

WASTE CONTROL SPECIALISTS LLC

April 13, 2010

Michael S. Ford, CHP
Chairman
Texas Low-Level Radioactive Waste
Disposal Commission
711 West 7th Street
Austin, TX 78701

Re: Comments to Proposed Chapter 675, Subchapter B “Exportation and
Importation of Waste”

Dear Chairman Ford:

We are pleased that the Texas Low-Level Radioactive Waste Disposal Compact Commission (the “Commission”) has proposed Chapter 675, Subchapter B, Exportation and Importation of Low-Level Radioactive Waste (the “Preliminary Rules”).

WCS believes that the Preliminary Rules are an important step towards reasonable and responsible exportation and importation of low-level radioactive waste (“LLW”) into and out of the Texas Compact Low-Level Radioactive Waste Disposal Facility (the “Compact Facility”). 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.

The Preliminary Rules as proposed balance public and private needs and valid concerns involving economics, safety, public health, the environment, and economic development. Nonetheless, WCS proposes in its comments particular revisions to these rules that mainly seek to clarify the intent or meaning of certain provisions.

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

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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. Construction of the Compact Facility would result in more than \$70 million of economic benefits to the region. In addition, the region would receive another \$15 million in annual economic benefits from the well-paying jobs and expenditures associated with a robust, financially-sound Compact Facility. The region would receive over \$525 million of economic benefits over the estimated 35-year operating life of the Compact Facility.

Hospitals and research universities would benefit from the importation of LLW. Hospitals and research universities use radioactive materials to diagnose and treat disease; research new cures for cancer, AIDS, diabetes, and many other diseases; and develop and test new pharmaceuticals. Recently, the Nuclear Regulatory Commission held a meeting to collect views from these institutions on how the lack of disposal options for Class B and C LLW is affecting research and healthcare. The Council on Radionuclides and Radiopharmaceuticals listed over 100 radioactive compounds that are no longer being used for diagnosis, treatment, and research due to a lack of disposal options for the resulting LLW. In addition, 15 years ago, Barnwell closed to out-of-Compact generators for a period of six months. Following that brief period of time, a study was conducted to determine what impact a temporary closure had on a wide range of industries, including hospitals and research universities. The result showed a consistent pattern to the current crisis: substitution of more expensive materials for certain radioactive materials for research and diagnosis; reduction in products, services, and research, especially those using long-term isotopes; increased utilization of non-U.S. laboratories with no waste disposal restrictions; reduction in diagnostic procedures; loss of revenue and higher operating costs and elimination of jobs.

During the past months, certain interest groups have raised objections to an importation rule such as that proposed by the Commission. These concerns either are unfounded, or have been addressed in the proposed rule. For example:

- *Should consideration of importation be delayed because the facility is not yet operational?* No. WCS needs a decision on importation in order to obtain financing and to make the investment necessary to construct the facility. Without importation, there would not be enough volume of LLW for the facility to be financially viable.
- *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.

- *Would importation mean that there would not be enough capacity for Compact LLW?* No. WCS originally estimated that there would be 2.8 million cubic feet of LLW over the operating life of the Compact facility, and the Compact facility is designed for 3.05 million cubic feet of disposal capacity. Yet, Compact generators now estimate that they will only have needs for 2.4 million cubic feet. This estimate could be reduced to the extent that the Commission allows exportation, which is one reason why these two issues need to be, and are being, considered at the same time. Also, LLW volumes have decreased over the past fifteen years due to better processing, and are expected to continue to decrease in years to come. Finally, WCS expects that licensing amendments would also increase disposal capacity in future years. Thus, there should be no concerns that importation as proposed by WCS will limit capacity for Compact LLW.
- *Would denial of an extension of the Vermont Yankee nuclear plant beyond 2012 by the Vermont legislature mean that there is a greater need for Compact disposal and thus less space available for imported waste?* No. The decommissioning waste for Vermont Yankee is included in the volume and curie limits of the disposal license of the Compact Disposal Facility. The exportation of any decommissioning waste would increase the capacity for other waste, including imported waste.
- *Would imported LLW increase or cause new health, environmental or financial risks to Texas or Texans?* No. Any imported LLW would be of the same type, character, and profile as the waste approved for disposal at the Facility, and be subject to the same disposal restrictions and requirements as Compact LLW.
- *Would the Commission have adequate staffing and funding to review applications for importation and exportation?* Yes. The proposed rule provides a funding mechanism for such a review.

