

December 22, 2010

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Texas Low-Level Radioactive Waste Disposal Compact Commission
3616 Far West Blvd., Suite 117, #294
Austin, Texas 78731

Re: Comments on Proposed Rules Published on November 26, 2010, in The Texas Register

Dear Commissioners:

On behalf of Nuclear Sources & Services, Inc. (“NSSI”), I am pleased to submit for your consideration the following comments on Section 675.24 of the exportation and importation of waste rules proposed by the Texas Low-Level Radioactive Waste Disposal Compact Commission (“the Commission”) in the November 26, 2010, issue of the Texas Register.¹

As discussed below, NSSI is also attaching for the Commissions consideration and use proposed revisions to Section 675.24, “Importation of Waste from a Non-Compact Generator for Management.” See Attachment A. NSSI has no issue with any sections of the proposed rules other than Section 675.24.

As background, NSSI is a business located in Houston, Texas, that has been handling radioactive materials and radioactive waste since its formation in 1971. NSSI has forty (40) full-time employees. NSSI is the primary receiving and consolidation facility for transuranic radioactive sources recovered worldwide by the Department of Energy/National Nuclear Security Administration Offsite Source Recovery Project and is the primary shipper and receiver of radioactive sources used internationally by oil well logging companies. NSSI also receives and processes NORM, short lived nuclides, Radium, and other wastes exempted from the Compact’s rules.

Due to the nature of the materials it manages, NSSI is already heavily regulated by governmental agencies and has already undergone a number of case-by-case permitting actions designed to ensure that NSSI manages radioactive materials in a safe, secure, and accountable manner. Among the company’s authorizations are: (1) Texas Department of State Health Services

¹ 35 Tex. Reg. 10425 (Nov. 26, 2010).

License No. L0-2991 which allows NSSI to manufacture radioactive chemicals and sealed sources, to recycle radioactive materials for beneficial use, and to provide a variety of radiation safety services; (2) Texas Commission on Environmental Quality (“TCEQ”) License No. R0-1811 which allows NSSI to receive, possess, and treat radioactive, and mixed hazardous/radioactive wastes; and (3) a July 15, 2010, Order from the Commission authorizing NSSI to export certain low-level radioactive waste for disposal outside of the Compact, until the Compact Facility is operational.

During a hearing held in Austin, Texas on December 9, 2010, NSSI raised a number of concerns regarding Section 675.24 of the exportation and importation rules, the most urgent of which follow:

- (1) NSSI is concerned that the proposed policy against the import of all low-level radioactive wastes of international origin would be detrimental to Compact-based businesses and the federal government, both of which conduct services or operations outside of the United States and ship low-level radioactive waste into Texas for purposes of management.
- (2) NSSI believes that, for entities which are already heavily regulated by other state agencies, the Commission can meet its obligations under the Compact Agreement through an Agreement By Rule.
- (3) The existing case-by-case provisions in Section 675.24 should include transition provisions and increased flexibility.
- (4) NSSI does not believe that the Compact Agreement allows surcharges on low-level radioactive waste imported for management and then exported for disposal outside of the Compact.

Although we have concerns with the current version of Section 675.24, NSSI does not dispute the Commission’s general authority to promulgate importation for management rules for low-level radioactive waste. However, NSSI believes that Section 675.24 as currently drafted is seriously flawed and would have a very adverse impact on NSSI and the customers it serves, without furthering the goals of the Commission to protect disposal capacity in Compact disposal sites. NSSI believes that Section 675.24 can be revised in a manner that would address the issues previously noted by NSSI, while still protecting the Commission’s authority to meet its obligations under the Compact Agreement.

Accordingly, NSSI has prepared specific regulatory language that we believe would provide needed flexibility for obtaining an importation for management agreement, but would also make clear that the same quantity and activity of low-level radioactive waste that is imported for management must be exported for disposal, unless authorized for disposal in the Compact Facility by a separate importation for disposal agreement under Section 675.23.

