

## **31 TAC §§ 675.21-23 — June 12, 2010 Meeting Draft**

### 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

The Texas Low Level Radioactive Waste Disposal Compact Commission ("Commission") adopts new Subchapter B, to be captioned "Exportation and Importation of Waste" (including §675.21 to be captioned "Exportation of Waste to a Non-Party State for Disposal," §675.22 to be captioned "Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or for Disposal in the Compact Facility," and §675.23 to be captioned "Importation of Waste from a Non-Compact Generator for 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 fees associated with those activities.

The Compact Commission received more than 3,000 comments on the proposed rules in new Subchapter B, in response to those comments, the Commission made a number of changes to the rule to address the concerns of those who provided comment. New §§675.21-23 are adopted with changes to the proposed text as published in the February 12, 2010, issue of the Texas Register (34 TexReg 1028).

#### **BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES**

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 limit the number of facilities needed to effectively, efficiently, and economically manage low-level radioactive waste and

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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 to distribute the costs, benefits, and obligations among the party states; all in accordance with the terms of the 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 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 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 import may be considered and granted or denied by the Commission and by which export permits and import agreements may be granted. The sections set and assess fees associated with evaluating and processing export petitions and 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.

Adopted new §675.21(a) prohibits exportation of low-level radioactive waste 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 issued an export permit in accordance with these sections.

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Adopted new §675.21(b) requires that 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 to petition the Commission for an export permit.

Adopted new §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.

Adopted new §675.21(d)(1) establishes and sets non-refundable Petition Application Fee of \$500 that must accompany the petition form before any action will be taken by the Commission.

Adopted new §675.21(d)(2) establishes an Export Petition Evaluation Fee that will be set out in a fee schedule created by the Commission. The section sets forth the factors that will be considered in creation of the fee schedule. It provides an appeals process for the amount of the fee that may be assessed.

Adopted new §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)~~ the disposal facility receiving the waste that the waste acceptance criteria have been met for the proposed waste to be exported. Likewise, the Compact facility operator is required to submit any comments on the export petition to the Compact Commission no later than 30 days after the Commission receives the petition. It requires the Commission, upon receipt, to post the export petition to the Commission's web site and to the Texas Register. The Commission shall distribute the export petition and comments received on the petition to the Commissioners, the petitioner and the Compact facility operator.

Adopted new §675.21(f) requires the Commission to meet promptly, but no sooner than 60 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.

Adopted new §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.

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Adopted new §675.21(h) states that the Commission may impose any terms or conditions on the export permit as determined by the Commission.

Adopted new §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.

Adopted new §675.21(j) 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.

Adopted new §675.21(k) states the export petition shall be on a form promulgated by the Commission and made available to the public.

Adopted new §675.21(l) provides that the Commission will receive, but not begin to process, export petitions until the Commission determines by affirmative vote that it has adequate resources to examine the permit applications and enforce the terms and conditions of any permit issued. The new subsection authorizes the Commission to continue to approve export permit applications pursuant to its December 11, 2009 resolution until the Commission determines by vote that it has adequate resources to consider the export petitions under the criteria set out in this rule.

Adopted new §675.21(m) 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.

Adopted new §675.22(a) provides that party state generators are not required to obtain an export permit to export waste for the purpose of managing or processing if the waste will be returned to the party states for disposal in the compact facility.

Adopted new §675.22(b) requires party state generators to notify the Commission by report not later than 10 days after the shipment of waste under §675.22(a). New subsection §675.22(b) authorizes generators to submit U.S. Nuclear Regulatory Commission Forms 540 and 541 to satisfy the reporting requirement,

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along with the information set out in new subsection (b)(2). In the alternative, the new subsection specifies what information must be in the report submitted to the Commission, 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.

Adopted new §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 of the waste returned. The new subsection requires the generator and processor to certify 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.

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

Adopted new §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. It also provides that it is the policy of the Commission that it will not accept the importation of waste of international origin.

Adopted new §675.23(b) states that disposal capacity is reserved for Texas and Vermont calculated by total, as-disposed volume and total activity, and provides that 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 shall be informed by the annual host State status report, which includes projections of the facility's anticipated future capacity.

Adopted new §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 based on the currently licensed volume and activity. 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.

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Adopted new §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.

Adopted new §675.23(d)(1) provides that violation of new subsection (d) may result in the Commission prohibiting the violator from disposing of waste in the Compact Facility or imposition of penalty surcharges on the shipments to the facility.

Adopted new §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.

Adopted new §675.23(f) assesses and sets a non-refundable Import Agreement Application fee that must accompany the proposed agreement form before any action will be taken by the Commission. New subsection (f)(3) establishes the Import Agreement Evaluation Fee that will be assessed in a fee schedule adopted by the Commission. The new subsection sets out the factors that will be considered by the Commission in creating the new fee schedule. Once assessed the fee is due whether the Commission grants the Import Agreement or not.

Adopted new §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 the Compact Facility that the waste acceptance criteria have been met for the proposed waste importation. The new subsections (g)(2)-(7) set out processes by which the Compact Commission will receive; process; provide notice; and receive comments upon proposed Import Agreements.

Adopted new §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 new subsection sets out the factors to be utilized in consideration of the proposed Import Agreement.

Adopted new §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.

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Adopted new §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.

Adopted new §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.

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

Adopted new §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.

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

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

Adopted new §675.23(o) provides that the Commission will receive, but not begin to process, applications for Import Agreements until the Commission determines by affirmative vote that it has adequate resources to examine the applications and enforce the terms and conditions of any Agreements entered.

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

### **FINAL REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES**

The Compact Commission received several comments which stated that the proposed rule is a “major environmental rule” as defined in section 2001.0225 of the Texas Administrative Procedure Act, TEX. GOV’T CODE § 2001.0225(g). These comments did not analyze this issue pursuant to the provisions of section 2001.0225(a) of the APA, but merely indicated in conclusory statements that this rule is a major environmental rule and analysis should be conducted.

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The Commission does not find that this is a major environmental rule as defined in section 2001.0225(g) of the APA, as previously stated in the preamble to the proposed rule to be adopted as Subchapter B, Chapter 675, Part 21, Title 31, “Exportation and Importation of Waste.” The primary objective of the new rule is to create economically viable options for waste disposal for Compact generators. The Texas Commission on Environmental Quality (TCEQ) has the sole authority to license the facility for disposal of radioactive substances. TEX. HEALTH & SAFETY CODE § 401.011. The TCEQ currently licenses the quantity, quality, and sources of materials that may be disposed of at the compact facility. While protection of the environment and human health are concerns for the Compact Commission, the Commission is charged with determining whether waste may be lawfully imported or exported from the state, not whether such waste may be lawfully disposed of at the site. The proposed new rule requires the Compact Commission to consider whether the compact facility will be licensed to dispose of the waste prior to granting an import agreement for the waste. The rules adopted in new Subchapter B, Chapter 675 set out the procedural requirements for obtaining permits and do not themselves authorize either the exportation or importation of waste.

Assuming, arguendo, this rule falls within the definition of section 2001.0225(g) of the APA, the Commission is not required to conduct further analysis under section 2001.0225(a). The Compact Commission’s rule making is excepted from the analysis pursuant to section 2001.0225(a)(1)-(4). First, the Commission is not a state agency. It is an Interstate Compact Commission and its authority is derived equally from both federal and state law. While the Compact itself is properly construed under federal law upon ratification, it remains the fact that this rule does not fall within any of statements in section 2001.0225(a) and, thus, there is no requirement to conduct further analysis. None of the statements regarding derivation of authority to adopt the rule described in section 2001.0225(a) of the APA applies to the Compact Commission. The Compact Commission is acting pursuant to the express authority of both the state and federal governments, which have both adopted the Compact law, to create processes to enter into import agreements and grant export petitions. TEX. HEALTH & SAFETY CODE CH. 403, § 3.05(6)-(7), PL 105-236. Such authority is specifically granted under state and federal law. Thus, section 2001.0225, by its own terms, is inapplicable to the Compact Commission’s exercise of rule making authority in Subchapter B, Chapter 675, Part 21, Title 31, “Exportation and Importation of Waste.”



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### **FINAL TAKINGS IMPACT ASSESSMENT**

This rule is adopted to create a process for obtaining authorization to export or import low level radioactive waste from or into the Compact. This rule does not affect the ownership of private real property. 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. Currently, there is no right under existing law to export or import radioactive waste from the party states without a permit or authorization granted by the Compact Commission, as currently stated in §§ 3.05(6), (7), 6.01, 6.02 of the Compact. TEX. HEALTH & SAFETY CODE CH. 403, §§ 3.05(6)-(7), 6.01-.02; PL 105-236. This rule simply creates a mechanism for obtaining the authorization currently required by law.

### **FINAL STATEMENT: IMPACT TO STATE OF TEXAS; PUBLIC BENEFIT**

Michael Ford, Chairman of the Compact Commission, has determined that for each year of the first five years that the rule is in effect the fees generated by 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. At the time the compact facility becomes operational, there will be no additional cost to the State for administering the rules because the costs will be included in the disposal fee pursuant to §4.04(4) of the Compact Act. TEX. HEALTH & SAFETY CODE §4.04(4).

Mr. Ford has determined for each year of the first five years that the rule is in effect that permits issued for export of wastes may have a negative effect on the State of Texas General Revenue Fund because gross receipts may decrease if disposal at the Compact Disposal Facility is ultimately reduced or is not offset by importation. The dollar amount of gross receipts cannot be estimated at this time because disposal fees have not been established in rule.

Mr. Ford has further determined that the State will benefit from additional regulatory controls on the flow of waste to and from the State of Texas for both management and disposal.

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Mr. Ford has determined that for each year of the first five years that the rule is 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.

### **FINAL STATEMENT: LOCAL EMPLOYMENT IMPACT STATEMENT**

In general, local employment could be negatively impacted due to export of waste that could be sent to and accepted by the Compact Disposal Facility for disposal. While certain types of waste may be classified as “low-level radioactive waste,” those wastes may not meet the waste acceptance criteria of the facility. Additionally, there may be certain types of waste that may not be economically disposed at the facility due to the current Compact Disposal Facility license conditions. Currently, the facility operator employs 150 positions. Exports may reduce the number of positions the facility employs as business volumes decline or make the disposal facility uneconomical to operate and result in discontinuance of operation. Local employment could be positively impacted if import agreements are issued to allow disposal of low-level radioactive waste at the Compact Disposal Facility to replace exported volumes and/or to provide sufficient operational volumes to create affordable rates for Compact generators. Currently, the facility operator employs 150 positions and will add 75 positions when the site opens for disposal. Additionally, indirect employment may result from the additional direct employment impact. Also, 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 Commissioner’s 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.

### **FINAL SMALL AND MICRO BUSINESS COST ANALYSIS**

Michael Ford, Chairman of the Compact Commission, has determined that 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 rules. The Compact Commission estimates the economic impact of the cost of compliance

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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 received comments expressing concern that there would be a negative impact on small businesses if export permits are not granted. The Commission acknowledges that it is possible that there could be a greater cost associated with disposal in the compact facility; however, that impact cannot be determined at this time because the rates for disposal at the compact facility have not been set. The Compact Commission does not control the disposal rate set for the facility. The Compact Commission does not have sufficient information to address this issue at this time.

Mr. Ford has determined that, in addition to the application fees called out in the rule, the probable economic costs for persons required to comply with this proposed Rule will be a total of approximately 8-hours or fewer labor time to compile and provide the information required by the Commission. It is anticipated, based on the information required by the Commission that an engineering professional (or similar) would likely be required to compile the required information (shown in 675.21(e) and 675.21(h)) and submit it to the Commission. Based on estimated labor costs of \$50 to \$100 per hour, depending on the organization and the relationship of the engineering professional to the waste generator (i.e., employee or consultant), the overall cost to persons required to comply with this rule could range from an estimated low of \$450 for small volume waste generators to an estimated high of \$1300 for large volume generators. Additional costs incurred by persons due to delays encountered in waiting for determinations by the Commission are not included in this cost estimate since the proposed Rule does not change the requirement for persons seeking export from or import into the Compact to have an Agreement with the Commission prior to any such action taking place. Finally, persons may choose to engage legal counsel or professionally certified personnel in the preparation of information required by the Commission. Such legal or professional endorsements are not required by the proposed Rule.

The Commission has designated a reduced fee of \$50 for generators submitting export petitions for 100 or fewer cubic feet of waste to lessen the impact on these generators. Additionally, small 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 may have limited duration.

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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.

### **STATUTORY AUTHORITY**

New Rule 675.21 is adopted under PL 105-236 and Texas Health and Safety Code, ch. 403 (Compact Act § 3.05(4)), which grants the Compact Commission rule making authority to carry out the terms of the Compact. This rule is also adopted pursuant to §§ 3.05(7), 6.01 and 6.03 of the Compact, which authorize the Commission to regulate the exportation of low level radioactive waste and prohibit unauthorized exportation of waste..

New Rule 675.22 is adopted under PL 105-236 and Texas Health and Safety Code, ch. 403 (Compact Act § 3.05(4)), which grants the Compact Commission rule making authority to carry out the terms of the Compact. This rule is also adopted pursuant to § 3.05(8) of the Compact, which authorizes the Commission to monitor the exportation of waste for the sole purpose of management or processing.

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

### **PUBLIC COMMENT AND COMMISSION RESPONSES**

**The Compact Commission held public hearings in Austin, Texas on April 5, 2010 and Andrews, Texas April 6, 2010. The summaries and responses to those comments appear below, organized by topic.**

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### PURPOSE OF THE COMPACT

The Compact Commission received the following comments that indicated the commenter was against the adoption of one or more rules in Subchapter B.

Comment: When the Texas Low-level Radioactive Waste Disposal Compact Bill passed, the explanation was that Compact was in place to limit the amount of waste that would come into Texas. When we questioned the provision that was in the legislation and in the Compact that the Commissioners had the ability to import waste from other states that were not in the Compact, the explanation given was that it will never be invoked; it's only an emergency provision. We were assured that this would never become a regular feature of the Compact. I'm here to voice my belief that the Commissioners should reject the inclusion of this rule along with the others about exporting the waste.

Response: The Commission respectfully disagrees with this comment. The Texas Low-Level Radioactive Waste Disposal Compact Consent Act in section 3.05(6) provides that the Compact Commission may enter into an agreement with certain parties to allow the importation of low-level radioactive wastes into the Compact for management or disposal. Paragraph (7) of the same section in the Act provides for the exportation of waste from the compact sites.

The export and import clauses in the Act were approved by the legislative bodies of Texas and Vermont, as well as approved by the United States Congress and signed by President Clinton. The framers of this Act clearly undertook a deliberative process to incorporate these provisions.

Comment: Opening up this Andrews County site to waste from all other states or many other states we're largely abrogating the need for that original Compact and what it was designed to do. So I believe that this is something that the Commission should not do and should back away from as soon as possible.

Response: The Commission respectfully disagrees with this comment. The Texas Low-Level Radioactive Waste Disposal Compact Consent Act provides for the regulation of export and import of low-level radioactive waste within the Texas-Vermont Compact states. Article I. Policy and Purpose of the Act, states the reasoning and responsibilities of the party states Texas and Vermont. The Compact language calls for the party states to cooperate in the protection of the health, safety, and welfare of their citizens and the environment, and other aspects that include to effectively, efficiently, and economically manage low-level radioactive waste. The Compact Commission is given this responsibility to weigh the policy factors, and the rules for export and import provide that process.

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### IMPORT

Comment: A commenter stated that the import rule will offset a lot of costs of the current compact generators, and provide them benefit; financial benefit to support their operations. It will also help all the other commercial nuclear waste generators in the country.

Response: The Commission generally agrees with this comment. The export/import rule will provide a process where the Compact Commission can consider the import of low-level radioactive waste from outside the Texas-Vermont Compact. One of the criteria to be considered is in Section 675.23, "Importation of Waste from a Non-Compact Generator for Management or Disposal", subsection (a) states that "It is the policy of the Commission that any savings generated by importation accrue to the benefit of the party states." It is the policy of the Compact Commission that should there be space available in the compact disposal facility after assuring that the needs of Texas and Vermont generators are secured importation can be considered. In addition, the Compact Commission will seek to provide that any importation provide for a savings to the low-level radioactive waste generators in Texas and Vermont. However, another very important responsibility of the Compact Commission is to consider the economic impact of waste disposal to the operator of the compact disposal facility since the rate for disposal is regulated by a fiduciary ratemaking process by the Texas Commission on Environmental Quality. By law, the operator of the compact disposal facility is entitled to a return on their investment in constructing and operating the disposal facility. The Compact Commission needs to consider the impact to the disposal rates for Texas and Vermont generators when considering export and import of low-level radioactive wastes.

Comment: A commenter against adoption of the import provisions stated that import rules will open this site up to waste potentially from all over the world; low level waste is not low level risk, it is waste that will be hazardous here tens and hundreds of thousands of years.

Response: The Commission respectfully disagrees. With regard to the comment that the export/import rule will allow the disposal of low-level radioactive waste of international origin, the rule states in section 675.23(a) that it is the policy of the Commission that it will not accept the importation of low-level radioactive waste of international origin.

With regard to the comment that low-level radioactive waste will remain hazardous for multiples of thousands of years, the Commission is not the licensing agency for the disposal facility. The Texas Commission on Environmental Quality is the licensing agency that approved the Compact disposal facility to assure the protection of the public and the environment.

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### CONCERNS ABOUT THE COMPACT SITE

Comment: A commenter stated that there are about fifty-two preconstruction conditions on that license. Some of those conditions have been met, but not all of them. In the meantime, Waste Control Specialist (WCS) has sought some amendments to the license to change part of their design. TCEQ is going to do a notice deficiency on that design.

Response: The commenter states correctly that the Texas Commission on Environmental Quality (TCEQ) is the licensing agency for the compact disposal facility operated by WCS. The Compact Commission has no authority with regard to the license that TCEQ issued to WCS. The Compact Commission is the gatekeeper of low-level radioactive waste going to the WCS facility. Construction and acceptance of waste into the WCS disposal facility can only occur with approval of TCEQ.

Comment: A commenter was against the rule and stated that the place [WCS facility] isn't operating, all the conditions haven't been met, the Sierra Club appeal is still working it's way through the process - we don't feel like there's a need to go forward with a rule on importation at this time, in fact we think there would be every reason if they wanted to go forward with a rule on importation to say, let's just say no to importation at least over the next ten years see if this facility actually gets off the ground operates, operates well and then we might look at that other issue, but we don't feel there's any need to do it at this time.

Response: The Commission respectfully disagrees. The commenter states correctly that the WCS disposal facility is not operating at this time. WCS must still construct the facility and meet the requirements stipulated by the state licensing agency, the Texas Commission on Environmental Quality. The Commission believes that having a process defined and approved to consider importation of waste is prudent planning, and provides the Commission to fulfill its responsibilities stated in Public Law 105-236-Sept. 20, 1998, "Texas Low-Level Radioactive Waste Disposal Compact", "Article I. Policy and Purpose", where Sec. 1.01 states "It is the policy of the party states to cooperate in the protection of the health, safety, and welfare of their citizens and the environment and to provide for and encourage the economical management and disposal of low-level radioactive waste." The issue of importation of low-level radioactive waste needs to be resolved up front to assure that rules are in place to assure and secure adequate disposal capacity for Texas and Vermont, and to consider the economical impact to Compact generators, the Host state, and the operator of the disposal facility.

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Comment: I come from an area where one of the six previous so called low-level radioactive waste sites it is and supposedly permeable clay. And from the early 60's into the mid 70's radioactive waste was buried at that site. It was at a point before there were many nuclear power reactors running, but it does have nuclear power waste buried there. But the impermeable clay did end up getting cracks, and there were leaks and the projected clean up costs now for that site, which both the state and federal government are working out, is in the range of 5 billion dollars. So the point now, though, about liability, is that the costs are something that are going to affect all of the people in Texas from this.

Response: The Commission disagrees with this comment. The licensing of the Waste Control Specialist disposal facility is with the Texas Commission on Environmental Quality. The comments provided on the geology of the disposal site are part of the licensing process with TCEQ. The Commission has no authority on the licensed issued by the TCEQ to WCS.

Comment: I am going to submit to the record, documentation that the new nuclear reactors are planning on sending their wastes here. [D'Arrigo's handouts] What I am going to submit for the record is, the independent study that was done on the clean up of the west valley nuclear site and the costs, the full costs of cleanup study and some of the documentation from one of the several reactors that are proposed that are indenting of dumping at WCS. [D'Arrigo's handouts]

Response: The Commission disagrees with this comment. The handout provided is Section 11.4 Solid Waste Management of the COL application to the Nuclear Regulatory Commission for the Vogtle Electric Generating Plant, Units 3 & 4. In section 11.4.2.4.3 Alternatives for B and C Wastes, the applicant lists possible solutions to the storage and/or disposal of B and C wastes. One of the alternatives described is to transfer for storage B and C wastes to WCS for storage pending the availability of a disposal site. It is not clear from the applicant of the COL that storage at WCS of Class B and C material is assumed to be disposed at WCS. The applicant simple states that the material can be stored at WCS and then disposed at a licensed site. In any event, the Commission has not provided any guarantees to any generators that waste from out of compact will be approved for disposal at the Compact facility. The export/import rule under consideration will provide for the Commission decision making process.

With regard to the studies submitted on clean-up costs of the west valley nuclear site, the Commission is not the licensing authority for the Compact disposal facility. The Texas Commission on Environmental Quality(TCEQ) issues the license to the operator of the Compact disposal facility. Issues regarding the safety and geology of the Compact site are addressed during the licensing process through TCEQ.



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### ISSUES INVOLVING TCEQ

Comment: TCEQ's staff in the first place went ahead and said that we should not be building a nuclear waste storage facility in Andrews County to begin with. Commissioners overturned that rule and despite not knowing that there would be opportunities for waste to be coming from other various streams from outside the state. I think that this means that not only should the Compact Commission not go ahead with approving this, but that the TCEQ needs to look at this again and really decide whether this is what we want to do.

Commission Response: The licensing of the Waste Control Specialist disposal facility is with the Texas Commission on Environmental Quality. The Commission has no authority on the licensed issued by the TCEQ to WCS.

Comment: Professionals at the TCEQ recommended against storing waste at this facility and in fact several resigned from the agency over it

Commission Response: The licensing of the Waste Control Specialist disposal facility is with the Texas Commission on Environmental Quality. The Commission has no authority on the licensed issued by the TCEQ to WCS.

Comment: There still remains serious allegations by 3 former TCEQ employees who worked on the initial application for the radioactive waste license that claim there was confirmation of water in and around samples that were taken during the time that they worked there.