In addition to its comments, WCS has attached two documents in support of its proposed revisions. Exhibit A is a clean copy of the Preliminary Rules that reflects the changes proposed by WCS. Exhibit B is a blacklined version that compares the differences between the changes proposed by WCS and the Preliminary Rules.

I. Comments on § 675.21

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. See § 675.21(d)(2). Because there are different provisions for these two types of fees, this language clarifies which fee is being discussed in any particular provision.

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. Similarly, WCS proposes revising § 675.21(d)(2)(B) to apply only to evaluation fees, as no bill will be issued for the initial application fee. WCS also proposes a new § 675.21(d)(2)(C) to parallel the identical import agreement fee provision in § 675.23(F)(3)(B).

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).

WCS believes that there may have been a typographical error in § 675.21(e), and the term “import agreement” should be changed to “export permit”, and that “Texas Commission on Environmental Quality” should be changed to “the disposal facility operator receiving the waste.” WCS also believes that it is unlikely the TCEQ would be able to provide a certification that the waste acceptance criteria have been met for an out-of-state disposal facility that is outside the jurisdiction of the TCEQ. Additionally, the last sentence of § 675.21(b) should be deleted because it is duplicative of the provision above it.

WCS proposes a change in § 675.21(h) to clarify 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.” This clarifies that any additional terms or conditions imposed by the Commission on an export permit should be within the policies and purposes of the Compact, and is consistent with the language in § 675.21(F).

WCS proposes a revision to § 675.21(k) to clarify that the form of export permit “shall contain at a minimum the criteria found in subsection (f) of this section.” The Commission has proposed such a requirement on import agreements, and the rationale for such a rule is equally applicable to an export permit. By including these criteria in the form of export permits, the Commission will ensure that these criteria can be properly and fully evaluated.

II. Comments on Section 675.22

WCS has proposed certain minor changes to § 675.22 that are grammatical or for clarification.

III. Comments on Section 675.23

WCS 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 “pre-treatment” volume. No legitimate purpose is served by requiring WCS to protect disposal capacity that will not be used, and thus it would be wasteful and costly for the Compact generators to reserve capacities for pre-treatment volumes when only the lesser, expected “as disposed” volumes will be needed.

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. Additionally, a Compact generator or WCS should be allowed to petition the Commission to review the estimated LLW disposal needs for Texas and Vermont upon “a material change in conditions and assumptions as reflected in the most recent report.” Estimates of expected “as disposed” LLW volumes for Texas and Vermont may be dynamic. There may be a need to review the estimated disposal needs for Texas and Vermont more often than once every five years. This would be the case, for example, if there were an unexpected development that substantially increased or decreased the amount of such

waste needed to be disposed of by a Texas or Vermont generator. It would be prudent to build some flexibility into this rule so that the Commission can review the needed capacity for Texas and Vermont more often than once every five years, if necessary.

WCS requests changes to § 675.23(c) as to the certification required by WCS. WCS should certify that the “annual imported volume will not impact the ability of the Compact Facility to accept the most recent estimates of total expected volume and activity of party state generated waste.” This proposed change ties this certification to the findings of the Commission’s report required in § 675.23(b). The rule as presently written requires that WCS certify that “disposal of imported waste will not reduce capacity for party state generated waste.” Yet, even a teaspoon of imported waste will theoretically “reduce capacity for party state generated waste.” 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.

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

WCS has added provisions in § 675.23(f)(6) and (7) which provide 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.

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”. The Compact Facility operator ensures that the waste acceptance criteria have been met prior to disposal of waste at the Compact Facility. This is done through generator audits, profile reviews, sampling and other methods. Although the TCEQ will have two resident inspectors at our facility, it is not their responsibility to ensure the conditions of the disposal license have been met for each shipment received at our facility.

When the import agreement is filed with the Commission, the exact characteristics of the waste material may not be known in enough detail to certify that the waste meets all of the waste acceptance criteria. Regardless of approval to import the waste for disposal, the Compact Facility operator could not dispose of non-conforming waste in the disposal facility if it did not meet the waste acceptance criteria for disposal. The Compact Facility operator may also need authorization to import prior to submitting amendments or other documents to the TCEQ to receive approval to dispose of waste that may not meet the current waste acceptance criteria at the time of filing an import agreement.