The most prominent of the revisions is an Agreement By Rule, similar to a permit by rule, that would allow entities that have already been licensed to handle low-level radioactive waste by other agencies of a Compact State to qualify for a pre-approved agreement with the Commission by providing notice and a processing fee and by consenting to allow the Commission to inspect management facilities and request records demonstrating that the entity has not circumvented the requirements of Section 675.23. Both Texas agencies and federal agencies have relied on permits by rule and similar provisions for many years. Permits by rule require the regulated entity to meet specified requirements which have been decided upon in advance. This mechanism allows for tight regulation without the need for time consuming case by case review of permit applications.

Entities which are unable to qualify for the Agreement By Rule would need to propose an agreement for the Commission's case-by-case review. Regulatory language addressing flexibility and other issues for this case-by-case review and implementing the Agreement By Rule discussed above is provided for the Commission's consideration and use in Attachment A.

NSSI sincerely hopes that the Commission will find the proposed revisions to Section 675.24 useful, as the Commission continues the process of finalizing its exportation and importation rules for low-level radioactive waste. If the Commission should have any questions, NSSI would be happy to provide additional feedback.

Very truly yours,



Louis S. Zimmerman

LSZ
Attachment

Attachment A

Proposed Regulatory Text for Section 675.24

§675.24 *Importation of Waste from a Non-Compact Generator for Management*

(a) It is the policy of the Commission that it will not accept for the purpose of management the importation of low-level radioactive waste of international origin, unless the radioactive constituents comprising the low-level radioactive waste originated in the United States before becoming a waste material or the waste was generated outside of the United States by:

(1) A business with a permanent place of business in a Compact State; or

(2) The government of the United States, including government agencies and the armed forces.

(b) Agreement Required--No person shall import into a party state any low-level radioactive waste for management that was generated ~~in a non-party state unless the Commission has entered into an~~ outside of the Compact unless they:

(1) Meet all requirements of §675.24(d) for claiming an Agreement By Rule; or

(2) Enter into a case-by-case importation for management agreement ~~for that waste pursuant to this rule~~ with the Commission pursuant to §675.24(e).

(c) Violations of subsection (b) of this section may result in prohibiting the violator from importing for any purpose low-level radioactive waste into a party state or in the imposition of penalty surcharges on shipments to the ~~facility as determined by the Commission~~ Compact Facility. In determining whether to impose an importation ban, the Commission shall consider whether the violation resulted in significant negative impacts to the policy and purpose of the Compact.

(d) Agreement By Rule

(1) By promulgation of this Agreement By Rule, the Commission agrees to allow the importation of low-level radioactive waste into the Compact for purposes of management, provided that the person claiming this Agreement By Rule meets the conditions and restrictions set forth in the remainder of subsection (d).

(2) This Agreement By Rule does not authorize the importation of low-level radioactive waste for disposal in the Compact Facility without first entering into an import agreement pursuant to Section 675.23. Management within the Compact of low-level radioactive waste imported under this Agreement By Rule shall not be deemed to convert the low-level radioactive waste into Compact-generated waste that may then be disposed of in the Compact Facility without an importation for disposal agreement under Section 675.23.

(3) Low-Level Radioactive Wastes Authorized--The Commission acknowledges that some low-level radioactive waste management operations within the Compact are already subject to stringent regulations and licensing standards overseen by other governmental agencies in the Compact States. Accordingly, the importation for management of low-level radioactive wastes may be conducted under this Agreement By Rule without a case-by-case review under subsection

(e), if permitted by license or regulation of another governmental agency of the Compact State in which they are located to manage, receive, store, recycle, or treat such low-level radioactive waste.