Commission Response: The licensing of the Waste Control Specialist disposal facility is with the Texas Commission on Environmental Quality. The Commission has no authority on the licensed issued by the TCEQ to WCS.

### TRANSPORTATION

Comment: WCS commented that it has been in business for quite a few years now, and we have been technically importing waste for years now, for treatment, storage. But, the waste that is treated is then shipped back off, so it's on the highways, all over the U.S., already coming to us; we treat it and it's shipped off to the disposal site to where it's being disposed of right now. So, we are not really asking to do anything beyond what we have already been doing for quite a few years, we are just wanting to dispose of it now, to put a final resting place.

Response: The Commission agrees with the commenter that transportation of radioactive wastes occurs daily on the Nation's highways and in Texas and are regulated by Federal and state agencies to assure the protection of the public and

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the environment. The Federal Agency having primary jurisdiction on the transportation of radioactive waste is the U.S. Department of Transportation, and the State of Texas also regulated the transportation of radioactive waste per Texas Health and Safety Code § 401.052.

Comment: Facilities such as the WIPP site have been able to transport countless numbers of containers of radioactive waste safely through the State of Texas, on the very highways that have been mentioned before.

Commission Response: The Commission agrees with the commenter that WIPP transports waste through Texas on its way to the WIPP site in Carlsbad, New Mexico. Federal and state regulators are involved in assuring the materials are transported safely.

### **HEALTH AND SAFETY CONCERNS**

Comment: Our concern with this is that the rights of consumers are not being protected.

Commission Response: The Commission disagrees with this comment. The purpose of the Compact Commission is stated in Public Law 105-236-Sept. 20, 1998 in Article I, Policy and Purpose, Sec 1.01. In part, this section states that the purpose of the Compact is provide for the economical management and disposal of low-level radioactive waste for the party states. To accomplish this, the Commission was given the authority to control the export and import of radioactive waste in the party states, Texas and Vermont. Consumers are affected by the costs of disposing of low-level radioactive waste for this is a true cost reflected in services and products from hospitals, universities, nuclear power electricity production, well loggers, and many others. It is the responsibility of the Commission to regulate such that disposal of radioactive waste do not adversely affect the valuable services and products that consumers enjoy to the extent practical.

Comment: In most other countries where there is a functioning nuclear power sector that power sector is in fact socialized it is run by the government - public wealth being used to create a public good. Public good, public risk - and the United States regulatory or the United States nuclear industry has largely been private wealth, private good, private reward. We are now looking at a situation with this where we are looking to socialize these risks and have the public take a very large amount of risk, but the economic rewards will all be held by a very few individuals and those will largely not be shared.

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Commission Response: The Commission disagrees with this comment. It is not clear how the commenter's remarks pertain to the export/import rule being considered by the Commission. The construct and ownership and terms of the compact disposal facility was approved by the Texas Legislature.

Comment: WCS is seeking to underestimate the risk, reduce the perception of risk for this facility. Private types profit for themselves and then socialize the cost by leaving the liability for any future problems failures of this facility with us the people of Texas

Response: The Commission disagrees with this comment. It is not clear how the commenter's remarks pertain to the export/import rule being considered by the Commission. The construct and ownership and terms of the compact disposal facility was approved by the Texas Legislature.

Comment: The importation rule is being driven by WCS without any sincere consideration of the impact that it will have on the state. At the very least I would ask that the Compact Commissioners refuse to incorporate a rule such as this one without officially acknowledging numerous problems such as, as has been stated, the facility at Andrews County as permitted is insufficient to handle the amount of waste that is coming. There's no limit in the rule to the amount of radioactive waste that could come in, which kind of makes it not even a rule, and the rule fails to anywhere acknowledge the state's liability in the event of a leak or any other need to clean up.

Commission Response: The Commission disagrees with this comment. The amount of waste that can be disposed of in the WCS facility is defined in the license issued by the Texas Commission on Environmental Quality. Before any importation will be considered, the Commission will determine the capacity that Texas and Vermont must have, and if a surplus of capacity exists importation can be considered by the Commission. In addition, the license for the WCS disposal facility also stipulated the waste types and forms that will only be accepted. With regards, to liability to the State of Texas, this is a matter deliberated and resolved by the Texas Legislature. The Commission has no jurisdiction with regard to liability.

Comment: It's clear in reading this rule that more deliberation is needed and that some significant changes should be made. Taking the time to get the job done right will not cost the Compact or any of the goals that these folks were selected to accomplish. I think that you can promote industry, job creation, new revenues and promote safety, accountability and intelligent guidance by improving this rule. This commenter was against adoption of the new rules at this time.

Commission Response: The Commission respectfully disagrees. The Commission agrees that this rule and any other should be undertaken with careful deliberation to assure issues are addressed to the extent practical. The Commission

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has undertaken a deliberative process complying with the Texas APA. This included publication of the export/import rule in the Texas Register to receive public comment, two public hearings, a public rules committee meeting, and deliberation among the Commissioners during meetings with the opportunity to hear additional public comments.

Comment: There is no fiscal impact statement on these rules its required for every law that passes the Texas Legislature, but we can't get one in this rule process to talk about what will negatively impact the state budget for hundreds and hundreds of years to come. Why?

Commission Response: The Commission respectfully disagrees. The rule provides a statement concerning the Impact to the State of Texas, local employment and public benefits. The APA requires a 5-year analysis of the financial impact, which was provided in the proposed rule preamble. The Texas Commission on Environmental Quality which is the licensing agency for the Compact disposal facility has considered State of Texas liability and mitigation of the facility in the licensing process.

Comment: When you are working with radioactivity, and you are dealing with radioactive contamination, it is the most controlled, the most understood. The engineering, transportation - all the issues have to be thought out at WCS. They have to be planned for - all kinds of contingencies.

Commission Response: The Commission neither agrees nor disagrees with this comment. The regulation of radiological safety is the jurisdiction of the Texas Commission on Environmental Quality. The Commission has no jurisdiction in this area.

Comment: What I [an employee] really like about WCS is that they gave me responsibility, and they gave us the right to stop any work out there. If we see that something is wrong, we have the authority to say "stop".

Commission Response: The Commission neither agrees nor disagrees with this comment. The Commission has no jurisdiction on the development and enforcement of procedures at WCS. Other Federal and State agencies have jurisdiction to regulate work practices at WCS.

Comment: There is no guarantee against accidents, both human and caused by Mother Nature.

Commission Response: The Commission neither agrees nor disagrees with this comment. Regulation of safety and protection of the environment is the jurisdiction of the Texas Commission on Environmental Quality, and other state and federal agencies. The Commission has no jurisdiction in the regulation of health and safety, and the protection of the environment.

Comment: People have asked for alternatives to storing toxic waste here. There

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are safe processes to make radioactive materials harmless. But, then there would not be all of the billions of dollars flowing in and around this area, to handle this matter.

Commission Response: The Commission disagrees. The Texas Legislature through a deliberative process approved the construction and operation of a low-level radioactive disposal facility to be operated by a private entity in Texas. The Commission has no authority to explore or compel other concepts to dispose of low-level radioactive waste. However, the Commission does have the authority to encourage the reduction of the generation of low-level radioactive waste.

Comment: A commenter stated that one young lady mentioned a waste disposal unit in the 60' and 70's. I was actually alive then when we had leaded solder, when we had leaded gas, when we took mercury out of thermometer and put it in dimes so it would be nice and shiny, black and white TV's, black and white movies; a lot has changed since then. Then, this was a calculator; a lot of technology has changed. What we do at WCS has changed too, as compared to the landfills she was speaking of. I've worked a lot of places over the years and I have never been someplace that places more emphasis on being safe, on keeping the most minor little oil drip out of a vehicle cleaned up, and everything straight. And, I feel that we go well beyond the regulatory rules that are put on us.

Commission Response: The Commission neither agrees nor disagrees with this comment. The Commission has no authority in the licensing process. The Texas Commission on Environmental Quality reviews the requirements to issue a license that includes the design of the facility and site investigation.

Comment: A commenter stated that Glencoe says in that book [a Social Studies textbook used in Andrews County schools], "the largest underground water Aquifer, in the world is right here in West Texas; Ogallala." That waste has been stored 14 feet above the largest underground Aquifer in the world. It will not only affect Andrews County, it would affect a lot of the whole Permian Basin; it's in that Glencoe book.

Commission Response: The Commission neither agrees nor disagrees with this comment. The Commission has no authority in the licensing process. The Texas Commission on Environmental Quality reviews the requirements to issue a license which includes the design of the facility and site investigation.

Comment: Earthquakes are happening more and more all the time. The French do not bury their nuclear waste above their water layers. They bury them 80 feet below the water layers because they know there could be a leak.

Commission Response: The Commission neither agrees nor disagrees with this comment. The Commission has no authority in the licensing process. The Texas Commission on Environmental Quality reviews the requirements to issue a license which includes the design of the facility and site investigation.

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Comment: Unfortunately, if we look at examples like Chernobyl, that have been brought up before, we see the potential for disaster in this situation, and we know what it can do.

Commission Response: The Commission neither agrees nor disagrees with this comment. The Commission has no authority in the licensing process. The Texas Commission on Environmental Quality reviews the requirements to issue a license which includes the design of the facility and site investigation.

### **SITE COMMUNITY COMMENTS**

Comment: I am hoping that the TCEQ will very rapidly pass this legislation in so that my 10 grand-children will have a choice other than menial jobs or oil fields, when they are of age, and are adults and want jobs to work.

Commission Response: The Commission agrees that the export/import rule provides an assessment to the impact of local employment in Andrews where the compact facility is located. The assessment states that there is a potential that exporting of low-level radioactive waste out from the party states may reduce the number of personnel that the WCS facility employs. Importation of low-level radioactive waste from non-party states could increase the number of personnel employed by WCS. The rule provides for review of the impact to the Host state, the Host county and the facility operator when considering export and import petitions. These provisions are found in section 675.21(f)(4) and section 675.23(h)(4) of the proposed export/import rule.

Comment: A commenter was against the import rule. The commenter stated that: we want you to say “No” to the import rule, because, the import rule has left out things like environmental impacts. Each facility that brings in nuclear waste; and we’re talking about nuclear facilities who already have brown outs, have brown fields around them, have leaks already around them. We don’t want them to bring in their stuff from decommissioning to Andrews, Texas.

Commission Response: The Commission respectfully disagrees. The proposed export/import rule develops a process to consider importation of low-level radioactive waste from party states. No low-level radioactive waste can be disposed into the compact disposal facility unless it meets the criteria of the license issued by the Texas Commission on Environmental Quality (TCEQ). Review and consideration of environmental impacts of the compact disposal facility are the jurisdiction of TCEQ.

Comment: We’re not talking about medical waste here. We are talking about nuclear waste. We are talking about highly radioactive waste.

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Commission Response: The Commission neither agrees nor disagrees with this comment. The compact disposal facility is licensed by the Texas Commission on Environmental Quality to accept low-level radioactive waste for disposal as defined in the license. No low-level radioactive waste can be imported into the compact disposal facility unless it meets the license conditions.

Comment: We are talking about possibly this opening up to overseas waste as well.

Commission Response: The Commission disagrees with this comment. With regard to the comment that the export/import rule will allow the disposal of low-level radioactive waste of international origin, the rule states in section 675.23(a) that it is the policy of the Commission that it will not accept the importation of low-level radioactive waste of international origin.

Comment: If there was any damage from an earthquake, would we all still feel that everything is alright over at WCS?

Commission Response: The Commission neither agrees nor disagrees with this comment. The Commission has no authority in the licensing process. The Texas Commission on Environmental Quality reviews the requirements to issue a license which includes the design of the facility and site investigation.

Comment: While working here at WCS, I have participated in the most extensive training and indoctrination programs that I have ever experienced anywhere, bar-none. From radiation safety awareness, to proper conduct of operations; we are trained.

Commission Response: The Commission neither agrees nor disagrees with this comment. The Commission has no jurisdiction on the development and enforcement of procedures and training at WCS. Other Federal and State agencies have jurisdiction to regulate work practices at WCS.

Comment: I am strongly in favor of the approval of the Texas Compact Commission's proposed export or import rules. The question is whether the Texas Compact Commission should promulgate rules that would allow waste from states other than Texas or Vermont to be disposed of at the Compact disposal facility at WCS. These waste streams must be generated from the same processes and have the same radiological and chemical properties that have already been approved for Texas and Vermont waste generators; they are just generated in another state.

Commission Response: The Commission agrees with this comment. The Compact Commission is promulgating the export/import rule to develop a process where petitions for export and import of low-level radioactive waste can be consistently and thoroughly evaluated. Any low-level radioactive waste from a party state or non-party state must meet the radioactive materials license requirements issued to WCS by the Texas Commission on Environmental Quality.

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Comment: I chose to work at WCS, as they are very conscientious of their license and permit requirements; it's exemplary compared to every facility I have worked at.

Commission Response: The Commission neither agrees nor disagrees with this comment. The Commission has no jurisdiction on the development and enforcement of procedures and training at WCS. Other Federal and State agencies have jurisdiction to regulate work practices at WCS.

Comment: It [low-level material] wouldn't be sent here, to Andrews, to WCS, if they weren't in compliance with all the standards of the federal government and agencies. And, my hats off to them for doing a job well done.

Commission Response: The Commission generally agrees with this statement. The Compact Commission is promulgating the export/import rule to develop a process where petitions for export and import of low-level radioactive waste can be consistently and thoroughly evaluated. Any low-level radioactive waste from a party state or non-party state must meet the radioactive materials license requirements issued to WCS by the Texas Commission on Environmental Quality.

Comment: I want to say how proud I am of the people of Andrews as they have stepped forward, realized what they have to offer to the rest of the country, and have watched WCS grow and develop and care, because that is one thing that I guarantee working there; WCS does care.

Commission Response: The Commission neither agrees nor disagrees with this comment. The Commission has no jurisdiction on the development and enforcement of procedures and training at WCS. Other Federal and State agencies have jurisdiction to regulate work practices at WCS.

Comment: I am grateful to the Andrews people that they step up to the plate and realize that we have something to offer to the country [disposal facility for low-level radioactive waste], and it's something that is needed deeply.

Commission Response: The Commission disagrees with this comment. The Compact Commission is promulgating the export/import rule to develop a process where petitions for export and import of low-level radioactive waste can be consistently and thoroughly evaluated. The criteria to be considered by the Compact commission when reviewing an import petition is stated in section 675.23(h). These criteria do not include alleviating non-party states and other compacts in the nation from their responsibility to manage for the generation of low-level radioactive wastes in their states or compact region.

Comment: We know what we are here to do, and we do it with a professional and a professional manner. So, I want to make sure that everybody understands that we are not here to just do this and leave; we are here to do this for a living.



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Commission Response: The Commission neither agrees nor disagrees with this comment. The Commission has no jurisdiction on the development and operation of the WCS disposal facility. The Texas Commission on Environmental Quality is the licensing agency for the WCS compact disposal facility and has jurisdiction on the construction, operation and final closure of the facility.

Comment: I am here to tell this Commission that they [WCS] don't have 100% support. They can go to however many conferences, meetings and tell all the bureaucrats in the country, that "we all want toxic waste here." But, I had to come here tonight, and speak my mind, and tell you that it would be a lie. We may be stuck taking Vermont's toxic waste, but we don't all don't want the nation's toxic waste transported here from all over the country, or from all over the world, for that matter.

Commission Response: The Commission neither agrees nor disagrees with this comment. The export/import rule that the Compact Commission is considering for adoption defines the process for considering petitions to export and import from outside the compact party states. In addition, section 675.23(a) states that importation of low-level radioactive waste from international origin will not be accepted.

Comment: I'm a mom, I'm a grandmother, and if I had any concerns about what we were doing at Waste Control, I wouldn't work here. It's not about money, it's not about Corporate America, it's about the 130 or 40 continuing to grow people that live here, in Andrews, and in Eunice, and in Jowel, and in Hobbs, that work here, and live here and raise their children and grandchildren here. It's; you know, that's the people that are doing this, not Corporate America.

Commission Response: The Commission neither agrees nor disagrees with this comment. The export/import rule that the Compact Commission is considering for adoption defines the process for considering petitions to export and import from outside the compact party states. The criteria to be considered for exportation and importation of low-level radioactive waste are provided in section 675.21(f) and 675.23(h) of the proposed rule.

Comment: Unless there is a solution, wastes that are generated by and in 36 states, could be stranded into perpetuity. Texas Compact Commission to find a win - win solution, not just for Texas but as a nation as a whole. And this solution would not just benefit not only Texas, and Andrews Counties, but also waste generators across the country. And while they would also preserve the disposal capacity, they are due to the generators in Texas and Vermont.

Commission Response: The Commission disagrees with this comment. The export/import rule that the Compact Commission is considering for adoption defines the process for considering petitions to export and import from outside the compact party states. The criteria listed in section 675.23(h) of the proposed rule

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does not include the consideration of benefit to non-party states of the Texas-Vermont Compact.

Comment: Harry Reid got 20 years of work stopped on Yucca Mountain in Nevada, because they didn't want it there. They didn't care about the jobs that were going to be lost in Nevada. There must be some reason why these people cannot support toxic waste, nuclear waste being in Nevada or in Texas for that matter. I would like the Commission to take notice of this comment.

Commission Response: The Commission disagrees that this comment is relevant to the proposed rule.

**The Compact Commission received over 1,000 comments from individuals via e-mail. Summaries and responses to those comments appear below organized by topic:**

### **Health and Safety Issues**

Comment: Every safety precaution should be taken to insure the health and safety of all Texans. A current Environmental Impact Study, a Transportation Safety Study and an independent investigation into whether or not the site sits directly over the Ogallala, Pecos Valley and other aquifers should be performed before the Compact Commission allows additional states to store their waste at the Andrews County site.

Commission Response: The Commission agrees in part and disagrees in part with this comment. The Commission agrees that every safety precaution should be taken to insure the health and safety of all Texans. The Commission disagrees that an additional Environmental Impact Study, Transportation Safety Study or an independent investigation into whether or not the site sits directly over the Ogallala, Pecos Valley and other aquifers should be performed before the Compact Commission allows additional states to store their waste at the Andrews County site. The WCS low-level radioactive waste disposal site at Andrews has been carefully reviewed by the Texas Commission on Environmental Quality. Based on that review, including considerations of environmental impact, transportation safety and hydrology, the TCEQ has determined that the site is a safe and environmentally protective design and location to dispose of low-level radioactive waste. The Export/Import Rules that are the topic of this rulemaking do not address the adequacy of the site as that has been previously determined by the TCEQ.

Comment: The characteristics and effects of low-level radioactive waste are well known and when properly transported and managed, the risks to the public from LLRW are extremely low.

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Commission Response: The Commission agrees with this comment. The WCS low-level radioactive waste disposal site at Andrews has been carefully reviewed by the Texas Commission on Environmental Quality. Based on that review, including characteristics of low-level radioactive waste, transportation, management of low level radioactive waste and the risks to the public, the TCEQ has determined that the site is a safe and environmentally protective design and location to dispose of low-level radioactive waste. The Export/Import Rules, that are the topic of this rulemaking, assume the adequacy of the site as that has been previously determined by the TCEQ.

Comment: When the Compact disposal facility is built in accordance with the requirements of the TCEQ license, it will be an excellent facility built on outstanding geology that will be protective of human health and the environment.

Commission Response: The Commission agrees with this comment. The WCS low-level radioactive waste disposal site at Andrews has been carefully reviewed by the Texas Commission on Environmental Quality. Based on that review, including the geology underlying the site, the TCEQ has determined that the site is a safe and environmentally protective design and location to dispose of low-level radioactive waste. The Export/Import Rules, that are the topic of this rulemaking, assume the adequacy of the site as that has been previously determined by the TCEQ.

Comment: Profits really and truly should not come before people and planet. You must act in the children's best interest since they are totally dependent on the adults to make sane decisions.

Commission Response: The Commission agrees in part and disagrees in part with this comment. The Commission agrees that it must always act in the children's best interest since they are totally dependent on the adults to make good decisions. Likewise, the Commission believes that it must always act, and does always act in the best interest of all Texans and the environment. However, fees and assessments, including reasonable profit for the facility operator, are not the subject of this rulemaking. Those matters will be determined by the Texas Commission on Environmental Quality according to their rules at 30 TAC §336, Subchapter N.

Comment: It's pollutive (sic) and expensive to keep the waste, and is unstable in the event of power outage. We can't have waste storage without power. We couldn't turn it off if we wanted to. It would blow up. How stupid is that?

Commission Response: The Commission disagrees with this comment. The disposal of low-level radioactive waste relies on passive mechanisms to isolate the waste. There is no dependence on active motive sources, such as electric or

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mechanical power to contain the waste. The TCEQ regulates the storage of radioactive waste through their rules at 30 TAC §336, Subchapter M. The proposed Export/Import Rules do not address the adequacy of waste storage as that has already been licensed by the TCEQ.

Comment: I care about my children and do not want to see them hurt from the possible contamination of our ground water.

Commission Response: The Commission has noted this comment. The Commission likewise believes that it must always act, and does always act, in the best interest of all Texans and the environment.

Comment: Extreme care and consideration of lives possibly effected (sic) need to be given. Quality of life and cost of remedy in case of accidents are vital considerations. Ideally we would not have this to deal with.

Commission Response: The Commission has noted this comment. The WCS disposal facility is licensed by the TCEQ, which also oversees the operation to ensure that extreme care and consideration is given to not only daily operations, but also planning for immediate response in the event of an accident. The proposed Export/Import rule does not address these issues.

Comment: In order to take care of radioactive materials, these materials must be kept in view not only as facilities of storage but as houses of remembrance. The project, a citizen initiative, asserts that present proposed 'solutions' to the problem of radioactive waste further displace notions of its responsible care. As a dynamic recommendation for isolation and remembrance, Nuclear Guardianship seeks to honour (sic) humanity's connection to future generations. The concept advocates monitored, retrievable storage of nuclear materials, and acknowledges that this form of responsible care will require ongoing monitoring and maintenance. Instead of earth burial in West Texas we need to urgently explore: Maintaining radioactive waste in a monitored retrievable facility; Providing information to present and future generations about the exact nature of the materials and storage techniques currently employed; Creating practices for intergenerational equity; and Ceasing to rely on technologies that produce long-lived radioactive byproducts.

Commission Response: The Commission has noted this comment. The choice of disposal versus long-term above ground storage was decided during the licensing of the WCS disposal facility. The Compact Commission has no statutory authority to license the low-level radioactive waste disposal facility, as that is the jurisdiction of the TCEQ. Any concerns about the licensing or operation of the facility should be forwarded to the TCEQ.

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Comment: Because of the uniquely vast temporal nature of radioactive waste, these materials will require routine repackaging in order to ensure their safe isolation from the environment.