WCS has also proposed that the last sentence of § 675.23(g) be deleted because it is duplicative of the prior sentence in the same section. This change conforms with an identical proposed change for the export rules.

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). 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 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.

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 with the rules for exportation.

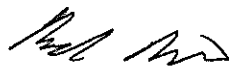
WCS requests a change to § 675.23(k) to clarify that an import agreement can cover the waste of more than one generator. There may be instances, for example, in which a broker may consolidate the waste of several generators and that waste could be covered by one import agreement. WCS may also request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

WCS suggests revisions to the reporting requirement of § 675.23(l). The reporting should focus on the storage or disposal of imported LLW waste at the Compact Facility.

IV. Conclusion

WCS requests that the Commission consider and adopt its proposed revisions to the Preliminary Rules. 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.

Very truly yours,



Rod Baltzer

cc: Margaret Henderson, Executive Director
Bill Lindquist
Bill Kroger

Exhibit A

**WCS Proposed Changes to the Proposed Rules
Clean Version**

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 nonparty 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 petitioners seeking to export 100 cubic feet or less shall pay an application fee of \$50. Payments shall be made by check or money order, made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission. No action shall be taken on any petition until the application fee is paid in full.

(2) Export Petition Evaluation Fee. An export petition evaluation fee may be assessed based on the actual time and expenses incurred in evaluating and acting on the petition, if the expense exceeds the export petition application fee. Payments shall be made by check or money order, made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(A) The evaluation fee will be based on the actual cost of evaluating the petition and may include, but not be limited to, these factors:

(i) staff expenses;

(ii) supplies;

(iii) direct and indirect expenses;

(iv) purchased services of consultants such as engineers, attorneys or consultants, and

(v) other expenses reasonably related to the evaluation.

(B) The evaluation fee will be due and payable within 30 days of issuance of fee bill.

(C) A petitioner may appeal the assessment of the evaluation fee by requesting a public hearing before the Commission within 30 days of the assessment. Such hearing shall be held as soon as practicable after the request, but no sooner than 60 days or longer than 120 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 proposed export petition shall be accompanied by a certification by the disposal facility operator receiving the waste that the waste acceptance criteria have been met for the proposed waste exportation. By electronic mail, the petitioner shall deliver to the Compact Facility operator a copy of the export petition (and any supplements or amendments thereto) at the time of filing with the Commission, and a copy shall also be delivered by certified mail. Upon receipt, the Commission shall post the export petition to the Commission's web site and to the *Texas Register*. Any comments by the Compact Facility operator on the export petition shall be filed in writing with the Commission no later than 20 days after the date the petition was received by the Commission. By electronic mail, the Compact Facility operator shall deliver to the petitioner a copy of all comments (and any supplements or amendments thereto) submitted to the Commission at the time of filing with the Commission, and a copy shall also be delivered by Certified mail. The Commission shall distribute the export petition and comments received from the Compact Facility operator, petitioner, and public to other interested parties by mail or email for information and comment and shall post the export petition, comments received and other pertinent information on the Commission's web site.

(f) Review of Petition--After receiving the export petition and any comments that have been made thereon, the Commission, at a meeting held no sooner than 60 days or later than 120 days after the date the export petition was filed with the Commission, shall act on the export petition utilizing the following factors:

(1) The volume of waste proposed for exportation, the type of waste proposed for exportation, the approximate radioactivity of the waste, the specific radionuclides contained therein, the time period of the proposed exportation, and the location and name of the facility that 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.

(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 the Commission deems appropriate to carry out the policy and purpose of the Compact.

(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.

(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, and shall contain at a minimum the criteria contained in subsection (f) of this section. The form may be amended by the Commission from time to time.

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

§675.22. Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or for Disposal in the Compact Facility.

(a) Where the sole purpose of the exportation is to manage or process the material for recycling or waste reduction and return it to the party states for disposal in the compact facility, party state generators are not required to obtain an export permit; however,

(b) The generator shall be required to file a report with the Commission prior to a proposed exportation 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;

(c) Upon return of the waste to the generator,;

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

(2) the generator and the processor shall 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 and that does not exceed one-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.