(4) Recordkeeping--Any person importing low-level radioactive wastes under this Agreement By Rule shall keep manifests, invoices, and other records sufficient to demonstrate that the same volume and activity of low-level radioactive waste imported for management is either exported from the Compact after management or is authorized for disposal in the Compact Facility pursuant to an importation for disposal agreement under Section 675.23. Records maintained pursuant to requirements imposed by other governmental agencies in the Compact States shall satisfy these recordkeeping requirements. Upon request by the Commission, any person importing low-level radioactive wastes under this Agreement By Rule shall provide a copy of records demonstrating compliance with the Agreement By Rule.

(5) Consent to Inspection--Any person importing low-level radioactive wastes under this Agreement By Rule consents to allow Commission employees and agents to enter at reasonable times facilities in which low-level radioactive waste is managed so that the Commission may determine compliance with the conditions and restrictions of the Agreement By Rule.

(6) Notification Required—Beginning 90 days after the effective date of this rule, any person who wishes to claim an Agreement By Rule for the import of low-level radioactive waste into a compact state must submit notification to the Commission via email and certified U.S. mail before beginning to import the wastes that will be covered under the Agreement By Rule. Authorization pursuant to the Agreement By Rule shall be effective, without further action, upon receipt of the required notification by the Commission. The registration shall include the following:

(A) Contact information for the person or persons responsible for ensuring compliance with the Agreement By Rule.

(B) A copy of any current and effective licenses issued by the appropriate state agency authorizing the management, receipt, storage, recycling, or treatment of low-level radioactive wastes.

(C) A short description of the records which will be kept to demonstrate that the same volume and activity of low-level radioactive waste imported is either exported from the Compact after management or is authorized for disposal in the Compact Facility pursuant to an importation for disposal agreement under Section 675.23.

(D) An administrative processing fee of \$100. Payment shall be by check or money order made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(7) Amendments to Underlying Licenses--Low-level radioactive wastes authorized for management by an amendment of a Compact State-issued license or regulation after the initial effective date provided in subsection (e)(6) are authorized under this Agreement By Rule without an additional notification to the Commission. However, the license holder shall submit a copy of

any amended license to the Commission within 60 days following the effective date of the amendment.

(e) Case-By-Case Importation for Management Agreements

(1) Scope--A case-by-case importation for management agreement may be used to authorize the importation for management of low-level radioactive wastes that are not eligible for coverage under the Agreement By Rule. The case-by-case agreement may authorize the import and management of the types of low-level radioactive wastes described in the agreement, regardless of origin, subject to the limitation in subsection (a).

(A) An importation for management agreement does not authorize the importation of low-level radioactive waste for disposal in the Compact Facility without first entering into an import agreement pursuant to Section 675.23.

(B) Management within the Compact of low-level radioactive waste imported under an importation for management agreement shall not be deemed to convert the low-level radioactive waste into Compact-generated waste that may then be disposed of in the Compact Facility without an importation for disposal agreement under Section 675.23.

(2) ~~(d)~~ Form of the Importation for Management Agreement--The Commission shall promulgate the form of the agreement ~~shall be promulgated by the Commission and posted and post it~~ on the Commission's web site, ~~or otherwise made~~ so that it is readily accessible to persons who manage low-level radioactive wastes, generators and ~~to~~ the public.

(A) The agreement shall be on a form promulgated by the Commission and posted on the Commission's website and shall contain at a minimum the criteria contained in subsection (g) of this section. The form may be amended by the Commission from time to time.

(B) Until the form of the agreement is promulgated, persons seeking a case-by-case importation for management agreement may draft a proposed agreement for the Commission's review. The proposed agreement shall contain the information necessary for the Commission to evaluate the proposed management activities based on the factors in subsection (e)(5).

(3) ~~(e)~~ Fee Fees for Proposed Importation for Management Agreements.

(A) ~~(1)~~ Importation for Management Agreement Application Fee--A non-refundable, application fee of \$100 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.