Commission Response: The Commission has noted this comment. The repackaging of radioactive waste is not addressed by this rule. The TCEQ, the DSHS, the US Department of Transportation and the US Nuclear Regulatory Commission have the statutory authority to regulate packaging and re-packaging of radioactive waste in Texas. Concerns about these issues should be directed to these agencies.

Comment: As yet, there is **\*\*no technological solution\*\*** to dispose of radioactive waste. For materials that remain life threatening beyond any conventional notion of time, 'disposal' can never be achieved. It is therefore the responsibility of people alive today, to warn future generations and prepare them for the radioactive legacy that they will inherit. But more than warn, we need to cease creating radioactive waste in the first place — this means No More Nuclear Power, No More Nuclear Weapons.

Commission Response: The Commission disagrees with this comment. The TCEQ has evaluated the proposed disposal method for this facility, and has issued a license to the facility operator after making a determination that the proposed method of disposal will isolate the waste for the required period of time. The Compact Commission has no statutory authority to determine the methods of disposal, nor do they have the authority to determine if nuclear power or nuclear weapons are created or used. These concerns are not addressed by the proposed rule.

Comment: I urge that an environmental study be allowed to take place.

Commission Response: The Commission has noted this comment. An extensive environmental analysis was conducted by the TCEQ as part of the licensing process of the WCS disposal facility.

Comment: Approving this rule would be putting forth a “major environmental rule” without the required environmental impact analysis. I believe that an independent EIS must be conducted before this rule can go forward. This rule will be used by utilities wanting to build new nuclear power reactors to justify making more waste even though the WCS site has limited capacity. This rule could dramatically increase the amount of waste that comes to the site and increase the threats to the environment and public health.

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Commission Response: The Commission disagrees with this comment. This rule does not meet the requirements of a “major environmental rule” as defined by Texas Government Code, §2001.0225(g)(3), in that the specific intent of this rule is to regulate the import and export of radioactive waste in the Texas Compact. This rule does not adversely affect in a material way the Texas economy, a sector of the Texas economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rule does not and cannot alter or increase the volume or activity of waste that the Compact Disposal Facility is licensed to dispose.

Comment: We shall accept no such substances that endanger the public welfare without adequate environmental impact analysis, safety measures, and oversight.

Commission Response: The Commission has noted this comment. The TCEQ has conducted a thorough evaluation of the disposal facility and determined that the facility is adequate to protect the public health and the safety of the environment. A comprehensive environmental analysis has been prepared and is available from the TCEQ.

Comment: There are many issues such as environmental damage and liability that should be studied and evaluated before a decision is made to allow all states to send radioactive waste to Texas. I am requesting that much more evaluation is made before a decision is made.

Commission Response: The Commission disagrees with this comment. The TCEQ has conducted a thorough evaluation of the disposal facility and determined that the facility is adequate to protect the public health and the safety of the environment. A comprehensive environmental analysis has been prepared and is available from the TCEQ.

Comment: The proper health and safety measures have not been taken to accept this waste.

Commission Response: The Commission disagrees with this comment. The TCEQ has conducted a thorough evaluation of the disposal facility and determined that the facility is adequate to protect the public health and the safety of the environment. A comprehensive environmental analysis has been prepared and is available from the TCEQ.

Comment: Why haven't you done the studies that make this site safe? It seems like there are a lot of safety studies that still need to be done in Texas before you take radioactive waste from other states.

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Commission Response: The Commission disagrees with this comment. The TCEQ has conducted a thorough evaluation of the disposal facility and determined that the facility is adequate to protect the public health and the safety of the environment. A comprehensive environmental analysis has been prepared and is available from the TCEQ.

Comment: Even a little arsenic can kill a human being. So why is the Commission so enamored with storing hundreds of thousands of tons of radioactive waste in Texas by allowing more states to send their nuclear waste to us? Some radioactive substances become "hotter" over time. And that the decaying products can also create dangerous substances, including polonium—the poison used to kill that Russian spy in 2006. Radium can be another by-product of decaying radioactive substances. Radium turns into Radon gas as it decays, which can cause cancer. Why would anyone in their right mind want to ship and store such harmful materials in Texas?

Commission Response: The Commission disagrees with this comment. The WCS low-level radioactive waste disposal site at Andrews has been carefully reviewed by the Texas Commission on Environmental Quality. Based on that review, including considerations of environmental impact, transportation safety and hydrology, the TCEQ has determined that the site is a safe and environmentally protective design and location to dispose of low-level radioactive waste. The Export/Import Rules, which are the topic of this rulemaking, do not address the adequacy of the site as that has been previously determined by the TCEQ.

Comment: Experts at the TCEQ exhaustively examined a broad range of topics including the site's suitability, disposal facility design, disposal techniques and geology. By granting WCS a license, TCEQ has effectively declared the site protective of the public health and the environment.

Commission Response: The Commission has noted this comment.

Comment: When there is an accident with most other contaminants, remediation is possible. When radioactive nuclides contaminate, the consequences are not reversible.

Commission Response: The Commission disagrees with this comment. The WCS low-level radioactive waste disposal site at Andrews has been carefully reviewed by the Texas Commission on Environmental Quality. Based on that review, including considerations of all potential accidents and their consequences, the TCEQ has determined that the site is a safe and environmentally protective design and location to dispose of low-level radioactive waste. The Export/Import Rules, which are the topic of this rulemaking, do not address the adequacy of the site as that has been previously determined by the TCEQ.

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### Environmental Issues

Comment: I prefer "not in my backyard." In this case, "my backyard" includes a nearby National treasure of Big Bend.

Commission Response: The Commission has noted this comment. The compact disposal facility in western Andrews County is approximately 200 miles northeast of Big Bend National Park. Because of the park's location, no radioactive waste will be transported through the park.

Comment: Texas has not shown concern for residents or damage to the environment in too many of its actions concerning highways, air & water quality, to name a few. I see no reason to trust that public interests will be protected in this action involving importation of any level of radioactive waste from other states.

Commission Response: The Commission disagrees with this comment. The WCS low-level radioactive waste disposal site at Andrews has been carefully reviewed by the Texas Commission on Environmental Quality. Based on that review, including considerations of environmental impact, transportation safety and hydrology, the TCEQ has determined that the site is a safe and environmentally protective design and location to dispose of low-level radioactive waste. The Export/Import Rules, which are the topic of this rulemaking, do not address the adequacy of the site as that has been previously determined by the TCEQ.

Comment: Texas cannot afford the liability of accepting this waste and then having them decide, after the fact, if it is safe Texas. Studies and evaluations need to be done before the waste is imported into our state.

Commission Response: The Commission disagrees with this comment. The proposed import rule provides for such analyses at 675.23(h)(1)-(12).

Comment: A legitimate federally approved environmental impact study should be conducted before any new waste is authorized.

Commission Response: The Commission disagrees with this comment. The amount of waste authorized to be disposed at the Compact Disposal Facility is established by the TCEQ in the Compact Disposal Facility license. This amount may not be exceeded without a major amendment to the existing license. Such an amendment would require an environmental analysis prior to issuance of the license.

Comment: If there's one thing a majority of Texans can agree on, it's that we need a federally approved Environmental Impact Study assessing the impact of massive amounts of new deadly waste coming into our state.



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Commission Response: The Commission disagrees with this comment. The amount of waste authorized to be disposed at the Compact Disposal Facility is established by the TCEQ in the Compact Disposal Facility license. This amount may not be exceeded without a major amendment to the existing license. Such an amendment would require an environmental analysis prior to issuance of the license.

Comment: Some of [the waste] only gets hotter each year for thousands of years to come!

Commission Response: The Commission has noted this comment. Class A segregated waste and Class B stable waste decay to levels that do not pose a risk to human health and safety within 100 years. Class C waste decays to levels that do not pose a risk to human health and safety within 500 years. Reference NUREG-0782, 46 F.R. 38091.

Comment: When radioactive materials begin to deteriorate, it can mix with the soil and pollute the aquifers and lake waters.

Commission Response: The Commission disagrees with this comment. The WCS low-level radioactive waste disposal site at Andrews has been carefully reviewed by the Texas Commission on Environmental Quality. Based on that review, including considerations of environmental impact, transportation safety and hydrology, the TCEQ has determined that the site is a safe and environmentally protective design and location to dispose of low-level radioactive waste. The Export/Import Rules, which are the topic of this rulemaking, do not address the adequacy of the site as that has been previously determined by the TCEQ.

Comment: We need an up to date environmental impact study, a transportation safety study, and an independent study to ensure that no aquifers will be in danger.

Commission Response: The Commission disagrees with this comment. The WCS low-level radioactive waste disposal site at Andrews has been carefully reviewed by the Texas Commission on Environmental Quality. Based on that review, including considerations of environmental impact, transportation safety and hydrology, the TCEQ has determined that the site is a safe and environmentally protective design and location to dispose of low-level radioactive waste. The Export/Import Rules, which are the topic of this rulemaking, do not address the adequacy of the site as that has been previously determined by the TCEQ.

Comment: I have just inspected a government map that shows that the Andrews County waste disposal site is directly over at least one main water aquifer, the Ogallala. The map is called the Texas Geological Atlas produced by the Bureau of Economic Geology. I have also just inspected a map that shows that the Andrews

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site is right in the center of a severe earthquake hazards area. The map is called the U.S.G.S. Earthquake Hazards Program - seismic hazards map.

Commission Response: The Commission has noted this comment. The WCS low-level radioactive waste disposal site at Andrews has been carefully reviewed by the Texas Commission on Environmental Quality. Based on that review, including considerations of environmental impact, transportation safety and hydrology, the TCEQ has determined that the site is a safe and environmentally protective design and location to dispose of low-level radioactive waste. The Export/Import Rules, which are the topic of this rulemaking, do not address the adequacy of the site as that has been previously determined by the TCEQ.

Comment: Our understanding of the environment has improved, the technologies (both those for assessing, and those allowing for safer storage) have improved, and both should necessitate a new study.

Commission Response: The Commission has noted this comment. The WCS low-level radioactive waste disposal site at Andrews has been carefully reviewed by the Texas Commission on Environmental Quality. Based on that review, including considerations of environmental impact, transportation safety and hydrology, the TCEQ has determined that the site is a safe and environmentally protective design and location to dispose of low-level radioactive waste. The Export/Import Rules, which are the topic of this rulemaking, do not address the adequacy of the site as that has been previously determined by the TCEQ.

Comment: Allowing states beyond Vermont and Texas to store their radioactive waste in Texas means that potentially tons of additional radioactive materials can be stored on our soil.

Commission Response: The Commission disagrees with this comment. The amount of *radioactive waste* that may be stored by an individual licensee is under the jurisdiction of the state authorities in Texas and Vermont through license conditions. The amount of *radioactive material* that may be stored by an individual licensee is also under the jurisdiction of state authorities in Texas and Vermont through license conditions. The Export/Import rules require any person seeking to import waste for the purposes of management (which includes, treatment, packaging and storage) to have an importation agreement with the Commission prior to that activity occurring. This allows the Commission to track the waste being imported for “management” so that it does not become ultimately “Compact waste”. The Compact Commission is aware the importation of waste for management is currently taking place. It is critical that, through this proposed rule, the waste is properly accounted for and tracked.

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Comment: Test and more testing. This can poison beyond our water... land, livestock, fish. This makes zero sense.

Commission Response: The Commission disagrees with this comment. The Compact Disposal Facility operator is required to conduct extensive environmental monitoring to measure the radioactive background in water, land, livestock and fish. In addition, the TCEQ conducts independent monitoring to validate the monitoring done by the Compact Disposal Facility operator.

Comment: The half-life of many radioactive compounds (i.e. the amount of time it takes for half of the material to decay) is tens of thousands of years. We can't [we] (sic) build a container that's guaranteed to last for even 100 years. Who's going to pay for repackaging this waste again and again and again?

Commission Response: The Commission disagrees with this comment. The TCEQ required the Compact Disposal Facility operator to dispose of the waste in concrete containers within concrete vaults

Comment: The proposed disposal operations were licensed by the TCEQ after five years of thorough, rigorous scrutiny.

Commission Response: The is Commission has noted this comment.

Comment: I have personal knowledge and experience with the WCS site and the efforts taken to ensure the site is the best site possible for LLW disposal.

Commission Response: The Commission has noted this comment.

Comment: The WCS disposal facility is one of the - if not the most characterized, analyzed, modeled and monitored sites in the entire county.

Commission Response: The Commission has noted this comment.

Comment: The site is perfect for disposal because it sites atop hundreds of feet of almost impermeable red bed clay. The Compact Disposal Facility is ideal for permanent waste disposal because of its unique geology (impermeable red bed clay and no drinking water present), arid climate and its isolation.

Commission Response: The Commission has noted this comment.

Comment: Any waste eventually approved for importation must meet the stringent licensing requirements spelled out by TCEQ. The TCEQ will not allow any waste into the Texas Compact that does not meet the type, characteristics and volume the site is licensed to receive.

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Commission Response: The Commission has noted this comment. The proposed import rule requires the Commission to consider the characteristics and volumes of the waste to be received. See 675.23(h)(1).

### Aquifer Issues

Comment: To dump radioactive waste so close to a water table as Waste Control Specialists LLC proposes is courting disaster, because eventually contamination will seep into the water tables. The water table associated with the Triassic redbed sediments likely would be vulnerable to contamination because of potential future rainfall increases in the area. Predicted rainfall increases possibly could expand the water tables into the proposed radioactive waste units. Intrusion of groundwater into the proposed units would increase the likelihood of public exposure to radioactive waste.

Commission Response: The Commission has noted this comment. The WCS low-level radioactive waste disposal site at Andrews has been carefully reviewed by the Texas Commission on Environmental Quality. Based on that review, including considerations of environmental impact, transportation safety and hydrology, the TCEQ has determined that the site is a safe and environmentally protective design and location to dispose of low-level radioactive waste. The Export/Import Rules that are the topic of this rulemaking do not address the adequacy of the site as that has been previously determined by the TCEQ.

Comment: Many government maps show the waste site is directly over the Ogallala aquifer. No sources dispute the fact that other aquifers are also underneath the site.

Commission Response: The Commission disagrees with this comment.

Comment: If waste gets into the water system, it will be devastating.

Commission Response: Noted

Comment: Has anyone addressed the issue of the impact that possible contamination of the Ogallala and Pecos Valley aquifers would have on the wildlife? How many animals, some of them maybe threatened or endangered, rely on these aquifers as the main source of their water?

Commission Response: The Commission has noted this comment. The impact on wildlife, including threatened and endangered species, was evaluated by WCS and the TCEQ and found to be negligible. The evaluation can be reviewed in section 5.17 of the TCEQ's Environmental Assessment of the facility.

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Comment: We never imagined that highly radioactive waste would be allowed to melt into the groundwater. Yet, that's exactly what's happened at the Hanford Nuclear Reservation, upstream on the Columbia River in Washington State. The site the Compact Commission has chosen to dump the nation's radioactive waste sits directly over the Ogallala Aquifer and other aquifers. One Texas state government specialist reported that there is a water table only 14 feet below the stored waste.

Commission Response: The Commission has noted this comment. The TCEQ has determined that the Compact Disposal Facility is a viable and safe place to dispose of radioactive waste. The site geohydrology has been thoroughly reviewed by the TCEQ. Their environmental assessment related to groundwater hydrology can be found at section 6.6.

Comment: The "actual" scientifically substantiated maps show that the Ogallala Aquifer is not under the site and is at no risk of contamination. The other aquifers of "non-potable" water are not at risk of contamination as the substantial amount of data on file with TCEQ shows and 50,000 year modeling has backed up.

Commission Response: The Commission has noted this comment. The TCEQ has determined that the Compact Disposal Facility is a viable and safe place to dispose of radioactive waste. The site geohydrology has been thoroughly reviewed by the TCEQ. Their environmental assessment related to groundwater hydrology can be found at section 6.6.

Comment: poisoning water sources is against the law. disgusting.

Commission Response: The Commission has noted this comment.

Comment: The edge of the aquifers and taproot branches are nowhere near the facility or any of WCS's holdings.

Commission Response: The Commission has noted this comment. The TCEQ has determined that the Compact Disposal Facility is a viable and safe place to dispose of radioactive waste. The site geohydrology has been thoroughly reviewed by the TCEQ. Their environmental assessment related to groundwater hydrology can be found at section 6.6 of their assessment.

Comment: The Compact disposal site is not above or adjacent to any drinking water source. If there were potable water in that area it would have been tapped long ago. Eunice, N.M., the closest city to the site, pipes in its municipal water from Hobbs, N.M.

Commission Response: The Commission has noted this comment. The TCEQ has determined that the Compact Disposal Facility is a viable and safe place to

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dispose of radioactive waste. The site geohydrology has been thoroughly reviewed by the TCEQ. Their environmental assessment related to groundwater and surface water hydrology can be found at sections 6.6 and 6.7.

Comment: There have been multiple studies done in this area regarding the Ogalla aquifer! MULTIPLE independent studies have proven this water system does NOT flow under WCS!

Commission Response: The Commission has noted this comment. The TCEQ has determined that the Compact Disposal Facility is a viable and safe place to dispose of radioactive waste. The site geohydrology has been thoroughly reviewed by the TCEQ. Their environmental assessment related to groundwater hydrology can be found at section 6.6.

Comment: Texas Water Development Board mappings – and hundreds of independent test borings - clearly demonstrate the Compact disposal site is not above or adjacent to any drinking water source.

Commission Response: The Commission has noted this comment. The TCEQ has determined that the Compact Disposal Facility is a viable and safe place to dispose of radioactive waste. The site geohydrology has been thoroughly reviewed by the TCEQ. Their environmental assessment related to groundwater hydrology can be found at section 6.6.

#### **Transportation Issues**

Comment: Please if anything, strengthen rules against transportation of anything toxic into Texas, as Texas is already polluted enough and standards, if any, are way too low.

Commission Response: The Commission has noted this comment.

Comment: Allowing any nuclear waste to come into the state of Texas is ridiculous and absolutely upsurd (sic). For that matter, even the transportation through Texas on Federal or local highways should be banned.

Commission Response: The Commission disagrees with this comment. Regulating the transportation of radioactive material and nuclear waste is not within the jurisdiction of the Compact Commission. Comments regarding banning radioactive material on Texas highways should be addressed to the Texas Department of State Health Services or the US Department of Transportation.

Comment: I do not want the transportation of this material from outside of Texas boarders [sic] across state lines.

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Commission Response: The Commission disagrees with this comment. Regulating the transportation of radioactive material and nuclear waste is not within the jurisdiction of the Compact Commission. Comments regarding banning radioactive material on Texas highways should be addressed to the Texas Department of State Health Services or the US Department of Transportation. The Compact Commission only makes determinations as to the importation of radioactive material for disposal at the compact facility. The proposed rule provides a mechanism for the public to make known their objections to specific petitions to import waste. See section 675.23(g)(6)-(7).

Comment: Even shipping this waste through Texas is unsafe, let alone letting it be dumped here.

Commission Response: The Commission disagrees with this comment. Regulating the transportation of radioactive material and nuclear waste is not within the jurisdiction of the Compact Commission. Comments regarding shipping radioactive material through Texas should be addressed to the Texas Department of State Health Services or the US Department of Transportation. Additionally, the jurisdiction for making determinations as to the disposal of radioactive material in Texas is with the TCEQ or the US Nuclear Regulatory Commission. The Compact Commission only makes determinations as to the importation of radioactive material for disposal at the compact facility. The proposed rule provides a mechanism for the public to make known their objections to specific petitions to import waste. See section 675.23(g)(6)-(7).

Comment: I live in Lubbock and I am sure that all this stuff will be transported through here. Why hasn't a transportation safety study been done to make sure that cities and states are protected if something goes wrong?

Commission Response: The Commission disagrees with this comment. Regulating the transportation of radioactive material and nuclear waste is not within the jurisdiction of the Compact Commission. Comments regarding banning radioactive material on Texas highways should be addressed to the Texas Department of State Health Services or the US Department of Transportation. The Compact Commission only makes determinations as to the importation of radioactive material for disposal at the compact facility. The proposed rule provides a mechanism for the public to make known their objections to specific petitions to import waste. See section 675.23(g)(6)-(7).

Comment: If Texas becomes a national radioactive waste dump, thousands of truckloads of waste could eventually be shipped through large numbers of Texas communities. Some of this waste is so radioactive it has to be loaded onto trucks by robotic arms. By the Department of Energy's own estimates, hundreds of people can be expected to contract cancer simply by exposure to the radiation

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emanating from these passing trucks. The government of Texas is not going to solve this problem without public demand. We all need to voice our opinions, not just the few on the Compact Commission. Where in your proposed rules do you address the potential dangers in transporting this stuff?

Commission Response: The Commission disagrees with this comment. Regulating the transportation of radioactive material and nuclear waste is not within the jurisdiction of the Compact Commission. Comments regarding banning radioactive material on Texas highways should be addressed to the Texas Department of State Health Services or the US Department of Transportation. The Compact Commission only makes determinations as to the importation of radioactive material for disposal at the compact facility. The proposed rule provides a mechanism for the public to make known their objections to specific petitions to import waste. See section 675.23(g)(6)-(7).

Comment: As a person who has worked on nuclear waste issues for 30 years, I know that the transportation and burial of nuclear waste requires extensive study of the dumping site and involvement of the public, both at the site and along the transportation routes.

Commission Response: The Commission has noted this comment.

Comment: The precise type and ownership of all waste entering and leaving the Compact will be well documented.

Commission Response: The Commission has noted this comment.

Comment: WCS has safely accepted waste by rail and road for years. Compact Commission waste will not present any new transportation challenges.

Commission Response: The Commission has noted this comment.

Comment: Very exact state and federal rules currently exist that prevent waste from losing its identity and characteristics by mixing it with other waste.

Commission Response: The Commission agrees with this comment.

#### **Blending or Co-mingling**

Comment: No adequate provisions have been made for the co-mingling of waste. Where are the rules to prevent waste going out of Texas to another state, co-mingled with unknown waste, and then returned to Texas under a different name?



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Commission Response: The Commission disagrees with this comment. The proposed rule to monitor the export and subsequent return of waste for storage is at 675.22. Blending is specifically addressed in 675.22(b)(2) and at 675(c)(2).

Comment: Blending waste streams is where the least radioactive material (called “Class A” waste) is mixed with hotter waste (Class B and Class C material). Because “blending” is authorized by the Nuclear Regulatory Commission, it could happen here in Texas. William Dornsife, executive vice president of licensing and regulatory affairs for Waste Control Specialists in Andrews, Texas even agreed that blending B and C waste is the only way to make the Andrews facility cost-effective. Allowing new states to send their waste to Texas means that Texas goes all-in for storing radioactive waste, which will inevitably lead to blending waste streams with more radioactive materials. Before any additional states are allowed to send their waste to Texas, we should conduct Federally approved Environmental Impact Studies including the effects on the environment of the “blending”.