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

(C) ~~(3)~~ Importation for Management Agreement Evaluation Fee--~~Prior to any action on the proposed agreement by the Commission, an additional, non-refundable fee may be assessed based on the estimated time and expenses to be incurred in~~ The Commission may also

adopt an Importation for Management Agreement Evaluation Fee Schedule comprised of reasonable additional fees related to evaluating and acting on the proposed agreement, if the expense exceeds the application fee. The estimated fee shall be based on proposed agreements. These additional fees will be imposed only on agreements submitted for Commission approval after the Importation for Management Agreement Evaluation Fee Schedule as is adopted by the Commission. This fee and posted on the Commission's website. These fees shall be non-refundable and paid by check, money order, or electronic transfer and made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(D) ~~(4)~~ The Importation for Management Agreement Evaluation fee schedule will be based on the estimated cost of evaluating ~~the proposed agreement~~ agreements and may include, ~~but not be limited to~~ without limitation, these factors:

(i) ~~(A)~~ the complexity of the proposed agreement (e.g., the number of generators, isotopes, waste streams, waste classifications/activities, waste forms, etc.);

(ii) ~~(B)~~ staff expenses;

(iii) ~~(C)~~ supplies;

(iv) ~~(D)~~ direct and indirect expenses;

~~(E) purchased services of consultants such as engineers, attorneys or consultants; and~~

(v) ~~(F)~~ other expenses reasonably related to the evaluation.

(E) ~~(5)~~ The Importation for Management Agreement Evaluation fee will be due regardless of whether an importation for management agreement is issued and shall be made by check or money order made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(4) ~~(f)~~ Notice and Timing of Agreement--A person shall file a proposed importation for management agreement with ~~the Commission and receive approval by~~ the Commission prior to the proposed importation date, or within 90 days of the effective date of Section 675.24, whichever is later.

~~(1) The proposed~~

(A) Interim Approval--The Commission agrees that the importation for management activities described in a proposed agreement ~~shall be accompanied by a certification by the Compact Facility that the waste acceptance criteria have been met for the proposed waste importation.~~

~~(2) By both electronic mail and certified U.S. mail, the applicant shall deliver to the Compact Facility operator a copy of the proposed importation for management agreement (and any supplements or amendments thereto) at the time of filing with the Commission. may be conducted on an interim basis during the period after receipt by the Commission and before final~~

Commission action on the proposed agreement, provided that the proposed agreement is reasonably complete, required fees have been submitted, and the applicant maintains records demonstrating that the same volume and activity of low-level radioactive waste imported is either exported from the Compact after management or is authorized for disposal in the Compact Facility pursuant to an importation for disposal agreement under Section 675.23.

(B) (3) Proposed importation for management 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 the proposed agreement shall be deemed~~ Within 15 days of the first business day of the following calendar month. ~~Within 15 days of the date of receipt,~~ the Commission shall post the proposed importation for management agreement to the Commission's web site and transmit ~~it~~ to the *Texas Register* a notification that the Commission has received a proposed agreement, which can be accessed on the Commission's website.

(C) (4) Comments on the proposed importation for management agreement 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. During this 60-day public comment period, any person may notify the Commission that they are an interested party who wishes to receive a copy of submitted comments.

(D) (5) ~~The Commission shall distribute the proposed importation for management agreement and comments received from~~ At the end of the 60-day public comment period, the Commission shall post the comments received and other pertinent information on the Commission's web site and shall distribute a copy of all comments received to the Compact Facility operator, applicant, each commenter and public to other interested parties by mail or email for information and additional comment ~~and shall post the proposed importation for management agreement, comments received and other pertinent information on the Commission's web site. The Commission shall distribute the proposed importation for management agreement and any comments received from the Compact Facility or others to the Compact Facility operator, the applicant, and the public.~~ Additional comments may be submitted only by parties who, during the initial 60-day public comment period, submitted comments or notified the Commission that they are an interested party. This final comment period will last for 15 days from the date on which the Commission distributes comments received during the initial public comment period.