Commission Response: The Commission disagrees with this comment. The proposed rule to monitor the export and subsequent return of waste for storage is at 675.22. Blending is specifically addressed in 675.22(b)(2) and at 675(c)(2).

### **Economics**

Comment: Imported waste will increase the revenue generated for the state of Texas and Andrews County. Commercial LLRW generation rates have been in overall decline for many years and the volume of LLRW that can potentially come to Texas is relatively low.

Commission Response: The Commission has noted this comment. Section 675.23(h)(4) of the proposed import rule addresses import economics. Sections 675.23(h)(1), (6) and (11) address import volumes and any potential impacts on the compact facility.

Comment: With imported waste, the unit costs for disposal will be decreased and the viability of the Compact disposal site will be more assured, which should benefit the waste generators in the Texas Compact.

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

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Comment: Profitability has not been our [Andrews community] major issue or focus. We feel a strong need for what we uniquely can provide and have a strong desire to furnish it. Texas cannot afford the liability of accepting this [out of Compact] waste.

Commission Response: The Commission disagrees with this comment. Profitability is likewise not the major focus or issue for the Compact Commission. However, the Commission must give consideration to the impact that waste importation will have on the compact facility, both positive and negative. Section 675.23(h)(4) requires the Commission to consider the benefits and impacts on Andrews County, the State of Texas and the Compact Disposal Facility operator.

Comment: This low level landfill will create jobs and stimulate the economy in the area.

Commission Response: The Commission has noted this comment.

Comment: The Compact operations will not only create jobs and economic opportunities for the Permian Basin, just as WCS has done for the past 15 years, they will generate new revenue for Andrews County.

Commission Response: The Commission has noted this comment.

Comment: The 5 percent Andrews County will receive as a result of the disposal activity will pay for roads, recreational facilities and public safety projects that will enhance the quality of life for all residents. We need this economic diversity to protect our economy from the boom-and-bust cycles of the oil and gas industry.

Commission Response: The Commission has noted this comment.

Comment: Texas will assume the liability for any waste once the operator packs up its bags with its profits. It is Texas taxpayers who will ultimately face the financial and environmental burden of radioactive waste lasting thousands of years.

Commission Response: The Commission disagrees with this comment. The Texas Health and Safety Code, at 401.211, addresses liability for the long-term consequences of the facility. That section specifically provides that the Compact Disposal Facility operator is not relieved from liability for actions taken during facility operations. Issues related to long-term care and liability of the facility are within the jurisdiction of the TCEQ and are not addressed in these rules.

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### Community Comments

Comment: The people of Andrews and the Permian Basin are proud to answer our nation's call by supporting the environmentally safe disposal solution now proposed by the Texas Compact Commission and the operator of the facility, Waste Control Specialists.

Commission Response: The Commission has noted this comment.

Comment: [Andrews] is a community well informed and supportive.

Commission Response: The Commission has noted this comment.

Comment: The response that I hear from the community frequently is one of frustration over the repetitive attempts to control our community by those outside. We realize that the opposition does not want a reasonable solution but to shut all nuclear activity even if it means life saving medical research, testing, and treatment.

Commission Response: The Commission has noted this comment.

Comment: Most opposition is from groups outside that come with the same objections that we have considered and proved false. The tactics of false fears, half truths and lies have not worked and the extremists have found themselves clutching at straws, continuing to state as fact things known to be wrong and trying to invent new means of dividing our community even introducing thoughts of division irrelevant to the real issues,

Commission Response: The Commission has noted this comment.

Comment: I am a resident of Andrews, Texas and I am AGAINST the proposed rule of Subchapter B exportation and importation of waste!

Commission Response: The Commission has noted this comment.

Comment: I'm from Andrews County and know that it is in the middle of an earthquake danger area. Please don't allow further shipment of deadly waste to the site until proper federal studies have been conducted and authenticated.

Commission Response: The Commission disagrees with this comment. The TCEQ conducted an extensive analysis of tectonic and seismic activity in the area of the compact facility. The analysis indicates that the expected seismic activity,

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after further study, is within regulatory limits. Section 6.4 of the TCEQ's environmental analysis addresses seismicity as it relates to the compact facility.

Comment: Their (sic) are people and groups trying to do all they can to hinder this development they have tried and tried through the court system and have failed every time they are now back to scare tactics. Please note they only represent a minority of the citizens and residents of Andrews County.

Commission Response: The Commission has noted this comment.

Comment: It's not a government run project therefore it will be run efficiently, be responsive to the local community and provide jobs for the local citizens.

Commission Response: The Commission has noted this comment.

Comment: My family and I support the direction that WCS and the state of Texas is leading us. I know that I want waste products to be properly managed and disposed of. Orphaned and unwanted wastes are a disaster waiting to happen. Disaster can happen anywhere. We want closure. Please move us in that direction. The people of Andrews and the Permian Basin are proud to answer our nation's call by supporting the environmentally safe disposal solution now proposed by the Texas Compact Commission and the operator of the facility, Waste Control Specialists.

Commission Response: The Commission has noted this comment.

#### **Import/Export**

Comment: Please separate the regulations of exporting and importing waste. There is no necessary connection between them.

Commission Response: The Commission disagrees with this comment. The rules for exporting and importing waste are separate. Export rules are set out at 675.21. Import rules are set out at 675.23 of the rules.

Comment: I am against any ruling that allows radioactive waste to be shipped into, out of, or even across Texas.

Commission Response: The Commission disagrees with this comment. The interstate compact to which Texas and Vermont have joined and the US Congress has approved is established to provide for the shared responsibility of radioactive waste disposal. The terms of the compact require this Commission to promulgate rules for shipping waste out of, between, into or among the party states. If radioactive waste could not be shipped it would accumulate in areas where it might not be safely stored.

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Comment: Please say no to Texas accepting such until all details have a chance to be regarded.

Commission Response: The Commission disagrees with this comment. The purpose of a rulemaking is to allow all parties to speak to all details of the proposed rule. To accomplish that purpose, the Commission is engaged in a lengthy rulemaking where thousands of comments from all interested parties have been solicited and received.

Comment: I would like to encourage any decisions on Texas's involvement with storage of [low level radioactive waste] to be handled with MUCH deliberation and caution.

Commission Response: The Commission agrees with this comment. The rules for export and import require the Commission to consider many factors prior to making a decision to import or export waste.

Comment: Please do not go forward with the part of the proposed rule that would allow and regulate importing out-of-state and international radioactive waste into Texas.

Commission Response: The Commission disagrees with this comment. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: Recommendation: waste only from the compact states, Texas and Vermont be disposed of either in Texas or Vermont and the less transportation of such waste is better than more.

Commission Response: The Commission has noted this comment.

Comment: Lubbock is not a dump site for the unwanted waste no one else wants. Send it away.....

Commission Response: The Commission has noted this comment. The location of the Compact Disposal Facility is approximately 30 miles west of Andrews, TX.

Comment: \*\*\*\*\* NO \*\*\*\*\* Do we even have to ask this question? NO, to TX becoming a site for nuclear waste!!!!

Commission Response: The Commission has noted this comment.

Comment: I wanted to add my voice to those asking the Compact Commission to vote "no" to allowing the importation of low-level radioactive waste into our

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beautiful state of Texas. It is important to preserve our environment not only for us but for those coming behind us as well.

Commission Response: The Commission has noted this comment.

Comment: TEXAS SHOULD NOT IMPORT ANY GARBAGE, NUCLEAR OR ANYTHING ELSE, FROM ANY OTHER STATE. If we allow this to happen, as we have in the past with other garbage, people from other states will buy up large farms in remote parts of Texas and turn them into waste dumps. Look at what happened to Arkansas when Tyson's chicken farmers polluted all the waterways so that they were unswimable (sic) in just a few years. A few made lots of money, but the whole state paid the cost of cleaning up the mess.

Commission Response: The Commission disagrees with this comment. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: I would like to add my voice to those protesting the importation of additional waste to Texas; we have enough of our own. I am not anti-nuclear – but we should be re-processing as other countries do, not just burying. Let's try to bring more balance to this equation – but not at the expense of the contamination of Texas' underground aquifers.

Commission Response: The Commission disagrees with this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: I understand that the Texas Low Level Radioactive Waste Disposal Compact Commission wants to allow the entire country to dump nuclear waste at the Waste Control Specialists' West Texas site. Other Compacts in the country have excluded out-of-Compact radioactive waste, and the Texas-Vermont Compact should do the same. Compact Commissioners should not approve the import portion of the rule.

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Commission Response: The Commission disagrees with this comment. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: it is highly desirable to stick to Texas and Vermont wastes. Vermont Yankee nuclear plant has just been ordered closed when its current operating license expires in about two years. That will leave mostly Texas for you.

Commission Response: The Commission disagrees with this comment. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: Please make sure that we are protected from these toxic wastes that would make survival impossible in safe and secured conditions, and make many valuable resources of our beautiful state to vanish. Do not let those wastes come in!!!

Commission Response: The Commission disagrees with this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: With a growing demand for the disposal of radioactive waste in the future as governments around the world make a greater push for the use of nuclear power, Texas will be asked to take more and more “hot” waste.

Commission Response: The Commission disagrees with this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

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Comment: Where is there a federally approved Transportation Safety Study? Please do not approve any language that would allow other states to send their nuclear waste until an up to date Environmental Study has been conducted assessing the impact of the proposed amounts of new waste.

Commission Response: The Commission disagrees with this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation. In addition, the import petitioner must certify that the TCEQ has evaluated the proposed import and that the facility is properly licensed to receive the material. See 675(h)(5).

Comment: I'm more than a little concerned about the barrels of radioactive waste coming from additional states beyond Texas and Vermont. Once it's here, the citizen's of Texas are stuck with it.

Commission Response: The Commission disagrees with this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation. In addition, the import petitioner must certify that the TCEQ has evaluated the proposed import and that the facility is properly licensed to receive the material. See 675(h)(5).

Comment: Please don't use The Great State of Texas as a guinea pig. We do not need any more radioactive waste sent to Texas.

Commission Response: The Commission disagrees with this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the



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Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: I do not want irresponsible non-Texans to dump any further on what's left of the states' natural beauty.

Commission Response: The Commission disagrees with this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: Many of us following the issues of toxic waste disposal on Texas soil are concerned about the potential mixing of radioactive waste from multiple sources, and that Texas authorities have been no adequate provisions for the tracking and labeling of such waste. It is common, in order to ensure a community's right to know, that specific rules be adopted so that people can be aware of what specific wastes are in their midst. At the very least, should some accident happen at this site, first responders need to know what kind of waste is there, and where it has come from.

Commission Response: The Commission disagrees with this comment. Section 675.22 of the proposed rule is designed to monitor what waste is shipped out of state, how it is treated at out of state treatment facilities, and the principal qualities of that waste once it is returned to Texas. See 675.22(b)-(c).

Comment: Before authorizing further states to participate in the Compact, shouldn't you make adequate provisions for assessing the safety of the radioactive waste itself? While there may be adequate regulations on waste originating within the Texas borders (and for the purpose of this letter let us assume that there are), there doesn't appear to be a formal method of regulating and assessing the waste that could be produced by other states should the Compact be expanded.

Commission Response: The Commission disagrees with this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the

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Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: Cleaning up a toxic waste dump later is more expensive and messy than just making a good decision from the get-go. Vote to prevent any more states from sending their waste to the Andrews County site.

Commission Response: The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: As I watch the news about the Compact Commission's decisions to turn Texas into a radioactive dumping ground for the entire United States, I'm left to wonder if the Commission has ever considered how destructive their actions could be.

Commission Response: The Commission disagrees with this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: Let each state be responsible for their own mess.

Commission Response: The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

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Comment: There is no compelling reason to expand the storage of dangerous elements in Texas.

Commission Response: The Commission has noted this comment. The regulation of hazardous material storage, including storage of radioactive waste, is regulated by the TCEQ. This Commission has no jurisdiction to regulate the storage of hazardous materials, including radioactive material, in Texas. These proposed rules do not address this issue.

Comment: The rule provides for responsible import and export. These provisions with benefit Compact generators and help to provide a solution for Class B/C waste that is currently stranded in facilities that were not designed to store the waste for longer periods of time.

Commission Response: The Commission has noted this comment.

Comment: The proposed rules on the exportation and importation of waste would open up Texas to receive radioactive waste from states besides those already in the Texas Compact. It could create a national disposal site for radioactive waste, when the agreement between Texas and Vermont was to limit the site and take care of waste from those states only.

Commission Response: The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: There is no reason to adopt rules related to importation or allow importation of radioactive waste from other states at this time. In fact, the site has yet to be built, the license is being appealed, and the Compact.

Commission Response: The Commission disagrees with this comment. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: At a minimum, the proposed rules must: Establish overall volume and curie limits as well as for each and every importation agreement; Require that the disposal operator apply for and obtain a license amendment with the Texas

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Commission on Environmental Quality before the Compact Commission can act; Specifically ban the importation of any foreign waste; Specifically require the disposal operator to seek Compact Commission approval if they first plan to bring non-Compact waste into their existing storage license.

Commission Response: The Commission has noted this comment.

Comment: The Texas Legislature passed legislation to allow a private operator to open a site to take care of Texas and Vermont waste, not to turn Texas into the radioactive waste dump of the nation.

Commission Response: The Commission disagrees with this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: While we have an obligation to find an appropriate site for radioactive waste, turning West Texas into the answer to the nation's problems is not the answer.

Commission Response: The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: There is also the potential that by allowing imports, Texas and Vermont generators will not have sufficient room to house their waste.

Commission Response: The Commission disagrees with this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission.

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The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

### Compact Commission

Comment: We look to you for evidence that you represent the citizens of Texas and not just the waste industry. We expect you to do your homework;

Commission Response: The Commission has noted this comment. The proposed rules provide for the Commission to carefully evaluate all export and import petitions. See, 675.21(e)-(h); 675.23(h)-(l). Also, the proposed rules provide for considerable public scrutiny of the board's actions. See 675.21(e); 675.23(e)(3)-(7).

Comment: We expect you to secure adequate funding to do the necessary study and analyses that such regulations require.

Commission Response: The Commission agrees with this comment. The proposed rules specifically provide that the Commission must have adequate resources before it can commence review of petitions. See, 675.21(l), 675.23(o).

Comment: Why are you in such a hurry to rush forward on importing waste?

Commission Response: The Commission disagrees with this comment. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: Your work and actions are not credible when you rush into regulations that you have not demonstrated are needed.

Commission Response: The Commission disagrees with this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: You are operating on a minuscule budget; you are not taking into account whether there is room in the as yet unbuilt radioactive waste disposal facility;

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Commission Response: The Commission disagrees with this comment. The proposed rules specifically provide that the Commission must have adequate resources before it can commence review of petitions. See, 675.21(l), 675.23(o). Further, the propose rules require the Commission to determine that adequate capacity has been set aside to handle compact-generated waste. See, 675.23(b), (h)(3), and (h)(6).

Comment: You have not provided any evidence that you have done a thorough and independent study of the issues.

Commission Response: The Commission disagrees with this comment. The Commission has requested public input at every meeting since its inception in February 2009. A stakeholder meeting specifically addressing export and import of waste was held in August 2009. This rulemaking was commenced in December 2009. Several meetings and hearings have been conducted for the express purpose of fully vetting this rule, including extensive public comment. This rulemaking is continuing and further public comment is welcome.

Comment: Why are you insisting on ramroding the rule through?

Commission Response: The Commission disagrees with this comment. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: Can we expect from your actions that you will rubberstamp the industry, go through some sort of pretense wanting public comments and then do what the industry wants you to do without presenting any independent evidence of the need for such speedy action?

Commission Response: The Commission disagrees with this comment. The Commission has requested public input at every meeting since its inception in February 2009. A stakeholder meeting specifically addressing export and import of waste was held in August 2009. This rulemaking was commenced in December 2009. Several meetings and hearings have been conducted for the express purpose of fully vetting this rule, including extensive public comment. This rulemaking is continuing and further public comment is welcome.

Comment: Please see your responsibilities to the citizens of Texas. Please separate exporting regulations from the importing.

Commission Response: The Commission has noted this comment.

Comment: Such a short time to get up any organized protest - April 14 is next Wednesday!

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Commission Response: The Commission has noted this comment.

Comment: The Compact Commission is rushing ahead with this proposed rule, even though the TCEQ license has been appealed, the site has yet to be constructed, and the Compact Commission does not have adequate resources. How can the Commission responsibly open the state up to all the waste from around the country and possibly the world if they don't even have the funding for staff to review proposed importation agreements; cannot afford to come to the public hearings on the rule; stated at their last meeting that they didn't know if they would have enough funds to make it through this rulemaking process; cannot afford an attorney; and does not have bylaws yet? It is irresponsible and detrimental to the public interest.

Commission Response:: The Commission disagrees with this comment. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: Can you please tell me why the Commission would allow such dangerous materials to be sent to Texas when no one has yet evaluated the possible dangers and threats that these materials pose to the environment, and to our children?

Commission Response: The Commission disagrees with this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: As a citizen of the state, I'm writing to express my shock that the Compact Commission would not only allow, but welcome, the shipment of radioactive materials and the storage of these materials on top of aquifers that supply Texans with water.

Commission Response:: The Commission disagrees with this comment. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

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Comment: You owe it to the citizens you serve to make all efforts necessary to ensure our safety and the safety of our families. Additional waste must not be accepted in the absence of these studies!

Commission Response: The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: Will you stop the expansion of radioactive waste disposal until the proper studies and safety regulations have been met?

Commission Response: The Commission disagrees with this comment. The Commission is not responsible for expanding radioactive waste disposal in Texas. The TCEQ regulates the size in volume and radioactivity of radioactive waste disposal sites in Texas.

Comment: There is a substantial body of evidence to indicate that the private owners of the Andrews County radioactive waste dump site are storing radioactive waste outside of the scope of their license. Representatives of the news media and concerned citizens have asked the site owners why they are storing unevaluated waste streams at their facility when the facility has not even been built. All questions have been virtually ignored. Since neither the Texas Commission on Environmental Quality or your Commission have not done anything about these violations, why should you now create new regulations when you aren't even enforcing the old ones?

Commission Response: The Commission has noted this comment. Enforcement of the license conditions and operation of the Compact Disposal Facility is the jurisdiction of the TCEQ. Any evidence that you have that the Compact Disposal Facility is not being operated in accordance with the TCEQ rules and regulations should be immediately forwarded to the Director of the TCEQ's Radioactive Material Division.

Comment: Not only have you not provided the public with assurances that the site in Andrews County has passed a necessary environmental impact study, you have omitted language assuring us that the current rules prohibiting taking waste from other countries will not be changed or amended.



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Commission Response: The Commission disagrees with this comment. The TCEQ has published an extensive and comprehensive environmental assessment addressing the safety and adequacy of the compact facility. They have issued a license for the facility based on their analysis. The Commission has no jurisdiction to license or inspect the compact facility. Therefore, those issues are not addressed in these rules. The proposed rules specifically prohibit importing waste from foreign countries. See 675.23(a).

Comment: What is the Commission's position on the future importation of nuclear waste from foreign countries?

Commission Response: The Commission has noted this comment. The proposed rules specifically preclude the importation of waste from foreign countries. See 675.23(a).

Comment: What has the Commission done to assure the public that the waste is not being stored over several aquifers as claimed by various public interest groups?

Commission Response: The Commission has noted this comment. The Commission does not license or oversee the compact facility. The TCEQ has done an extensive analysis of the facility and has determined that the waste is not being stored over several aquifers. To the extent that there is limited groundwater under the compact facility, the TCEQ has determined that storing or disposing waste at the Compact Disposal Facility meets the standards for safety.

Comment: Why in the hell would anyone trust the word of the operators of the waste site in Andrews County? I have just learned that the site operators at the Andrews County radioactive waste disposal site are knowingly storing "out of compact waste" without a proper licensing amendment. The attorney for the site operators even had the gall to state that they could decide the matter themselves and did not need authorization or licensing to store "out of compact waste".

Commission Response: The Commission has noted this comment. Enforcement of the license conditions and operation of the Compact Disposal Facility is the jurisdiction of the TCEQ. Any evidence that you have that the Compact Disposal Facility is not being operated in accordance with the TCEQ rules and regulations should be immediately forwarded to the Director of the TCEQ's Radioactive Material Division.

Comment: We join with many others in strongly objecting to the Commission taking actions on the proposed rules inasmuch as you have no published provisions whatsoever on how the Commission would oversee, account for, and regulate radioactive waste that is sent from Texas or Vermont to another state for

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blending and processing and then returned to Texas for disposal. All actions concerning the proposed rules should be suspended until this matter has been corrected.

Commission Response: The Commission disagrees with this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: Why aren't you working on language and rules that protect and preserve Texans with a clean, safe and healthy environment? You seem mostly concerned with rescuing a company that says they are going out of business unless you bow down and do their bidding, including ignoring the fact that they frequently violate rules they have agreed to. How about showing some concern for our environment and the health our citizens for a change? If you were elected officials I would work to throw you out of office unless you start doing a decent job.

Commission Response: The Commission disagrees with this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: Where will the money come from to pay for all the legal bills that will be filed because this site is so dangerous and the proper safety measures have not been taken? Will I have to pay as a taxpayer?

Commission Response: The Commission has noted this comment. The Commission is financed at the outset by pro rata payments from the member states of the compact, Texas and Vermont. During operation of the compact facility, the Commission will be supported by fees paid by companies using the compact facility. No taxpayer funds will be used to support the operations of the Commission.

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Comment: Would any thinking parent want their family drinking water that flows underneath a radioactive waste dump? Why then are Texas government leaders so anxious to add hot toxic radioactive material from additional states to the nuclear waste site that presently sits directly over the Ogallala Aquifer and other aquifers? Texans deserve an explanation for the hastily drafted rules in the Texas Register which could allow all states to ship radioactive waste to Texas.

Commission Response: The Commission has noted this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: You want to allow radioactive waste to be shipped in from all states. You claim it's safe and nonlethal. I suggest the large casks of nuclear waste be stored in the backyards of the Texas Low Level Radioactive Waste Disposal Compact Commission, rather than upwind of where I live.

Commission Response: The Commission has noted this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: Your Commission is showing arrogant behavior and undermining faith in Texas government leaders. The steam rising from this nuclear waste issue will soon cover Texas like a dark cloud.

Commission Response: The Commission disagrees with this comment. The Commission is attempting to implement administrative rules to carry out the mandate they have from the States of Texas and Vermont, as ratified by the US Congress. See, Texas Health and Safety Code, Chapter 403.

Comment: Texans deserve a choice. The current Texas Low Level Radioactive Waste Disposal Committee was not elected to represent us. They're political appointees who obviously do not have Texas' best interests in mind. We deserve to

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have a say in how Texas is run. It would be nice to have someone step up and give the people of Texas a choice before the Compact Commission expands their authority beyond the two states they want to collect radioactive garbage from. I urge the governor to step in and insist that the Commission require environmental studies be conducted to determine any possible danger to the public health and well being before new streams are waste are allowed in the state.

Commission Response: The Commission disagrees with this comment. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: In regard to your Commission's published proposed rules in the Texas Register, how can you possibly adopt a rule for the importation of new and additional waste without an amended license from the TCEQ?

Commission Response: The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: The Texas Compact Commission has funding in place to conduct its operations and application fees contained in the proposed export/import rules will supply the funding necessary to adequately review all disposal requests.

Commission Response: The Commission generally agrees with this comment. The Commission is financed at the outset by pro rata payments from the member states of the compact, Texas and Vermont. During operation of the compact facility, the Commission will be supported by fees paid by companies using the compact facility.

Comment: Commission does not even have a staff to analyze any potential imports. We would suggest banning any imports for at least the next 10 years and then reassessing the needs of the Texas Compact

Commission Response: The Commission disagrees with this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted

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and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

### General Comments

Comment: I do not want radioactive waste dumped in Texas. I wish to recommend that you and the Commission consult my major professor Dr.Zhores A. Medvedev of the UK who is the foremost authority on nuclear waste disaster.

Commission Response: The Commission has noted this comment.

Comment: Please read Nuclear Disaster in the Urals and the Legacy of Chernobyl both published by WW Norton . . . the former in 1986 and the latter in 1979...Dr Medvedev is very active at age 84 and will answer your questions if time permits.

Commission Response: The Commission has noted this comment.

Comment: This idea is not in the best interest of Texas and Texans. It is an ill conceived plan that, if put for a vote before the people of Texas, would not pass!

Commission Response: The Commission has noted this comment.

Comment: Our state is not a refuge for international ne'er-do-well's nor is it a reposit for toxic shakeout from their thoughtless greed or oppressive undertow. We have a right to a fully democratic process and a clean environment.

Commission Response: The Commission has noted this comment.

Comment: This proposal has the scent of threat, and I'm tired of encountering one proposal after another that benefits no one, harms everyone, comes out of nowhere, and is practically a done deal by the time anyone hears about it.

Commission Response: The Commission has noted this comment.

Comment: The whole industry needs to settle down, not expand in their present form or probably any other. There was never any excuse for toxic waste. The whole process never should have been approved. It just suddenly popped up after the nuclear ban treaty, then later the waste was used as dirty bombs.

Commission Response: The Commission has noted this comment.

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Comment: In the absence of satisfactory compliance evidence, the State of Texas is correct in the previous (2007) non-issuance of a license to the applicant (Waste Control Specialists LLC) for radioactive waste disposal.

Commission Response: The Commission has noted this comment.

Comment: What an irresponsible approach to the awesome problem of excess radioactive waste, just to dump it in a relatively undeveloped area and walk away!

Commission Response: The Commission disagrees with this comment. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: We should not be accepting waste from other states outside of the compact (Texas and Vermont). We are not getting benefits from the electricity generated by those reactors: we should not be responsible for storing other states' waste.

Commission Response: The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: Given Texas' poor record of managing hazardous materials, I strongly urge you to prevent Texas from being the nation's nuclear dump. Nuclear waste has a very, very long "shelf life," on the order of hundreds of thousands of years meaning the waste will be here for all foreseeable human generations and beyond.

Commission Response: The Commission disagrees with this comment. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: Why would the citizens of Texas want to take the radioactive waste from other states? Apparently just for the money. I don't believe our legislators or citizens are in favor of this. I doubt they are even aware of this. We shouldn't be doing this and especially without a complete study of the effects to our environment.

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Commission Response: The Commission disagrees with this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: Would you really like to have this waste stored where your children and grandchildren will live and play? Would you take a drink of water from the aquifer directly below or adjacent to this toxic poison?

Commission Response: The Commission disagrees with this comment. The WCS low-level radioactive waste disposal site at Andrews has been carefully reviewed by the Texas Commission on Environmental Quality. Based on that review, including considerations of environmental impact, transportation safety and hydrology, the TCEQ has determined that the site is a safe and environmentally protective design and location to dispose of low-level radioactive waste.

Comment: It seems like the super-majority of Texans don't want nuclear waste dropped in our state anyway. But no matter what we think, the Compact Commission and the donations made to certain politicians appear to overrule what the people want. Maybe we should focus more on ethics reform in the political landscape, as much as the radioactive waste in our state's natural landscape.

Commission Response: The Commission has noted this comment.

Comment: As a professional engineer, I do not know enough about this situation to make an educated comment. I have only a few thoughts to share: TCEQ should be involved in this process. If they are not, then it is probably in violation of State Law. If TCEQ is involved, I have confidence that the waste is going to be disposed in a safe and contained way.

Commission Response: The Commission has noted this comment. TCEQ is involved in the process in that they have licensed the Compact Disposal Facility to receive radioactive waste as provided under state and federal law, and as provided by the WCS license.

Comment: If you insist on having our state turned into a nuclear dumping ground, then our voices and our votes should matter. When do we get to vote our opinions on the radioactive waste disposal proposal?

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Commission Response: The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: As a Texan and as a human, I'm offended at the Compact Commission's decision to make Texas a dumping ground for radioactive waste by soliciting more states to dump their deadly waste

Commission Response: The Commission disagrees with this comment. The proposed rules do not solicit waste from any state. The only purpose of the proposed rules is to implement the mandate of the Texas Legislature and the US Congress as spelled out in the Texas Compact, 42 USC §2021d, et seq. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: Where is the governor and our Texas legislature on your determination to make Texas the nation's radioactive repository?

Commission Response: The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: public referendum needed

Commission Response: The Commission has noted this comment. Texas law does not provide for public referenda.



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Comment: Why are they afraid of having TCEQ's decisions against the recommendations of their professional staff, reviewed by federal authorities? The answers are obvious and are bound to come out in public interest lawsuits and federal investigations.

Commission Response: The Commission has noted this comment. The Commission has no jurisdiction to conduct an independent review of the TCEQ decision to issue a license to WCS.

Comment: I recommend that your proposed rules, which could lead to tons of radioactive waste coming into Texas, and which allows for unlimited quantities of this waste, that it is, in fact, a major environmental rule. In order to avoid costly litigation on the matter, I ask that this be a matter of full public discussion and comment before the Commission votes on it.

Commission Response: The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: [The site] will be beneficial for ongoing medical research and ongoing medical treatments.

Commission Response: The Commission generally agrees with this comment.

### Miscellaneous Comments

Comment: I refuse to live in a state that accepts toxic wastes being dumped< like in the third world> we dont need it, and it is a criminal act against human's survival, just to make rich people richer, and others die!!!! I stand against the dumpage of toxic wastes in texas. It is criminal!

Commission Response: The Commission has noted this comment.

Comment: Do not let our State be the site of another future Superfund facility.

Commission Response: The Commission has noted this comment.

Comment: One quarter of the nuclear reactors in the U.S. are leaking tritium right now. It is time to get away from nuclear now!

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Commission Response: The Commission has noted this comment.

Comment: Do Not Allow The Rad-Waste Into TEXAS.. Send it to - ummm - China.....

Commission Response: The Commission has noted this comment. The Commission has no jurisdiction to oversee international shipments of radioactive waste.

Comment: If this is a ploy for some Texas politician to make money by selling our safety for his or her own profit then we as voting owners of the state of Texas should weed out such vermin and impeach them out of office and bring criminal charges against them for fraud. Because they have fraudulently taken an office that they swore to protect and represent the citizens of Texas, not just them selves.

Commission Response: The Commission has noted this comment.

Comment: If any other state has allowed the use of radioactive materials as part of their process of doing business without first having a long term plan for eliminating their own waste, then they should not have planned on imposing it to our state. Texas has enough troubles of our own; we don't need theirs in our back yard. Their inability to make plans for the disposal of their waste is not our problem.

Commission Response: The Commission disagrees with this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation.

Comment: Any radioactive waste created by one state should be dumped in there (sic) own back yard.

Commission Response: The Commission has noted this comment.

Comment: Uses [sic] your vote to keep Texas with the following: Clean Air, Clean Water, Clean Soil and Safe Transportation.

Commission Response: The Commission has noted this comment.

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Comment: Please consider the cost and liability that is being proposed to all of Texas....this is not democracy in action, but 'force' and I see a big problem and a whole lot of injustice.

Commission Response: The Commission has noted this comment.

Comment: What on earth could possibly cause you to want to pump millions of gallons of waste into the State of Texas. You and your families for the next 10 generations should have to live right on top of these dumps if your so sure their safe.

Commission Response: The Commission has noted this comment.

Comment: Stop drinking the koolaid. Just say NO to toxic Waste in TEXAS!

Commission Response: The Commission has noted this comment.

Comment: Sounds like the government is selling out Texas citizens for the profit of America's corporations and that Governor Perry is putting Texas second to Washington.

Commission Response: The Commission disagrees with this comment. The Texas Compact, which was adopted by the legislatures of Texas and Vermont and ratified by the US Congress, provides for disposal of radioactive waste at the Compact Disposal Facility within the compact region. The Compact, as adopted and ratified, also provides for export outside the compact and importation to the Compact Disposal Facility on terms and conditions imposed by the Commission. The purpose of the proposed Rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an *a priori* determination to allow waste importation..

Comment: Why is our state selling us out and for someone else's profit no less!

Commission Response: The Commission has noted this comment.

Comment: Waste Control Specialities (sic) does not have the funding to operate. They want to borrow 75 million dollars from Andrews. The vote passed by 3 and all the voters were not "legal". This has been in court. If they were a strong company they would not have to borrow the money from a town but could get financing through a bank. Also Vermont was going to send some money to andrews and the payment was late the last I heard.

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Commission Response: The Commission has noted this comment. The Commission has no jurisdiction to oversee the funding for the construction of the Compact Disposal Facility or to oversee payments by the State of Vermont to the State of Texas.

Comment: This is something that every Texan should have the right to VOTE on! Do not take away our freedoms or our environment!!!

Commission Response: The Commission has noted this comment.

**The Compact Commission received numerous written comments on proposed new Subchapter B. The summaries and responses to these comments appear below organized by topic.**

### EXPORT

The Commission received comments from the following, expressing their support or non-support of the major concept of exporting LLRW from the party states. When further depth of comment was provided, those issues were categorized into relevant sections of this paper and responses will be provided in those sections.

Comment: Advocates for Responsible Disposal in Texas (ARDT) commented that in general, ARDT supports the proposed Rules as they relate to export of waste.

Commission Response: The Commission agrees that the rule addressing export of waste should be adopted.

Comment: Sierra Club commented that the Commission to only approve Rules related to exportation because the Waste Control Specialists site is not yet operational. SC recognized the need to proceed with a Rulemaking process related to exportation of low-level radioactive waste, but was not support of moving forward with any Rule related to importation of waste.

Commission Response: The Commission disagrees that the import rule should not be adopted. The Commission agrees that the export rule should be adopted. Export is currently occurring. The Commission sees Rules to control export as a function of The Texas Health and Safety Code, 5.D.403.006, Article I, Section 1.01, whereby the Commission provides for and encourages the economical management and disposal of low-level radioactive waste.

Comment: EnergySolutions (ES) commented that it agrees the Texas Compact has authority to adopt new Rules that would restrict exports of waste from the Compact prospectively, the Rules must do so in a way that does not impair pre-existing contract rights of waste generators within the Party states. ES provided specific comment on “takings” and those comments are included in the section of

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this paper on comments on the proposed Rule.

Commission Response: The Commission agrees with the portion of the comment regarding the Commission's authority. The Commission disagrees that its regulation, authorized by statute, amounts to a taking. Contracts may have been established at any time in the past. The Compact Act codified in the Health and Safety Code establishes new law that defines the powers and duties of the Commission. The control of export as part of the Compact Commission's duties defined in the Compact.

Comment: A commenter stated that he wanted to go on record as supporting the adoption of the import/export Rules proposed by the Compact Commission. He noted that the state has already issued the license for the disposal of low level radioactive waste and that the proposed Rules only establish the parameters for the amount of waste to be received. The commenter stated that where it comes from isn't nearly as relevant to the Rulemaking process as establishing a process for governing the disposal, and setting the overall volumes.

Commission Response: The Commission has noted the comment.

Comment: Department of Defense Executive Agent (DODEA) commented that it generally supports the proposed rules. It further commented that while this Rule does not specifically authorize the importation of waste, they believe the Commission has the necessary procedures in place should this become a viable option in the future.

Commission Response: The Commissioner has noted the comment.

Comment: A commenter stated that he supports WCS and the commitments that they, on the WCS team, have made to properly treat, store, or dispose of specialty waste streams in the future. He strongly supports the importation and exportation Rules as written to properly solve the national problem of low level hazardous waste disposal.

Commission Response: The Commission neither agrees nor disagrees with this comment.

### **IMPORT**

Comment: ARDT commented that it does not oppose importation of waste for disposal at the Compact Waste Facility (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

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state waste to lower cost disposal facilities.

Commission Response: The Commission generally agrees with the comment. The purpose of the Rule, as revised in Committee on April 29 (revised Rule), ensures such safeguards. Two of the confounding factors in understanding the disposal capacity is that the site is currently licensed for less than its designed maximum capacity, but generated quantity studies are based on maximum capacity, and that amounts generated are much greater than as-disposed quantity. The Commission recognizes these confounders and has included language in the revised Rule to address these issues. Importation, if it should occur, would occur for the benefit of the party States.

Comment: Council of Radionuclides and Radiopharmaceuticals (CORAR) commented that they believe that the importing of LLRW for disposal at the Andrews County Site could be a synergistic arrangement. Out-of-compact generators will benefit by having access when no other viable options appear feasible for 10 to 20 years. They will be able to dispose of LLRW that is currently in interim storage at the generators' sites and will be able to expedite the disposal of future generated waste.

Commission Response: The Commission generally agrees with the comment. Importation, if it should occur, would be allowed to occur for the benefit of the party States.

Comment: The DODEA congratulated the Commission on the proposal of the new rules. The DODEA generally agrees with the policies and procedures set out in the proposed rules. The DODEA believes these rules will be useful if the Commission determines that it should accept imported waste.

Commission Response: The Commission neither agrees nor disagrees with this comment.

Comment: Citizens Awareness Network (CAN) commented that import of radioactive waste from outside of the Compact is not in the interest of Vermonters or the State of Vermont and urged the Commission not to go forward with the import part of the Rule at this point in time. CAN emphasized they need assurance that the decommissioning disposal needs of Vermont will be met, that the TLLRWDC will not ignore the responsibilities of the Compact (VT being a member) in lieu of possible profits to be gained by opening the Compact facility up and allowing it to become the nation's radioactive waste dump. The Compact radioactive waste facility must be available to meet Vermont's needs for disposal since Vermont Yankee will be shut down and since the Compact was originally intended to serve Texas and Vermont.

Commission Response: The Commission disagrees with the statement that a blanket prohibition of importing radioactive waste from outside the Compact is in the interest of the member States. The purpose of the Rule ensures disposal

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capacity safeguards. Two of the confounding factors in understanding the disposal capacity are that the site is currently licensed for less than its designed maximum capacity, but generated quantity studies are based on maximum capacity, and that amounts generated are much greater than as-disposed quantity. The Commission recognizes these confounders and has included language in the revised Rule to address these issues. Importation, if it should occur, would be allowed to occur for the benefit of the party States. Import of low level radioactive waste from outside the Compact could lower disposal costs for members of the Compact.

Comment: Fairewinds Associates, Inc. (Fairewinds) formally requested that the Commission not proceed with the import portion of the Rule, as it is not in the best interest of Vermonters and the State of Vermont. Fairewinds commented assuring adequate site capacity for Compact members, fulfilling responsibilities of the Compact, fully understanding financial liabilities, budgetary concerns and legal commitments are significant issues. (Each of these specific comments are addressed in corresponding topic areas of this paper.) Fairewinds also commented the Compact Commission should not be considering any Rule allowing the importation of any additional waste until the site itself is actually operational.

Commission Response: The Commission disagrees with the statement that a blanket prohibition of importing radioactive waste from outside the Compact is in the interest of the member States. The purpose of the Rule ensures disposal capacity safeguards. Two of the confounding factors in understanding the disposal capacity are that the site is currently licensed for less than its designed maximum capacity, but generated quantity studies are based on maximum capacity, and that amounts generated are much greater than as-disposed quantity. The Commission recognizes these confounders and has included language in the revised Rule to address these issues. Importation, if it should occur, would be allowed to occur for the benefit of the party States. Import of low level radioactive waste from outside the Compact could lower disposal costs for members of the Compact.

Comment: Texas Representative Lon Burnam commented opposing moving forward with the import Rule (§675.23 "Importation of Waste from a Non-Compact Generator for Management or Disposal"), stating that it is his firm belief that it is not in the best interest of Texans for the Compact facility to accept out-of-Compact waste at all, much less to move forward with the import Rule at this time. He made additional comment of a specific nature. Each of the specific comments are addressed in corresponding topic areas of this response to comments.

Commission Response: The Commission disagrees with this comment. The purpose of the proposed rule is to establish procedures in rule that allow the Commission to formally implement the provisions of existing law, not to make an a priori determination to allow waste importation.

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Comment: League of Women Voters of Texas (League of Women Voters) commented in opposition to the proposed importation Rules at this time stating concerns including the lack of limitation on volume and types of waste to be imported and monitoring and site capacity issues. League of Women Voters commented that LLRW waste should be limited to just the Compact Agreement states—Texas and Vermont. A concern was that no monitoring or certification processes have been described or funded to ensure that the type and quantity of waste that was permitted is actually what is being sent to the state.

Commission Response: The Commission disagrees with the statement that a blanket prohibition of importing radioactive waste from outside the Compact is in the interest of the member States. The purpose of the Rule, as revised in Committee on April 29 (revised Rule), ensures disposal capacity safeguards. Two of the confounding factors in understanding the disposal capacity are that the site is currently licensed for less than its designed maximum capacity, but generated quantity studies are based on maximum capacity, and that amounts generated are much greater than as-disposed quantity. The Commission recognizes these confounders and has included language in the revised Rule to address these issues. Importation, if it should occur, would be allowed to occur for the benefit of the party States. Import of low level radioactive waste from outside the Compact could lower disposal costs for members of the Compact. It should be noted that the types of waste, the monitoring and certification processes, and the permitting of the waste is determined by the Radioactive Materials License issued by the Texas Commission on Environmental Quality.

Comment: League of Women Voters commented that public participation in the decision making process is essential in good government. The notification to the public and the 20-day comment period, mentioned in the Import Rule, is inadequate and the short time frame prevents public participation. The Rule must be specific in outlining the public participation process by providing more time and detailing to whom comments should be made, with contact information.

Commission Response: The Commission agreed that the rule needed greater detail for comment on Import Agreements. The Commission revised the Rule in response to comment to materially change the public comment period and significantly increases the time the public has to comment on proposed import petitions. The persons to whom comments will be forwarded may change over time and should not be specified in the Rule.

Comment: Karen Hadden, Executive Director, SEED Coalition, Memorandum from Arjun Makhijani (SEED) commented via a memorandum from Arjun Makhijani in which he presents testimony on issues that SEED requested he give consideration and provide advice. He said that he was not arguing for or against import of LLRW at this time. Dr. Makhijani does strongly recommend that the



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State of Texas postpone consideration of import of wastes from outside the Compact until further evaluation can be made and aired in public. He noted that a consideration of whether to allow imports can only properly be made in view of further analysis, given that public health and the environment must be central factors in any such decision. Each of the specific comments in his memorandum are addressed in corresponding topic areas of this paper.

Commission Response: The Commission disagrees with this comment. It should be understood that the Compact Commission has a number of described duties, which do include ensuring the health and safety of the public and the protection of the environment in addition to other duties. The Commission respectfully disagrees with Dr. Makhijani and believes that the Commission's responsibilities to the Party States include evaluating requests for the import and export low level radioactive waste based on the Commission's legislated requirements.

Comment: Nuclear Information and Resource Service (NIRS) stated it opposes the adoption of the Import Rule 31 TAC 675.21-23.

Commission Response: The Commission has noted the comment.

Comment: Frances K. Sage, Ph.D. requested that the Commission not go forward with the part of the proposed Rule that would allow and regulate importing out-of-state and international radioactive waste into Texas. She asked that the Commission separate the regulations of exporting and importing waste because there is no necessary connection between them. She commented that she believes the Commission is not taking into account whether there is room available in the as yet unbuilt radioactive waste disposal Facility.

Commission Response: The Commission disagrees with the comment. The Rule as proposed includes both export and import of low level radioactive waste. The waste facility is licensed by TCEQ and the facility is planning to begin construction. The purpose of the Rule ensures disposal capacity safeguards. Two of the confounding factors in understanding the disposal capacity are that the site is currently licensed for less than its designed maximum capacity, but generated quantity studies are based on maximum capacity, and that amounts generated are much greater than as-disposed quantity. The Commission recognizes these confounders and has included language in the revised Rule to address these issues.

Comment: Tennessee Valley Authority (TVA) commented that because its facilities are located in non-party states, its comments only address the proposed importation regulation governing importation of low-level radioactive waste. TVA commented that the Rule lacks sufficient detail on crucial aspects of the proposed importation scheme. Comments on specific details are addressed in other sections of this paper.

Commission Response: The Commission disagrees that the rule insufficiently addresses the framework for consideration of proposed Import Agreements.

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Comment: WCS commented that the Preliminary Rules are an important step towards reasonable and responsible exportation and importation of low-level radioactive waste into and out of the Texas Compact Low-Level Radioactive Waste Disposal Facility. WCS noted that reasonable and responsible LLW importation would allow WCS to offer a stable and economical waste disposal service to Texas and Vermont generators and help solve a national crisis affecting hospitals, universities, research centers, and other out-of-Compact generators throughout the United States. WCS believes that the Preliminary Rules, as revised, will help ensure the implementation of an efficient and effective import and export system that will benefit the Compact states, Compact generators, Out-of-Compact generators and the Compact Facility alike.

Commission Response: The Commission neither agrees nor disagrees with these comments.

Comment: A commenter stated that he supports WCS and the commitments that they, on the WCS team, have made to properly treat, store, or dispose of specialty waste streams in the future. He strongly supports the importation and exportation Rules as written to properly solve the national problem of low level hazardous waste disposal.