(5) (g) Review of Proposed Importation for Management Agreement--After receiving the proposed importation for management agreement and any comments that have been made thereon, the Commission at a meeting held 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 importation for management agreement was filed with the Commission, shall act upon the proposed importation for management agreement utilizing the following factors:

(A) (1) The volume, type, physical form and activity of waste proposed for importation;

(B) (2) The policy and purpose of the Compact;

(C) ~~The type of management activities that will be conducted within the Compact and whether the person who will conduct management activities is authorized pursuant to Section 675.23 to dispose of non-Compact generated wastes in the Compact Facility or will, after management, export the wastes for disposal outside of the Compact and will obtain any needed authorizations for export prior to importing wastes for management.~~

(D) ~~(3)~~ Whether the ~~receiving person in one of the party states has~~ person who will manage the imported low-level radioactive waste needs, currently has, or will obtain, prior to importation, authorization from other party state or federal authorities to manage the waste;

(E) ~~Whether the person who will manage the imported low-level radioactive waste has or will implement waste tracking and recordkeeping procedures sufficient to demonstrate that wastes imported for management have been disposed of in the Compact Facility in compliance with an agreement to import for disposal pursuant to Section 675.23 or have been exported for disposal outside of the Compact.~~

(F) ~~(4)~~ The existence, nature, and severity of unresolved alleged violations pending against the applicant with any other regulatory agency with jurisdiction to regulate radioactive material, and any comments by the regulatory agency with which the applicant has unresolved violations;

(G) ~~(5)~~ Any unresolved violation, complaint, unpaid fee, or past due report that the applicant has with the Commission;

(H) ~~(6)~~ 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;

~~(7) The authorization of a person to export (if applicable); and~~

(I) ~~(8)~~ Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

(6) ~~(H)~~ Decision by the Commission--The Commission may take one of the following actions on the proposed importation for management agreement, in whole or in part: approve the proposed agreement; deny the proposed agreement; or approve the proposed agreement subject to reasonable terms and conditions as determined by the Commission.

(7) ~~(I)~~ Terms and Conditions--The Commission may impose any terms or conditions on the importation for management reasonably related to furthering the policy and purpose of the Compact.

(8) ~~(J)~~ Management Importation Agreement Duration, Amendment, Revocation, Reporting, Assignment and Fees.

(A) ~~(1)~~ ~~An~~ case-by-case importation for management 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. An importation for management agreement may only be revoked or canceled by the Commission if:

(i) The Commission finds that the importation for management poses an imminent and substantial endangerment to the health, safety, and welfare of the citizens and the environment of the party states; or

(ii) The agreement holder has failed to comply with the terms of the agreement and, after receiving notice of noncompliance followed by a reasonable period of time, has failed to implement appropriate corrective actions.

(B) ~~(2)~~ The Commission may, on its own motion or in response to a petition by the agreement holder, ~~add or delete~~ amend the agreement by deleting unnecessary requirements or limitations or by adding reasonable requirements or limitations to the agreement. ~~The Commission may,~~ provided the new requirements or limitations are reasonably needed to prevent endangerment to the health, safety, and welfare of the citizens and the environment of the party states, to demonstrate compliance with existing terms of the agreement, or to ensure that wastes imported for management are not disposed of in the Compact Facility without an import for disposal agreement pursuant to Section 675.23. Unless necessary to prevent an imminent and substantial endangerment, the Commission shall provide a reasonable time to allow the existing importer and the managing person to make the changes necessary to comply with any additional requirements imposed by the Commission.

(C) ~~(3)~~ An importation for management agreement is not assignable or transferrable to any other person, unless the Commission consents prior to the effective date of the assignment.

~~(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.~~

~~(k) Form of Importation for management Agreement The agreement shall be on a form promulgated by the Commission, posted on the Commission's website, and shall contain at a minimum the criteria contained in subsection (g) of this section. The form may be amended by the Commission from time to time.~~

(f) ~~(4)~~ 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.