Commission Response: The Commission neither agrees nor disagrees with these comments.

Comment: Lone Star Chapter of the Sierra Club (Sierra Club) commented that it opposes moving forward on proposed importation Rules at this time. Sierra Club asked that the Commission separate the exportation from the importation Rulemaking so greater caution could be developed if proposing waste importation Rules and noted that several issues related to importation must be resolved. Sierra Club noted, because the Compact Facility is not operational and because of Sierra Club's legal challenge, as well as the large amount of waste expected from the decommissioning of the Vermont Yankee, there is no immediate need for these Rules to be developed, and no reason to consider importation of waste at the same time.

Commission Response: The Commission disagrees with this comment. The Rule as proposed includes export and import of low level radioactive waste as part of an overall "mass-balance" process to ensure the "economical management" of waste disposal for Party State generators. The Commission has been publicly notified by a Vermont Yankee official that the vast majority decommissioning waste that would otherwise be sent to the Compact Disposal Facility would be not be sent there under the present license conditions due to the excessive cost that the utility cannot afford.

### DISPOSAL CAPACITY

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Comment: Representative Lon Burnam commented that estimated waste disposal volumes of Texas and Vermont already exceed the licensed volume of the site. Opening the site to import at this time jeopardizes space at the site for the two Compact party states whose very disposal needs the site was intended to accommodate. The proposed Rule contains no limits on imported waste. He respectfully requested that the Compact Commission add a provision to the Rule limiting the amount and type of imported low-level radioactive waste that may be disposed of at the Compact Facility site. Without a limit on out-of-Compact waste, the import Rule contravenes the primary purpose of the Compact Commission: to adequately and safely "manage low-level radioactive waste generated within its boundaries . . ." (Texas Low-Level Radioactive Waste Disposal Compact, Health and Safety Code, Chapter 403, Article I). He reiterated that the current licensed capacity at the WCS site is insufficient for estimated waste from Texas and Vermont. Without a technical review of the site, the Commission is not in the position to assume that the capacity of the site will increase to accommodate out-of-Compact waste. At a very minimum, the Rule should include a limit on the amount of waste, in volume and curie levels, that may be imported.

Commission Response: The Commission disagrees with this comment. The Commission has created provisions within the rule in Section 675.23(b)-(c) that address the commenter's concerns.

Comment: CAN commented that the Rule need to specify exactly how much space at the Compact facility is guaranteed for Vermont and Texas radioactive waste. It is CAN's understanding that the Compact Commission has estimated Texas and Vermont disposal needs over the next 50 years at 6 million cubic feet and that Vermont's share of that total, 1 million cubic feet, is meant to allow for the decommissioning of Vermont Yankee. According to the license for the Texas disposal site, the capacity of the Compact facility is limited to 2.31 million cubic feet. CAN objects to the Commission proposing a Rule governing import, which could allow many other states to dump waste at the site, when the Compact facility is only licensed to dispose of 38.5% of the estimated disposal needs of the Compact states. The amount needed for the decommissioning of Vermont Yankee must be reserved in the Compact facility, as initially licensed, regardless of when decommissioning occurs. CAN is concerned, too that nuclear reactors that are not yet built are relying on sending their waste to the Waste Control Site when the current licensed capacity is less than Texas and Vermont need. By taking this action, the TLLRWDC is enabling production of more waste far beyond the licensed capacity.

Commission Response: The Commission disagrees with the statement that a blanket prohibition of importing radioactive waste from outside the Compact is in the interest of the member States. The purpose of the Rule ensures disposal

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capacity safeguards. Two of the confounding factors in understanding the disposal capacity are that (1) the site is currently licensed for less than its designed maximum capacity, but generated quantity studies are based on maximum capability, and that (2) amounts generated are much greater than as-disposed quantity. The Commission recognizes these confounders and has included language in the revised Rule to address these issues. Importation, if it should occur, would be allowed to occur for the benefit of the party States.

Comment: Fairewinds commented that The Entergy Nuclear Vermont Yankee (ENVY) Power Plant is scheduled to either be shut down in 2012 or relicensed for an additional 20 years. Either way, the State of Vermont will require all of the currently allotted space at the Texas Compact facility. Vermont Yankee will shut down in 2012 if it is not allowed to relicense for an additional 20-years. Currently, Vermont Yankee's shutdown in 2012 looks likely given that the Vermont Senate voted against re-licensure on February 24, 2010. At the present time, Vermont is the only state in the country able to vote for or against re-licensure based upon reliability. During this evaluative process, which required many months of expert reports, testimony, and legislative review, the State of Vermont relied upon the Texas Compact contractual obligation to meet its commitment to accept Vermont's low-level radioactive waste.

Commission Response: The Commission neither agrees nor disagrees with the comment.

Comment: League of Women Voters commented that the Andrews County storage site has a limitation on the quantity that can be stored. The license is for 2,310,000 cubic feet of nuclear waste, but the Compact Commission has said Vermont needs one million cubic feet and Texas needs five million. The Rule must include a limit to the amount of nuclear waste in volume and curie levels.

Commission Response: The Commission disagrees with this comment. Through rulemaking, the Commission cannot alter the quantity of waste the Compact Disposal Facility is licensed to dispose.

Comment: The SEED Coalition commented that the projected disposal needs of Texas and Vermont far exceed the current licensed capacity of the compact facility, thus the importation of additional waste would be very problematic. SEED commented that the disposal needs of the non-compact states would result in a great deal of additional waste in the compact facility as measured by volume and curies creating public health and safety concerns.

Commission Response: The Commission disagrees with this comment. Through previous rulemaking, pursuant to HSC Chapter 403, Section 4.04(11), the Commission forecast the disposal needs of the Compact generators for the next 50 years. The term of the current license for the Compact Disposal Facility is 15 years. Through subsequent licensing activities, the Host State may consider the

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projected disposal capacity needs of the Party States.

### **FOREIGN OR INTERNATIONAL WASTE IMPORT**

Comment: Fairewinds commented that by proposing to take either international waste or waste from newly proposed reactors the Texas Compact Facility risks using its allocated space before being able to accept the anticipated waste from the decommissioning of Vermont Yankee. In fact, such an action may leave both Vermont and Texas without adequate fully licensed storage capacity.

Commission Response: The Commission agrees that it should be the policy of the Texas Compact to not accept international waste and has modified the rule in response to these comments. The rule excludes international waste. The Compact Commission does not have the authority to cause the volume of imported waste to exceed licensed capacity, and the Commission is required by law to safeguard Vermont's access to site capacity.

Comment: League of Women Voters commented that Texas could become a disposal site for national and international radioactive waste. League of Women Voters comment that it was not the intent of the Legislature in passing the Compact Act to accepted imported waste. No foreign low-level radioactive waste should be allowed in Texas. It further commented that the Subcontract should allow only low-level radioactive waste from Vermont and Texas, as proposed in the original compact. The Subcontract should not allow other states' waste, and should have an absolute ban on all foreign low-level radioactive waste.

Commission Response: The Commission agrees that it should be the policy of the Compact Commission not to accept international waste. The Compact Commission does not have the authority to cause the volume of imported waste to exceed licensed capacity, and the Commission is required by law to safeguard Vermont's access to site capacity. The Rule provides procedures by which persons may petition the Commission to import waste into the Compact, but does not guarantee such import will occur. Any importation allowed to occur would be for the benefit of the Compact States.

Comment: Sierra Club and CAN commented that the proposed Rule should ban the import of international waste.

Commission Response: The Commission agrees that it should be the policy of the Compact Commission not to accept international waste. The revised Rule excludes international waste.

### **CONCERNS ABOUT BECOMING A “NATIONAL DUMPING GROUND”**

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Comment: WCS commented about the question “Would Texas become the ‘dumping ground’ for LLW?” No. The proposed Rule balances the needs for importation with appropriate concerns for protecting current projected needs for disposal of Texas and Vermont LLRW and for public safety and health. As discussed in more detail below, importation would fill an important gap in the amount of LLW originally estimated for disposal under the facility’s license and the actual amounts of waste that compact generators now estimate that they will produce, resulting in the facility being economically viable as originally contemplated. Moreover, the percentage of LLW imported into Texas would be a small percentage of the total amount of LLW that needs to be disposed of in the United States. Additionally, no waste would be imported for disposal in Texas without approvals from the Commission. As such, imported LLW would be of the same type and subject to the same regulation as compact-generated waste.

Commission Response: The Commission generally agrees with the comment. It is important to note that Section 675.23 of the Rule does not grant permission for any entity to import waste. Rather, by its issuance, the Rule would implement procedures that the Commission would use to evaluate proposed importation agreements.

Comment: A person commented that characterization of the WCS workplace as a DUMP is inaccurate at best, and most offensive, and is frivolously used by those who do not have first-hand knowledge of our facilities. We, as employees, take umbrage to such uninformed comments. We don’t make special trips across Texas just to blast other businesses or individuals. However, we would invite those guests here tonight from other communities to relocate to our little spot of heaven on earth. We do enact our pride through sound safety policies and thorough housekeeping practices. Once you tour our fine facility, it will impress even the most outspoken critic.

Commission Response: The Commission notes this comment.

Comment: Sierra Club commented that the rationale for the site is to take care of Vermont and Texas waste and not to create a "dumping ground" or national "solution" to low-level radioactive waste disposal.

Commission Response: The Commission disagrees in that import of low level radioactive waste would occur for the benefit of the Compact States. The proposed Rule does not grant import permission to any entity, but establishes procedures for evaluating proposed importation agreements.

Comment: League of Women Voters commented that Texas could become a disposal site for national and international radioactive waste. When the law was passed in 1993, there was no intention of making Texas the “radioactive waste

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dump site of the U.S.,” which is what could happen if import is authorized.

Commission Response: The Commission disagrees with this comment. The proposed Rule does not grant import permission to any entity, but establishes procedures for evaluating proposed importation agreements.

### FINANCIAL CONSIDERATIONS OF THE SITE

Note: The Commission received comments on a variety of financial concerns. When comments related to fiscal impact described in the proposed Rule, they are included in the section on comment on the Rule. The comments in this section are of a broader nature.

Comment: Fairewinds commented that this Rulemaking proceeded in such a fast-paced manner. Approval of this Rule opens the door to a ticking clock at the same time the Commission has no funds to fulfill its current legal obligations responsibly and most likely even legally. According to this Rule and Commission funds allowing, every reactor in the country may be sending in applications demanding a timely review by an organization that has neither staff nor any legal counsel representing the Compact’s interests and contractual responsibilities. Lastly, the private company WCS that is running this radioactive dump is alleging that it may have to file for bankruptcy if it is not able to import significant amounts of additional waste, and this is without the site even constructed. As stated earlier, Vermont is responsible for its pro-rata share. Fairewinds stated it makes no sense for Vermont to be absorbing the cost of hiring additional Compact staff and Compact legal counsel in an effort to protect the contractor, who willingly sought this radioactive waste contract, but now after being awarded the contract says it will go bankrupt unless the scope of the project is increased. Not only would Vermont have to share in the Compact’s burgeoning cost burden of adding staff and legal counsel in order to evaluate other potential users of this low-level waste site, but then Vermont may also lose the allocated space it requires for a timely decommissioning of Vermont Yankee.

Commission Response: The Commission disagrees that there is financial risk with establishing a procedural Rule. There are many levels of review and response to a petition. The Commission believes it is responsible for retaining adequate staff to provide quality services to the Compact States, and believes the funds generated by the proposed fee schedule would allow such staff. The Commission has implemented safe guards in the rule in response to comments of this nature.

Comment: Representative Lon Burnam commented that proceeding with import under current conditions prioritizes the site operator’s financial considerations

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over the disposal needs of Texas and Vermont. Until Waste Control Specialist's (WCS) claim regarding the necessity of import for financial viability of the site has been independently verified, it is incumbent upon the Compact Commission to prioritize the disposal needs of the party states and the safety and welfare of Texans over WCS' s profits.

Commission Response: The Commission disagrees with this comment. The Commission may be approached at any time by persons seeking importation of waste into the Compact under existing state and federal law Texas Health and Safety Code, ch. 403 (Compact Act § 3.05(6)). The Commission has proposed rules pursuant to existing law that allow the evaluation of proposed importation agreements in a public and transparent manner. The procedures in the proposed Rule allow the Commission to determine the impact of both export and import on the Compact given that both activities affect Part State generators.

Comment: League of Women Voters commented that low revenues could lead to compromised safety procedures through cost cutting measures. If the revenues are low, it is not unusual for a corporation to try to cut expenses by either delaying or stopping implementation of safety procedures to increase profits. This type of decision making could cause a great deal of problems. Low-level radioactive waste is still high risk waste.

Commission Response: The Commission disagrees with this comment. International waste has been excluded in the revised Rule. Safety is overseen by the Licensing Agency, TCEQ. One of the purposes of the Commission is ‘...to provide for and encourage the economical management and disposal of low-level radioactive waste.’ The Commission sees the Export and Import Rule, in partial interpretation, as a means to ensure the economical management of the site, to ensure affordable disposal options for Texas and Vermont generators, and to ensure the management company is a viable financial entity.

Comment: CORAR commented that the benefit to the Andrews County LLRW Disposal Site is that if sufficient quantities of LLRW are received, in forms that the Site is designed to accommodate, the Site will achieve economic viability. This in turn will ensure that the generators in Party States (currently Texas and Vermont) will be able to cost-effectively dispose of their LLRW for the long term.

Commission Response: The Commission neither agrees nor disagrees with this comment.

### COMPACT COMMISSION RESOURCES CONCERNS

Comment: Representative Lon Burnam commented that the Commission has inadequate resources. The Commission does not have funding for staff and other



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administrative resources necessary to thoroughly evaluate import petitions on a case-by-case basis. The Commission cannot afford an attorney to represent the Commission or individual Commissioners in the event of litigation against the Commission arising from denial of import petitions, or any other litigation. The Commission cannot afford to hire an independent financial expert to review WCS's economic analysis alleging the viability of the site is dependent on importation. The Commission does not have enough funds to conduct its work beyond the May 11 meeting. This includes holding additional meetings to consider concerns raised in public comments on the Rules currently under consideration.

Commission Response: With regard to this comment, the Commission agrees in part and disagrees in part. The limited financial resources of the Commission have been addressed in this Rule through the imposition of application fees and the requirement for the Commission to certify its ability to properly operate on funds received prior to processing and evaluating any export petitions or proposed importation agreements. The Commission is currently receiving the legal counsel of the Texas Office of Attorney General. The Commission has the resources and conduct meetings, with the monetary and personnel assistance provided by Texas and Vermont and the volunteer efforts of each of the Compact Commissioners.

Comment: League of Women Voters commented that the Compact Commission has a significant lack of financial and other resources. The Compact Commission does not have the necessary financial resources or professional staff to protect the health, safety, and welfare of Texas' citizens and the environment, and to provide effective oversight for the import, export, management, and disposal of low-level radioactive waste. The Commission currently does not have enough funds to pay the expenses for commissioners to travel to public meetings. The Commission cannot afford geoscientists, geologists, physicists, or nuclear scientists on staff, therefore concern exists for future funding for oversight, regulation, and monitoring the WCS storage site. The Commission still does not have bylaws. The League asks how the members of the Commission can responsibly open the state to more nuclear waste from around the country—and possibly the world—if it does not have adequate resources to fund current operations with the appropriate number of staff, attorneys, scientists, monitors, and other professionals needed to do the job well?

Commission Response: The Commission disagrees. Funds for travel and meetings are provided under contract by the TCEQ. Funding the operations of the Commission falls onto the Compact States until such time as fees are collected to fund the Commission operations. One of the purposes of the Rule is to generate fees through permits to export and import low level radioactive waste, as specified in the proposed fee schedule. Additionally, in response to comments the Commission has implemented safe guards in the rule to ensure adequate resources for meeting the obligations imposed by rule. Import of international waste is excluded by the revised Rule.

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Comment: NIRS commented that immediately upon passage of the Import Rule (31 TAC 675.23), applications to import waste could start coming in to the Commission. The Compact Commission, by its own Rules, is required to act on them within a prescribed time period. The Commission, also by its own admission, currently does not have the capability to evaluate the applications thus makes unnecessary work for itself and opens itself up to legal challenge. The Rule gives the green light to Waste Control Specialists to enter into contracts for out-of-compact waste that it may not have capacity to fulfill. Although the Commission inserts the phrase “subject to the financial resources of the commission” (Section 31 TAC 675.23 (h)) in its timeline, as of this Rulemaking the entire Rule cannot be implemented so why proceed now? The Commission does not have the resources to proceed and should not expect that the meager application fees will enable you to do so responsibly.

Commission Response: The Commission disagrees. In response to comments the Commission has implemented safe guards in the rule to ensure adequate resources for meeting the obligations imposed by rule. The waste, which may be disposed at the site, are controlled by the TCEQ.

Comment: Frances K. Sage, Ph.D. commented that we expect you to secure adequate funding to do the necessary study and analyses that such regulations require. You are operating on a minuscule budget.

Commission Response: The Commission disagrees. The waste, which may be disposed at the site, are controlled by the TCEQ. In response to comments the Commission has implemented safe guards in the rule to ensure adequate resources for meeting the obligations imposed by rule.

Comment: WCS commented on the question, “Would the Commission have adequate staffing and funding to review applications for importation and exportation?” Yes. The proposed Rule provides a finding mechanism for such a review.

Commission Response: The Commission agrees that the proposed Rule provides a funding mechanism for review of petitions for import and export.

Comment: Sierra Club notes that the Compact Commission currently has no staff to even be able to adequately review a proposed import agreement and no funds to hire any outside experts to do so. In essence, the Commission would be acting on import agreements without adequate resources to determine whether it was a good idea or not, or whether there was sufficient controls in place to assure its safety and long-term disposal.

Commission Response: The Commission disagrees. Funding the operations of the Commission falls onto the Compact States until such time as fees are collected to fund the Commission operations. One of the purposes of the Rule is to generate fees through permits to export and import low level radioactive waste, as specified

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in the proposed fee schedule. Import of international waste is excluded by the revised Rule. In response to comments the Commission has implemented safe guards in the rule to ensure adequate resources for meeting the obligations imposed by rule.

Comment: Studsvik commented that if the Commission ultimately adopts the proposed Rules, Studsvik urges you to delay the effective date of the Import Rule until such time as the Commission is prepared to administer it accordingly.

Commission Response: The Commission disagrees. If the effective date of the Import portion of the Rule is delayed, then uncontrolled import continues. Once the import Rule is in effect, the Commission has the authority to impose penalties and evaluate petitions. In response to comments the Commission has implemented safe guards in the rule to ensure adequate resources for meeting the obligations imposed by rule.

#### **RULE MAKING PROCESS CONCERNS**

Comment: Fairewinds commented that it is gravely concerned that this Rulemaking is occurring in a rushed and ill-advised manner. Fairewinds is against current adoption of the rules and asks that the Commission postpone this Rulemaking until the site is fully operational and the items in question receive adequate review.

Commission Response: The Commission disagrees. The Commission has undertaken a deliberative process complying with the Texas APA. This included publication of the export/import rule in the Texas Register to receive public comment, two public hearings, a public rules committee meeting, and deliberation among the Commissioners during meetings with the opportunity to hear additional public comments.

The Commission feels that waiting until the site is open to promulgate the Rule will allow uncontrolled importation of low level radioactive waste into the Compact, which will then become compact waste and circumvent import controls. The Commission feels that this is currently occurring, and seeks to gain control of such import.

Comment: Representative Lon Burnam commented that given the time required for the site operator to meet these conditions, as well as the estimated one-year site construction timeline, there is plenty of time to address these and other concerns raised about import without unnecessarily jeopardizing space for Texas and Vermont waste, Texas' long-term fiscal health and the safety and welfare of Texans.

Commission Response: The Commission disagrees with this comment. It is

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important that when the Compact Disposal Facility is prepared for operations, the Compact Commission should also have rules promulgated and in place to properly discharge its responsibilities under the Texas Compact. The Commission has proposed rules pursuant to existing law that allow the evaluation of proposed importation agreements in a public and transparent manner. The procedures in the proposed Rule allow the Commission to determine the impact of both export and import on the Compact given that both activities affect Part State generators.

Comment: Nuclear Information and Resource Service (NIRS) NIRS encourages the Texas Vermont Compact Commission to stop acting like an enthusiastic business promoter for Waste Control Specialists and exert its authority in a manner that protects the best interest of the residents of Texas and Vermont.

Commission Response: The Commission disagrees with this comment. The Commission has a legal responsibility ‘...to provide for and encourage the economical management and disposal of low-level radioactive waste’. The Commission sees the viability of its site operator as part of providing for economical management. If the site operator’s business operations fail, the responsibility for the site falls onto the Compact States.

Comment: Dr. Sage commented that she expects the Commission to do its homework; she expects the Commission to secure adequate funding to do the necessary study and analyses that such regulations require. She asked why the Commission is in such a hurry to rush forward on importing waste?

Commission Response: The Commission disagrees. The Commission has undertaken a deliberative process complying with the Texas APA. This included publication of the export/import rule in the Texas Register to receive public comment, two public hearings, a public rules committee meeting, and deliberation among the Commissioners during meetings with the opportunity to hear additional public comments.

It is important that when the Compact Disposal Facility is prepared for operations, the Compact Commission should also have rules promulgated and in place to properly discharge its responsibilities under the Texas Compact.

Comment: Sierra Club commented that much more specific public comment input process is needed to assure that all views are taken into account before any decisions by the Commission.

Commission Response: The Commission disagrees with this comment. The Commission has held two stakeholder meetings, two Commission meetings, two public hearings and provided a 60-day comment period — twice the length of the normal comment period. The Commission has received approximately 3,000 comments. Lengthy and detailed public comment has been received by the Commission.

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Comment: The League of Women Voters recommends that an advisory panel be implemented to assist the Commissioners in decision-making.

Commission Response: The Commission disagrees with this comment. There currently is no provision for the creation of an Advisory Panel in the Compact.

### COMMENTS ON PREAMBLE OF PROPOSED RULES

Comment: The Department of Defense Executive Agent (DODEA) commented that the use of the term “person” should be read to authorize the DODEA to represent the Department of Defense, a specific branch of service (Army, Navy, etc.) or an individual generator for the purpose of entering into an import agreement.

Commission Response: The Commission disagrees with this Comment. The Commission must rely on the definitions as stated in the Compact.

Comment: Southeast Compact commented that “non compact” sounds like “not in a compact.” Do you mean to say “out of compact” or “out of region?”

Commission Response: The Commission disagrees with this comment. “Non compact” means not in the Texas Compact.

Comment: ARDT commented that 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.

Commission Response: Although the Commission disagrees with this comment, the Preamble of the Rule has been clarified to address wastes that do not meet the Compact Disposal Facility waste acceptance criteria.

Comment: ARDT commented that 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 five years in which the Rule is in effect does not appear to have been clearly provided.

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Commission Response: The Commission agrees with this comment. The Commission has provided a Final Fiscal Note with this information included to appear in the order adopting the rule and published in the Texas Register.

Comment: ARDT questions the factual basis for the statements that waste exported will have a negative effect on the State of Texas General Revenue Fund. ARDT sets out numerous arguments in support of this position.

Commission Response: The Commission disagrees with this comment. While it is possible that exports may have a beneficial effect on the Compact, it is also possible that exports may have a negative impact on the Compact. The Commission believes that the Rule allows for evaluation of both export and import petitions, including their financial impact. The preamble language in the order adopting the rule has been clarified to reflect this reality.

Comment: EnergySolutions commented that this section fails to recognize that requiring all waste generated within the Texas Compact be disposed at the WCS facility may have a negative impact on generators within the Texas Compact. Rates have yet to be established for the WCS facility. These rates may not be competitive with disposal rates currently received by generators who send waste outside of the Texas Compact. It is agreed that wastes exported will have a negative effect on the State of Texas General Revenue Fund, but the recognition of a negative effect of in-compact generators needs to be analyzed.

Commission Response: The Compact Commission agrees that the financial impact of granting export petitions could have a negative impact on generators. In response to comment, the Commission has addressed this issue in its Final Small Business Impact Statement. That impact is unknown because disposal rates have not been set. The Commission disagrees that export could have a positive impact on the general revenue of the State of Texas for the reasons already addressed in the preamble of the proposed rule.

Comment: Representative Lon Burnam commented that given that the State of Texas assumes liability for waste disposed at the site, the increase in waste disposed at the site implied by importation has significant liability implications for the State of Texas in the event of an eventual leak at the site. This liability has been completely excluded from the fiscal "Impact to the State of Texas" published along with the proposed Rule, which considers merely the state's share of fees generated by import and lost to export. The fiscal impact statement should incorporate costs associated with increased liability to the State of Texas associated with import, including both environmental clean-up and health remediation costs in the event of a leak and the financial consequences of an accident during transport.

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Commission Response: The Commission disagrees with this comment. The rule provides a statement concerning the Impact to the State of Texas. The APA requires a five year analysis of the financial impact, which was provided in the proposed rule preamble. The Texas Commission on Environmental Quality, which is the licensing agency for the Compact Disposal Facility, has considered State of Texas liability and mitigation of the facility in the licensing process. The Compact Commission does not have authority over the transportation of waste.

Comment: League of Women Voters commented expressing concerns that WCS can terminate their participation in the Compact Agreement at any time, leaving the state with a significant liability.

Commission Response: The Commission disagrees with this comment. A significant financial surety will be posted by WCS with the Licensing agency, TCEQ. The procedure export and import Rule does not address this issue. Inspection of the site is not the purview of the Commission but the Licensing agency. While the Commission understands that several sites across the country have had problems with leaks, the Commission notes that all those sites were built and commissioned in the 1960's or earlier, as Cold War exigencies, and the level of attention to the location, construction, and safeguards against leaking was minimal, unlike the Andrews site. The Andrews site has undergone major examination of geology, hydrology, and construction by the TCEQ.

Comment: WCS commented on the preamble fiscal note. WCS agrees with the Commission that the importation of LLW into Texas would have a positive effect on the State of Texas generally, and on the State of Texas general revenue fund in particular. Exportation of LLW would have the opposite effect. Revenue from LLW importation would increase the amount of gross receipts paid to the State of Texas general revenue fund. Texas and Andrews County are financial partners in the Compact Facility with 10% of every dollar of gross receipts being divided evenly between the State of Texas and Andrews County. Importation of LLW at reasonable levels could increase annual receipts to Texas and Andrews County by several million dollars. Andrews County would additionally benefit from reasonable importation as a result of the economic impact of WCS's investment in the Compact Facility. Without importation, the Compact Facility would not be economically viable, and jobs and other economic benefits to Andrews County and the State would be lost.

Commission Response: The Commission notes this comment.

Comment: Sierra Club commented noting their objection to statements made in the preamble to the proposed Rules, which states that the waste imported into Texas will have a "positive effect on the State of Texas General Revenue Fund," but fails to address potential negative effects. Negative effects include the risk that imports could impact the ability of the Compact Facility site to meet its obligations to Texas and Vermont generators, that additional wastes could pose

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health or environmental risks, and that additional wastes may have potential financial risks and a liability to Texas taxpayers since it is the State of Texas that will assume ownership of all waste housed there.

Commission Response: The APA requires a five year analysis of the financial impact, which was provided in the proposed rule preamble. The Texas Commission on Environmental Quality which is the licensing agency for the Compact disposal facility has considered State of Texas liability and mitigation of the facility in the licensing process. Protections exist within the rule to ensure that disposal capacity is reserved for Compact generators. All waste must meet the waste acceptance criteria stated in the license, regardless of origin.

Comment: ARDT commented that while it 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.

Commission Response: Regarding this comment, the Commission agrees in part and disagrees in part. The employment data were provided by the Compact Disposal Facility licensee. The Commission cannot dictate to the Compact Disposal Facility the employment levels necessary to develop either the programs or infrastructure necessary to become operational under its license, nor can the Commission dictate the staffing level of an operational facility. Since the acceptance of proposed importation agreements by the Commission is speculative at this point, the discussion of the staffing level required to support such activities has been removed. The potential negative effect of exports on the economical management of the Compact Disposal Facility have been clarified in the Final Impact Statements.

Comment: A person commented on the positive impact of the Compact Disposal Facility operations and the local higher education programs established to support the personnel who may work there.

Commission Response: The Commission neither agrees nor disagrees with this comment.



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Comment: 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).

Commission Response: The Commission agrees with this comment and the statement has been added.

Comment: ARDT commented that 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.

Commission Response: Regarding this comment, the Commission agrees in part and disagrees in part. The preamble language in the order adopting the rule has been revised to remove specific dates of operation. While some clarification of the effects of export has been made, the specifics provided by the commenter are likewise speculative and no such detail has been added.

Comment: ARDT commented that 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).

Commission Response: The Commission agrees that the analysis should include the name of the officer preparing the analysis. The Commission has provided a Final Small Business Analysis with this information included to appear in the order adopting the rule and published in the Texas Register.

Comment: EnergySolutions commented that restrictions on waste export could illegally infringe on existing contracts.

Commission Response: The Commission disagrees with this comment. The Texas Compact was adopted in state law by Texas and Vermont in 1993 and became federal law in 1998 by an Act of the U.S. Congress and the subsequent signing of the President. Contracts between persons cannot abridge existing law, and equally important, contracts that ignore laws that may be enforced on a date

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certain do so at the risk of both parties. This proposed Rule does merely creates procedures for the interpretation and enforcement of an existing law.

Comment: EnergySolutions, the League of Women Voters, SEED, NIRS, Sierra Club, CAN and other individuals commented that the proposed Rule is a "major environmental Rule."

Commission Response: The Commission disagrees with this comment. In response to comment the Commission has provided a Final Regulatory Analysis of this issue that will appear in the Order Adopting the Rule and be published in the Texas Register. For the reasons stated in that analysis, the Commission disagrees that it is required to conduct any further analysis.

#### **PUBLIC HEALTH AND SAFETY AND THE ENVIRONMENT**

Comment: League of Women Voters commented that the risk potential for accidents is increased, and the Rule should incorporate stringent standards for identifying radioactive materials, their volumes, half-lives, and levels of radioactivity in order to anticipate risks from potential accidents and contamination. Out-of-Compact waste should be excluded.

Commission Response: The Commission disagrees with this comment because the Commission lacks authority to address the concerns raised by this comment. Preventative measures in the case of an accident for the people of Texas are managed by the Texas Department of State Health Services. That activity is not in the purview of the Commission. The type of waste allowed to be disposed at the site is the responsibility of the Licensing agency, the TCEQ.

Comment: NIRS commented that the site is in the vicinity of important aquifers and could be leaking by the time the new reactor waste is produced and ready to be imported.

Commission Response: The Commission disagrees with this comment because the Commission lacks authority to address the concerns raised by this comment. Over 400 well drilled at the direction of TCEQ have determined that the site is not located over the Oglalla aquifer.

Comment: WCS commented that the Preliminary Rules as proposed balance public and private needs and valid concerns involving economics, safety, public health, the environment, and economic development.

Commission Response: The Commission neither agrees nor disagrees with these comments.

Comment: NIRS asked what consideration has the Compact Commission given to Spanish-language communications.

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Commission Response: The Commission have complied with the requirements of the Administrative Procedures Act in this rulemaking.

Comment: A commenter provided documents describing historical perspectives of the organization nuclear facility cleanups throughout the U.S.

Commission Response: The Commission disagrees that the documents are germane to this rulemaking.

Comment: NIRS commented that all six of the past “low-level” radioactive waste sites in the US have leaked or are leaking and have cost or are costing the state taxpayers. Both legal and technical costs have been incurred. The commenter provided specific details regarding leakage at each site, including costs for clean-up.

Commission Response: The Commission disagrees with the comment. While the Commission understands that several sites across the country have had problems with leaks, the Commission notes that all those sites were built and commissioned in the 1960’s or earlier, as Cold War exigencies, and the level of attention to the location, construction, and safeguards against leaking was minimal, unlike the Andrews site. The Andrews site has undergone major examination of geology, hydrology, and construction by the TCEQ.

### **FACILITY LICENSE**

Comment: Representative Lon Burnam commented that the site is not yet even operational. It is his understanding that several of the pre-construction license conditions have not yet been met.

Commission Response: The Commission disagrees with this comment. It is important that when the Compact Disposal Facility is prepared for operations, the Compact Commission should also have rules promulgated and in place to properly discharge its responsibilities under the Texas Compact.

Comment: League of Women Voters commented that the licensing approval process, public disclosure, and conflict of interest need improvement. The licensing approval process by the state is of concern.

Commission Response: The Commission disagrees with the comment. The licensing process has concluded with the issuance of a license for the site by the TCEQ. Through the issuance of this proposed Rule, the Commission has complied with all the requirements of the Texas APA.

Comment: NIRS commented that although the TLLRWDC claims not to be evaluating or licensing the site, the IMPORT Rule clearly drives expansion of the site beyond its already highly questionable license limits.

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Commission Response: The Commission disagrees with this comment. The purpose of the proposed Rule is to establish a procedures that implement the provisions of existing law. The Commission cannot authorize the Compact Disposal Facility to exceed the limits of its license.

Comment: Sierra Club commented the decision to grant the license is under judicial review and this rulemaking should not move forward as a result.

Commission Response: The Commission disagrees with the comment. The rule requires consideration of whether the compact facility is or will be licensed to accept the waste proposed for import.

Comment: Southeast Compact commented that it should be made clear that waste can only be accepted at a Texas facility in accordance with the limitations under its license. Also, the agreement should include a provision for return to the state of origin if certain waste does not meet license conditions for acceptance.

Commission Response: The Commission agrees with this comment and points out that all waste destined for disposal is described in the context of the Compact Disposal Facility. Waste that is found to not meet the waste acceptance criteria of the Compact Disposal Facility license is ultimately subject to the jurisdiction of the TCEQ, DOT and any provisions for enforcement the Commission or other persons may have in any binding agreements governing the disposal of said waste.

### TRANSPORTATION

Comment: Representative Burnam, the League of Women Voters, and several individuals commented on concerns related to the hazards associated with transportation of waste resulting from the importation of waste into the Compact for disposal

Commission Response: The Commission disagrees with these comments. The Commission does not have authority to regulate or oversee the transportation of waste in the state. Pursuant to section 401.052 of the Health and Safety Code, the Texas Department of State Health Services is charged with adopting rules governing the routing of radioactive waste in the State of Texas. The interstate transportation of such waste is governed by the U.S. Nuclear Regulatory Commission and U.S. Department of Transportation. The Compact Commission has no authority to adopting rules related to the transport of waste. Substantial reviews of the safety of transport of radioactive materials have been exhaustively studied by the federal government through its contractor, Sandia National Laboratories. Import of low level radioactive waste would occur for the benefit of the Compact States. The proposed Rule does not grant import permission to any entity, but establishes procedures for petitioning for an import permit.

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### CONCERNS REGARDING COMPACT STATUS

Comment: League of Women Voters and SEED commented that the proposed Rule does not meet the intent or the Purpose of the Compact.

Commission Response: The Commission believes that this Rule will not meet all the requirements of the Policy and Purpose of the Compact that are germane to the specific provisions of the Compact from which the proposed Rule is promulgated.

Comment: Fairewinds commented that as a party to the Compact with members on the Compact Commission, Vermont has some responsibility for the actions of the Commission. If this Rule is approved, the Commission will be making potential legal commitments that it may not be able to meet. Therefore, such an action seems like the Compact Commission may be putting Vermont at financial risk.

Commission Response: The Commission disagrees. This Rule is simply a procedural Rule to establish procedures for evaluating petitions to import and export LLRW. Legal challenges to the Rule will be dealt with as they arise.

### COMMENTS REGARDING RULE 675.21, EXPORTATION OF WASTE TO A NON-PARTY STATE FOR DISPOSAL

Comment: ARDT commented that 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).

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

Comment: WCS commented that the last sentence of § 675.21(b) should be deleted because it is duplicative of the provision above it.

Commission Response: The Commission agrees with this comment and will clarify paragraphs (a) and (b).

Comment: ARDT commented that it supports the Commission and believes that the Commission should be adequately funded in order to carry out its mission and appreciates the Commission's decision to only include nominal, administrative export fees in the Proposed Rule, but opposes any imposition of unit-based export fees of any kind.

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

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Comment: CORAR commented that in order to ensure that the Disposal Site is economically viable it is essential that the disposal facility operators be allowed the flexibility to establish a workable fee assessment schedule that brings in the necessary revenues and is affordable to waste generators, including the research community.

Commission Response: The Commission neither agrees nor disagrees with this comment. Fees for disposal costs are to be set by the TCEQ, not the site operator, as provided in the Compact Act.

Comment: NIRS commented on import and export evaluation fees regarding the adequacy of those fees to cover the Commission's cost of evaluation.

Commission Response: The Commission disagrees with this comment. The proposed Rule requires the upfront payment of application fees prior to any Commission action, along with the assessment and possible imposition evaluation fee payable within 30 days of assessment.

Comment: ARDT and WCS commented requesting clarification on the timing and description of fees.

Commission Response: The Commission neither agrees nor disagrees with this comment. The proposed Rule has undergone revision in Committee to clarify the mechanism and timing of petition evaluation fees.

Comment: WCS proposes revising § 675.21(d)(1) to reflect that some actions will by necessity be taken by the Commission between when the application fee is paid and the evaluation fee will be calculable and due.

Commission Response: The Commission disagrees with this comment. The language of the proposed Rule does not prevent action by the Commission prior to receipt of the evaluation fee.

Comment: ARDT, EnergySolutions, and WCS commented regarding the methods, timing and limits to the Export Permit Evaluation Fees.

Commission Response: In regard to these comments, the Commission agrees in part and disagrees in part. The proposed Rule has undergone revision in Committee to develop a fee schedule that will be used to determine the evaluation fee. The Rule now also describes the manner in which additional fees will be communicated to and paid by the petitioner. A limit on evaluation fees will not be placed in the rule.

Comment: ARDT, EnergySolutions, Sierra Club, the Southeast Compact and WCS commented that language relating to import appears to have inadvertently been included in the Proposed Rule and should be deleted.

Commission Response: The Commission agrees with this comment. The proposed Rule has undergone revision in Committee to address this comment.

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Comment: EnergySolutions commented that TCEQ will be required to "certify" that the waste acceptance criteria are met at the out of compact disposal facility.

Commission Response: The Commission disagrees with this comment. The petitioner is required to provide the certification, not the TCEQ.

Comment: The Sierra Club commented that a timeline for the commenting period on export petitions be added to the rule.

Commission Response: The Commission agrees with this comment. The proposed Rule has undergone revision in Committee to address this comment.

Comment: ARDT requested that the 60-day waiting period be changed to 30-days.

Commission Response: The Commission disagrees with this comment. No changes have been made to the proposed Rule.

Comment: EnergySolutions commented that this section addresses how the Commission will review export petitions. Economic impacts of the petitioner and the Host County, the Host State, and the Compact Facility operator will be considered in this review. The Commission should describe for public comment how this economic evaluation will be accomplished, including the proposal of criteria that the Commission will use to determine the trade-off of the economic impact on the petitioner versus the economic impact on the Host County, the Host State, and the Compact Facility operator.

Commission Response: The Commission disagrees with this comment. The Texas Compact was adopted in state law by Texas and Vermont in 1993 and became federal law in 1998 by an Act of the U.S. Congress and the subsequent signing of the President. Contracts between persons cannot abridge existing law, and equally important, contracts that ignore laws that may be enforced on a date certain do so at the risk of both parties. This proposed Rule does merely creates procedures for the interpretation and enforcement of an existing law.

Comment: ARDT questioned the requirement that criteria for evaluating export petitions include the "approximate radioactivity of the waste" and "specific radionuclides contained therein."

Commission Response: The Commission disagrees with this comment. The Compact requires both elements to be stipulated in any export agreement with the Commission.

Comment: EnergySolutions commented that existing contracts should be an exception to the requirement for export permits

Commission Response: The Commission disagrees with this comment. The Texas Compact was adopted in state law by Texas and Vermont in 1993 and became federal law in 1998 by an Act of the U.S. Congress and the subsequent signing of the President. Contracts between persons cannot abridge existing law,

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and equally important, contracts that ignore laws that may be enforced on a date certain do so at the risk of both parties. This proposed Rule does merely creates procedures for the interpretation and enforcement of an existing law.

Comment: Sierra Club suggested adding the following language in 675.21 (f) (3), "The availability of the Compact Facility for the disposal of the waste involved, including whether or not the specific waste codes and volumes contemplated in the export petition would be allowed by the current radioactive waste license issued by the Texas Commission on Environmental Quality."

Commission Response: The Commission disagrees with this comment. The Compact Disposal Facility will be requested to provide such information as part of the existing language.

Comment: ARDT commented that additional restrictions should be placed on "the existence of unresolved violations pending against the petitioner with another regulatory agency with jurisdiction to regulate radioactive material."

Commission Response: The Commission disagrees with this comment. The context, time frame and origin of any such sanctions will be evaluated by the Commission at the time of its deliberations.

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

Commission Response: The Commission disagrees with this comment. This is an existing requirement of the Compact (Section 3.02).

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

Commission Response: The Commission disagrees with this comment. The language in the proposed Rule is taken directly from the Compact law.

Comment: ARDT requested the reporting date be change from October 31 to June 30.

Commission Response: The Commission disagrees with this comment. No changes were made to the proposed Rule.

Comment: Sierra Club comment that it is supportive of the provisions in 675.21 (i)(3) requiring an annual report on the actual amount of waste exported by any party that has received approval of its export petition as well as the reporting requirements for waste generators exporting waste to another state for processing for eventual disposal at the Compact Facility. This should create a legal document



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to assure that Texas or Vermont waste is being managed properly in other states.

Commission Response: The Commission agrees with this comment.

Comment: 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.

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

Comment: ARDT commented that this subsection appears duplicative of Subsection (c).

Commission Response: This Commission disagrees with this comment.

Comment: WCS proposed a revision to § 675.21(k) to clarify that the form of export permit "shall contain at a minimum the criteria found in subsection (1) of this section."

Commission Response: The Commission disagrees with this comment. The existing language sufficiently identifies the minimum content of the Commission's evaluation criteria and form.

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

Commission Response: The Commission disagrees with this comment. The Compact does not require an a priori determination by the Commission; however, nothing in the proposed Rule bars the Commission from making a determination that waste proposed for import is not eligible for disposal at the Compact Disposal Facility.

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### **COMMENTS REGARDING 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**

Comment: ARDT commented that 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).

Commission Response: The Commission agrees with this comment. The proposed Rule was revised in Committee to incorporate this comment.

Comment: Southeast Compact commented that they found that the key to the enforcement of export policies is preventing the wastes from being accepted at the potential receiving facilities. Southeast Compact suggested that the TLLRWDC send formal notification to other compacts and unaffiliated states, as well as all other site operators, asking for their cooperation in not accepting TX Compact waste without an export permit.

Commission Response: The Commission has noted this comment.

Comment: Studsvik commented that this section applies to the exportation of waste "where the sole purpose of the exportation is to manage or process the material for recycling or waste reduction" and return to a party state for ultimate disposal in the compact facility. Studsvik supports the purpose of this subsection but wishes to clarify that its interpretation of "waste reduction" does not mean blending or dilution of waste as described in Texas Administrative Code, Title 30, Section 336.229 ("Texas Anti-dilution Rule"); rather, Studsvik would construe "waste reduction" to mean a reduction in waste volume consistent with the United States Nuclear Regulatory Commission's Policy Statement on Low-Level Waste Volume Reduction found at 46 Fed. Reg. 51100.

Commission Response: The Commission has noted this comment.

Comment: Energy Solutions commented that "This section discusses the 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. §675.22(a), however, discusses exportation to manage or process "material." The subsection address "wastes" sent for processing and disposal at a non-compact facility."

Commission Response: The Commission agrees with this comment. The proposed Rule was revised in Committee to address the comment.

Comment: ARDT commented that for the same basic reasons explained in ARDT's comments to § 675.21(f)(1) of the Proposed Rule, if generators who are

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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 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.

Commission Response: The Commission agrees with this comment. The proposed Rule was revised in Committee to address the comment.

Comment: Studsvik suggests changing “waste management facility” to “waste processing facility” to maintain consistent terminology within this subsection. Further, since the waste processing facility must be identified in §675.22(b)(2), Studsvik suggests deleting this same requirement from §675.22(b)(1). Also, the term “blended” suggests a change in waste classification and could be construed to endorse activities subject to the Anti-dilution Rule. We recommend using the term “commingled” rather than “blended” in this subsection. The term “encapsulate” is not a defined term and Studsvik suggests that the Commission consider providing a definition for that term. “Encapsulate” could mean as little as placing the waste into a high-integrity container or some other engineered structure—or it could mean more aggressive steps such as encasement in concrete or some other monolithic form.

Commission Response: The Commission agrees with this comment and has clarified the language in the proposed Rule.

Comment: ARDT commented that 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. ARDT believes generators will not be in the position to make that certification without relying on what the processor certifies.

Commission Response: The Commission has noted this comment. The section of the proposed Rule germane to this comment was revised in Committee.

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Comment: Studsvik supports the intent of §675.22(c)(2) and believes applicants should certify their compliance with the Texas Anti-dilution Rule. Studsvik also believes the same certification should be made by out-of-compact generators who seek to import waste for disposal under Section 675.23. Studsvick states the blending of waste is clearly not a favored practice for LLW waste management in Texas based upon the Anti-dilution Rule.

Commission Response: The Commission notes this comment.

Comment: ARDT recommends clarifying that the terms and definitions used the proposed Rule have the same meaning ascribed to them in the Compact.

Commission Response: The Commission agrees with this comment. The proposed Rule has been revised in Committee to address this comment.

#### **COMMENTS REGARDING RULE 675.23, IMPORTATION OF WASTE FROM A NON-COMPACT GENERATOR FOR MANAGEMENT OR DISPOSAL**

Comment: The Southeast Compact commented as to whether the Commission consider allowing States, compacts, brokers, processors, or organizations to petition the Commission for importation on behalf of a group of generators? Southeast Compact posed these questions: For what duration is an import agreement intended? For each shipment, annual, or for a long-term, blanket agreement? Is there a fee for amendments or extensions?

Commission Response: The Commission has noted this comment. The definition of “persons” within the Compact addresses the commenter’s question.

Comment: The Southeast Compact commented as to what duration is an import agreement intended and whether there is a fee for amendments or extensions?

Commission Response: The Commission has noted this comment. The proposed Rule contains the provisions provided by law in 3.05(6) of the Compact.

Comment: NIRS posed a series of questions regarding the possibility of legal actions following determinations on importation by the Commission.

Commission Response: The Commission notes the questions posed by the commenter although they have not resulted in any changes to the proposed Rule. The answer to the questions posed are found by reading the Rule.

Comment: TVA commented that the meaning of the TLLRWDCC's policy statement is unclear.

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Commission Response: The Commission disagrees with the comment. The intention of the policy statement is to ensure that all persons understand that out-of-compact generators will pay higher rates than compact-generators.

Comment: Sierra Club commented that if the Commission were to consider going forward with a Rule allowing for importation of waste on a case-by-case basis as the present proposed Rule contemplates, TCEQ must be consulted. Thus, Sierra Club states, even if the Compact Commission were to approve a specific "Import Agreement," the Facility Operator could not import the waste covered in the Import Agreement before gaining approval from the TCEQ. Sierra Club states that only through an amendment process at the TCEQ could the Facility Operator import waste from other states, and that, therefore, at a minimum, the Sierra Club suggests that a new 675.23 (a) be added to the proposed Rule stating the following: (a) 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 statement from the Texas Commission on Environmental Quality that the specific waste contained in the agreement is covered in the current license, as amended, governing the operations of the Compact Facility.

Commission Response: The Commission disagrees with this comment. One of the principal roles of the Compact Commission is to control the origin of waste entering the Compact Disposal Facility. The licensee is responsible for ensuring that waste entering its facility complies with its license. The TCEQ (acting on behalf of the Host State) is responsible for, among other things, ensuring, "consistent with any applicable federal and host state laws, the protection and preservation of the environment and the public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care" of the Compact Disposal Facility. If the TCEQ could, by law, control the origin of waste entering the Compact Disposal Facility, there would be no need for the Texas Compact to be in place.

Comment: 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.

Commission Response: The Commission notes this comment. The proposed Rule has been revised in Committee to address the periodicity of the disposal capacity review.

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Comment: EnergySolutions commented that Texas Compact should not consider importation of LLRW until after the facility is operational and a new license is approved with increased capacity and source term.

Commission Response: The Commission has noted the comment. The matter of importation for disposal is moot until the facility is operational.

Comment: WCS commented that it believes that § 675.23(b) should be changed so that disposal capacity is reserved for Texas and Vermont by total expected “as disposed” volume, as opposed to “pretreatment” volume.

Commission Response: The Commission agrees with this comment. The proposed Rule was revised in Committee to address the comment.

Comment: TVA commented that the rule lacks sufficient detail to inform persons wishing to import waste of the exact process and information required.

Commission Response: The Commission disagrees with the comment. There is sufficient detail in the Rule and the forms to be developed by the Commission to guide individuals through the petition and/or import agreement processes.

Comment: Sierra Club commented with the suggestion to include a timeline for development of the report, such as "Such disposal capacity shall be established every 5-years by a report of the Commission, beginning in 2011."

Commission Response: The Commission agrees with the comment. The proposed Rule was revised in Committee to address the comment.

Comment: CAN appreciates the efforts of the Vermont Commissioners at the January 22, 2010 Compact Commission meeting to add language to the Rule in an attempt to reserve capacity at the site for Texas and Vermont disposal needs. However, the added verbiage is insufficient. The Rule needs to specify exactly how much space at the Compact facility is guaranteed for Vermont and Texas radioactive waste.

Commission Response: The Commission has noted this comment. In accordance with the Compact law, the Commission has promulgated a Rule, Title 31, Part 21, Chapter 675.1, governing the disposal capacity requirements of the Party States for a 50-year period.

Comment: FA commented that Vermont’s contract with the Compact is based upon the premise that there will be the requisite capacity for Vermont’s low-level radioactive waste disposal needs at the Compact facility in Texas. While the current language in §675.23(b) appears to reserve capacity at the site for Vermont’s disposal needs, FA believes that the proposed Rule is inadequate for Vermont’s needs.

Commission Response: The Commission has noted this comment. In accordance with the Compact law, the Commission has promulgated a Rule, Title 31, Part 21,

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Chapter 675.1, governing the disposal capacity requirements of the Party States for a 50-year period.

Comment: League of Women Voters commented that the proposed Subchapter B should place limitations on the volume, level of curie and types of waste that can be imported. There are no limitations of volume or type of waste set forth that identify the radioactive waste that can be imported.

Commission Response: The Commission has noted this comment. The report required by the Commission will provide the information needed to assess the capacity available for importation.

Comment: ARDT commented that 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.

Commission Response: The Commission agrees with this comment. The proposed Rule was revised in Committee to address the comment.

Comment: WCS agrees that the Commission should prepare a report on Texas and Vermont LLW disposal needs, but proposes that more flexibility be prescribed in how often the Commission can review its reported estimate. Thus, WCS proposes that the Commission should evaluate disposal capacity “at least” every five years. The more important question is not whether total capacity would be reduced, but whether any reduction would impact the ability of the Compact Facility to accept the expected volumes and activity of party state generated waste.

Commission Response: The Commission agrees with this comment. The proposed Rule was revised to address this comment.

Comment: Sierra Club commented that there is no public participation or public input process outlined in proposed 675.23 (a), which has the Compact Facility operator issue a recommended total annual volume to be imported. The Sierra Club recommended language to address their comment.

Commission Response: The Commission notes this comment. The proposed Rule was revised in Committee to require the report to be a product of the Commission and informed by an annual report of the Host State.

Comment: CORAR commented on the language “...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 the waste pursuant to this Rule,” stating that the rules do not provide sufficient detail on whether the agreement is limited to a container-by-container basis, individuals or groups, etc.

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Commission Response: The Commission disagrees with this comment. The person seeking an agreement to import waste has complete discretion to describe the type and quantity of waste to the Commission. “Person” has the meaning described in the Compact.

Comment: Sierra Club commented that the present importation Rule is silent on the role of the Compact Commission in overseeing any importation of low-level radioactive waste for storage prior to disposal.

Commission Response: While the Commission disagrees that the proposed Rule is silent on importation for management, the Commission has added additional language regarding this topic.

Comment: Sierra Club commented suggesting that any proposed Importation Agreement include a specific time limit by which the proposed waste stream must be imported.

Commission Response: The Commission has noted this comment. The proposed Rule allows the Commission to apply terms and conditions to any proposed importation agreement.

Comment: Sierra Club commented that the Rules should establish a deadline for public comments on a waste importation agreement published in the Texas Register so the public may have a specific opportunity to comment.

Commission Response: The Commission agrees with this comment. The proposed Rule was revised in Committee to address the comment.

Comment: WCS comments that with regards to fees for both exportation and importation, WCS requests changes which would clarify that there are two types of fees: an “evaluation” fee and an “application” fee.

Commission Response: The Commission agrees with this comment. The proposed Rule was revised in Committee to address the comment.

Comment: CORAR comments that similar to comments on 675.23 (d) above, these fees will be excessive if levied on each generator’s radwaste, waste container or shipment.

Commission Response: The Commission disagrees with this comment. Fees are based on an individual application.

Comment: CORAR commented that in order to ensure that the Disposal Site is economically viable, it is essential that the disposal facility operators be allowed the flexibility to establish a workable fee assessment schedule that brings in the necessary revenues and is affordable to waste generators, including the research community.

Commission Response: The Commission has noted this comment.



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Comment: EnergySolutions commented that it is impossible for a petitioner to evaluate actual costs associated with an import petition (due to review) if fees are not determined until after the review. EnergySolutions proposes that the Texas Compact provide a cost estimate for any evaluation that exceeds the \$500 application fee and that the \$500 application fee be refunded should the petitioner decide to withdraw the petition based on excessive review costs.

Commission Response: The Commission agrees with this comment. The proposed Rule was revised in Committee to address the comment.

Comment: WCS proposes conforming changes to § 675.23(f) that mirror those in § 675.21(d).

Commission Response: The Commission has noted this comment. The sections of the rule governing the establishment of fees were conformed in Committee.

Comment: NIRS commented regarding both import and export evaluation fees stating that the provisions for the Compact Commission to evaluate the applications first, then bill the applicant for fees above the filing fee, appears to be recipe for the Commission to go into debt or to do an inadequate evaluation.

Commission Response: The Commission disagrees with this comment. The proposed Rule requires the upfront payment of application fees prior to any Commission action, along with the assessment and possible imposition evaluation fee payable within 30 days of assessment.

Comment: WCS proposes lengthening the time for hearing an appeal of an assessment of an evaluation fee by the Commission, given that the Commission may not meet more often than quarterly. See § 675.21(d)(2)(C).

Commission Response: The Commission disagrees with this comment, given that a meeting of the Commission may be called to address such a hearing.

Comment: Studsvik commented that the proposed cost-recovery mechanism in §675.23(f)(3) is too vague

Commission Response: The Commission agrees with the comment and has clarified the process and timing in Committee.

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

Commission Response: The Commission disagrees with the comment. It has not been established that the application fee is excessive for non-compact generators.

Comment: WCS has suggested provisions in § 675.23(f)(6) and (7) which provide

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for when fees should be paid and how an appeal of a fee assessment would be handled for importation. These provisions make the importation Rules conform with the same provisions found for exportation.

Commission Response: The Commission has noted this comment. The timing and payment of fees have been addressed in Committee.

Comment: WCS proposes a change to § 675.23(g) to clarify that the Compact Facility operator, and not the TCEQ, should provide the certification to the Commission that the waste acceptance criteria “will be” met for the proposed waste importation “prior to disposal”.

Commission Response: The Commission agrees with this comment. The proposed Rule was revised in Committee to address the comment.

Comment: Sierra Club appreciates that the Commission has proposed in 675.23 (g) that "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," having the waste acceptance criteria met by a TCEQ certification is not the same as a certification that the present license would allow such waste be deposited at the Compact site. Thus, again Sierra Club would prefer that LSC SC's suggested language for 675.23(a) be adopted.

Commission Response: The Commission has noted and previously responded to this comment.

Comment: Studsvik commented recommending a more streamlined process that relies on TCEQ's waste acceptance criteria “with bounds,” so that a certification by TCEQ is not required prior to submitting an import petition to the Commission. This would eliminate an enormous burden that would otherwise be delegated to TCEQ, and avoid unnecessary delays.

Commission Response: The Commission agrees with this comment. The proposed Rule was revised in Committee to address the comment.

Comment: Southeast Compact commented that proprietary information had to be protected and not posted as might otherwise be required by the proposed Rule.

Commission Response: The Commission agrees with this comment. Any proprietary information will be handled in accordance with governing requirements.

Comment: ARDT commented that 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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Commission Response: The Commission agrees with this comment. The proposed Rule was revised in Committee to address the comment.

Comment: TVA commented concerning the factors outlined in § 675.23(h).

Commission Response: The Commission has noted the comment.

Comment: WCS proposes that § 675.23(h) be revised to shorten the time for the Commission to review a proposed import agreement. This proposed change conforms with a similar Rule change proposed for exportation. Also, given that these Rules contemplate both export and import fees, WCS does not believe that the “subject to the financial resources of the Commission” language is needed in § 675.23(h). The financial resources needed by the Commission to review an import agreement should be provided by the fees imposed for the review, as provided for in this Rule. WCS proposes certain changes to the importation criteria found in § 675.23(h).

Commission Response: The Commission disagrees with the comment. Both the length of time for review and the assurance of adequate financial resources needed to effectively review an application are necessary for the proper operation of the Commission.

Comment: Sierra Club commented, as previously noted, that in making a decision on the import agreement, the Commission must ascertain whether the present license even allows for such an import of additional waste not originally contemplated in the license. If the license does not allow for this import then LSC SC’s view is the Commission cannot approve that import agreement. Sierra Club suggests adding an (h) (2).

Commission Response: As previously noted, the Commission disagrees with this comment.

Comment: Southeast Compact commented, regarding section 675.23(h), could there be circumstances where the Commission may need to make a decision more quickly than 60 days?

Commission Response: The Commission believes that the timeline created in the revised Rule will give adequate time for public comment.

Comment: Southeast Compact commented that the Commission should consider adding “in-compact users of the compact facility” to the list of potential beneficiaries in 675.23(h)(4).

Commission Response: The Commission disagrees with the comment. The list that currently exists in the Rule is not exhaustive.

Comment: WCS commented that criteria § 675.23(h)(5) should be revised to require that the Compact Facility operator “has or will obtain, prior to importation, authorization from the TCEQ.” As discussed above, the Compact Facility operator

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may not be able to obtain authorization from the TCEQ by the time the import agreement is filed. WCS agrees that the Compact Facility operator is not allowed to dispose of waste at the Compact Facility until the TCEQ has certified that the waste meets applicable acceptance criteria.

Commission Response: The Commission agrees with this comment. The proposed Rule was revised in Committee to address the comment.

Comment: The following comment from ARDT is repeated from 675.23(c) because it suggests conforming changes may be needed in both sections. ARDT commented that this subsection requires the compact facility operator to recommend a total annual volume to be imported for disposal in the CWF.

Commission Response: As previously stated, the Commission disagrees with this comment.

Comment: Southeast Compact commented that to show cooperation in the enforcement of the import/export requirements of other compact commissions, Southeast Compact suggests adding “Compact Authorities” to item 675.23(h)(7) or alternatively, add an item addressing the potential for outstanding actions against a generator or the state of its domicile by a Compact Authority.

Commission Response: The Commission disagrees with the comment. The existing language does not preclude “Compact Authorities” from commenting.

Comment: CORAR commented regarding “Any relevant comments received from the Compact Facility operator, the person proposing to export the waste...” CORAR believes that since section 675.23 concerns import of waste, it is not clear why the export of waste is considered here. If the intent is to consider the export of imported waste after treatment, perhaps “re-export” should be used or this intent otherwise clarified.

Commission Response: The Commission has noted this comment and has revised the language of the proposed Rule in Committee to change “export” to “import.”

Comment: EnergySolutions commented that this section addresses how the Commission will review import petitions. Economic impacts of the petitioner and the Host County, the Host State, and the Compact Facility operator will be considered in this review. The Commission should describe for public comment how this economic evaluation will be accomplished. In addition, we recommend that the Commission receive approval from the exporting compact as part of the administrative controls.

Commission Response: The Commission has noted the comment. The proposed Rule contains the requirement that an applicant has permission to export their waste.

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Comment: WCS has also proposed a non-substantive change in switching the order between § 675.23(h)(11) and (12) so that the last criteria is “any other factor.” This conforms to the rules for exportation.

Commission Response: The Commission agrees with this comment. The proposed Rule was revised in Committee to address the comment.

Comment: Studsvik commented that we recognize the Commission has had funding problems that continue to affect the Commission’s ability to meet on a regular basis. From a practical perspective, however, it would be extremely difficult for waste-importation petitioners to forecast their options for disposal to any reasonable degree of certainty if the pre-certification and petition processes could take more than a year. If the Commission chooses to adopt a process that allows the importation of certain waste streams for disposal, we urge the Commission to streamline the process and afford some degree of certainty to petitioners.

Studsvik further encourages the Commission to delay the effective date of any Import Rule until such time as the Commission has appropriate procedures and administrative support in place to process such requests efficiently. By adopting the Import Rule but delaying the effective date, the Commission will allow imported waste to be a factor in the ratemaking process, which will occur after this Rule is adopted. The decision criteria listed in §§675.23(h)(1) through (12) are appropriate and reasonable. Studsvik believes volume reduction and a stable waste form are important factors for the Commission to consider pursuant to an import petition but also with respect to the Commission’s stewardship of the disposal facility’s overall disposal capacity.

Commission Response: The Commission has noted the comment. There is nothing that bars the Commission from making improvements to the rule once experience is gained through the process.

Comment: ARDT comments that it 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.

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

Comment: EenergySolutions commented that the subsection addresses how the decisions the Commission will make with respect to import petitions. We are assuming this is by a majority vote, but that should be specifically stated.

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Commission Response: The Commission disagrees with this comment. Commission decisions are governed by Compact law, as previously stated.

Comment: TVA commented that Section 675.23(i) uses permissive language in describing the various actions the TLLRWDC could take on a proposed importation agreement. By saying the TLLRWDC "may" take one of several actions, the Rule implies that the TLLRWDC might, in fact, do nothing. Revising the provision to state, "The Commission shall take one of the following actions . . ." would provide assurance to stakeholders, including the non-Compact generator, the Compact Facility, and the public at large, that the TLLRWDC will take some affirmation steps to address a proposed importation agreement.

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

Comment: League of Women Voters commented that provisions for amendment, revocation, or cancellation of the agreement are not enough. Proposed §675.23(k) requires an import agreement to be issued for a certain term, and provides for amendment, revocation, or cancellation of the agreement. This may sound like this gives the state a position of power and authority, but the last thing the state wants is to be in the business of managing a low-level nuclear waste storage facility. The state does not have enough money to meet its current obligations to fund much needed mental and physical health services, education, structures such as roads and bridges, Texas prisons, child and elderly protective agencies or quality oversight of current industries that might pollute our environment, to name a few.

Commission Response: The Commission notes the comment. The Commission is authorized to implement the program as described in Texas Health & Safety Code Ch. 403

Comment: CORAR commented on "An importation agreement shall be issued for that term unless amended, revoked, or canceled by the Commission." CORAR recommends that the "term" be a multi-year period. Five years would be compatible with most generators' business cycles. Also the "term" should be specified so that petitioners to import can plan their waste decommissioning, treatment, storage and shipping facilities and procedures and budget for these.

Commission Response: The Commission disagrees with the comment. The term of any agreement will be determined by the Commission based on the needs of the Compact at the time of the application.

Comment: WCS requests a change to § 675.23(k) to clarify that an import agreement can cover the waste of more than one generator. There may be instances, for example, in which a broker may consolidate the waste of several generators and that waste could be covered by one import agreement. WCS may also request an allotment of disposal capacity that it could market to potential

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customers, which would increase the volume of waste disposed and assist in reducing the rates for disposal by Compact generators. This proposed change will lead to efficiencies and better allocation of limited importation capacity while minimizing administrative burdens on the Commission, WCS, and generators.

Commission Response: The Commission disagrees with this comment. There is nothing within the rule that dictates how an agreement may be proposed to the Commission aside from the definition of “person.”

Comment: CORAR commented that the Commission continues to consider 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.” A major concern is that LLRW generators in the biomedical research community have very limited budgets for conducting their research and financing radwaste treatment and disposal. CORAR requests that the Compact Facility operators be allowed the flexibility to establish a fee assessment schedule that encourages the import of sufficient radwaste forms to ensure the economic viability of the Site and that the research community be availed of a lower affordable rate. If this is not done numerous researchers will either continue to place radwaste in interim onsite storage or abandon their research. One way to achieve these objectives is to base fees on volume or weight of the waste that is affordable for the low-volume generators and assess a surcharge based on activity above a threshold chosen to exclude most generators in the research community. Most of the LLRW, particularly class B, associated with biomedical research is generated by CORAR industry members who manufacture and supply the radionuclides used in research. While these suppliers can take advantage of economies of scale they too are currently limiting the manufacture of certain types of radiochemicals because the radwaste treatment and disposal costs have been too high. One possible solution to this would be to waive the surcharge on radwaste that can be certified to result from manufacturing radiopharmaceutical products or products used for research applications.

Commission Response: The Commission has noted this comment. However, the matter of a per-unit surcharge is not the subject of this rulemaking.

Comment: DODEA asked, with regard to payments, can the Texas Low Level Radioactive Waste Disposal Compact Commission accept payment other than from check or money order? Are payments via Electronic Funds Transfer (EFT) an option? In addition, DODEA noted that the Evaluation Fee charged is open-ended based on level of effort involved. The federal government is prohibited from unauthorized commitment of funds availability; any agreement with the federal government must have a fee certain attached to it to ensure proper funding procedures are followed prior to commitment and obligation by authorized federal personnel.

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Commission Response: The Commission agrees with this comment and has addressed this concern in Committee through revision of the rule.

Comment: Southeast Compact commented that the names of the various fees related to import are similar, and, therefore, confusing—consider changing the name of the “import agreement fees” in 675.23(k)(4).

Commission Response: The Commission disagrees with this comment and feels that the terminology used is sufficiently clear.

Comment: ARDT commented 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.

Commission Response: The Commission agrees with this comment and has revised the proposed Rule to create a separate process governing importation for management only.

Comment: WCS suggests revisions to the reporting requirement of § 675.23(1). The reporting should focus on the storage or disposal of imported LLW waste at the Compact Facility.

Commission Response: The Commission notes the comment, but declines to revise the reporting requirements in the proposed Rule.

Comment: Southeast Compact commented that 675.23(l) refers to quarterly reports. Southeast Compact noted that based on their experience with import, they suggest monthly reports so the Commission has ample time to react if there is a problem. Also, do the forms of the report need to be provided to the public or only to the site operator?

Commission Response: The Commission notes this comment. The reporting requirements in the proposed rule were left unchanged.



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**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 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 isare paid in full.

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

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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.

(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:

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(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;

(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.

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(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 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.

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(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 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.

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

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§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;

(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;~~

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(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 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



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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 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.

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(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 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.

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(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 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.

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(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.

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(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;

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(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);

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

(11~~2~~) The impacts, if any, on the availability of disposal capacity on the Compact Facility to meet the current and future needs of Compact generators.

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(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 Ppolicy and Ppurpose 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.

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(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

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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.

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