(b) Disposal capacity is reserved for Texas and Vermont calculated by total expected “as disposed” volume in the Compact Facility and total expected 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. A Compact generator or the Compact Facility operator may also petition for a Commission review of such disposal capacity on the basis of a material change in conditions or assumptions as reflected in the most recent report

(c) No petition for an agreement to import low-level radioactive waste for disposal shall be granted by the Commission unless the Compact Facility operator has provided to the Commission a recommended total annual volume to be imported for disposal to the Compact Facility and certifies that the annual imported volumes will not impact the ability of the Compact Facility to accept the most recent estimates of total expected volume and activity of party state-generated waste. The recommendation shall become final after Commission approval. The approval shall be based on timely renewal of the Compact Facility License by the licensee, assigns, or successors.

(d) Agreement Required--No person shall import any low-level radioactive waste for management or disposal that was generated in a non-party state unless the Commission has entered into an agreement for the importation of that waste pursuant to this rule.

(e) Form of Agreement--The form of the Agreement shall be promulgated by the Commission and posted on the Commission’s web site, or otherwise made readily accessible to generators and to the public.

(f) Fee for Proposed Importation Agreements.

(1) Importation 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. No action shall be taken on any proposed agreement until the application fee is paid.

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

(A) The evaluation fee will be assessed to recover the actual cost of evaluating the proposed agreement and may consider, 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) The evaluation fee will be due regardless of whether or not an import agreement is issued. .

(C) The evaluation fee will be due and payable within 30 days of issuance of fee bill.

(D)An applicant may appeal the assessment of the evaluation fee by requesting a public hearing before the Commission within 30 days of the assessment. Such hearing shall be held as soon as practicable after the request, but no sooner than 60 days or longer than 120 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.

(g) Notice and Timing of Agreement--A person shall file a proposed import agreement with the Commission and receive approval by the Commission prior to the proposed importation date. The proposed import agreement shall be accompanied by a certification by the Compact Facility operator that the waste acceptance criteria will be met for the proposed waste importation prior to disposal. By electronic mail, the petitioner shall deliver to the Compact Facility operator a copy of the import agreement (and any supplements or amendments thereto) at the time of filing with the Commission, and a copy shall also be delivered by Certified mail. Upon receipt, the Commission shall post the import agreement to the Commission's web site and to the *Texas Register*. Any comments by the Compact Facility operator on the import agreement shall be filed in writing with the Commission not later than 20 days after the date the proposed import

agreement was received by the Commission. By electronic mail, the Compact Facility operator shall deliver to the petitioner a copy of all comments (and any supplements or amendments thereto) submitted to the Commission at the time of filing with the Commission, and a copy shall also be delivered by Certified mail. The Commission shall distribute the import agreement and comments received from the Compact Facility operator, petitioner, and public to other interested parties by mail or email for information and comment and shall post the import agreement, comments received and other pertinent information on the Commission's web site.

(h) Review of Proposed Importation 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 120 days after the date the proposed import agreement was filed with the Commission, shall act upon the import agreement utilizing the following factors:

- (1) The volume, type, physical form and activity of waste proposed for importation;
- (2) The policy and purpose of the Compact;
- (3) The availability of the Compact Facility for the disposal of the waste proposed to be imported;
- (4) The economic impact, including both potential benefits and liabilities, on the Host County, the Host State, and the Compact Facility operator of entering into the import agreement;
- (5) Whether the Compact Facility operator has or will obtain, prior to importation, authorization from the 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, the person proposing to import 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) The impacts, if any, on the availability of disposal capacity on the Compact Facility to meet the current and future needs of Compact generators;

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

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

(j) Terms and Conditions--The Commission may impose any terms or conditions on the import agreement reasonably related to furthering the policies and purposes 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 importer and the Compact Facility operator to make the changes necessary to comply with any additional requirements imposed by the Commission.

(3) An importation agreement is not assignable or transferable to any other person provided that a single importation agreement may authorize the importation of waste from more than one generator.

(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 low-level radioactive waste that was disposed of or stored at the Compact Facility under an import agreement during the quarter, including the physical, radiological and chemical properties of the waste consistent with the identification required by the Compact Waste Facility license. Each Quarterly Import Report will provide the manifested volume and activity of each imported class of waste (A, B, and C,

or in the case of waste imported for management, Greater Than Class C), the state or other place of origin, and the date(s) of waste disposal, if applicable. The Quarterly Report shall provide this information for the imported waste disposed of during the most recent quarter, as well as the cumulative information for imported waste managed or disposed of in prior quarters under this Agreement. The forms of the Quarterly Import Report shall be prescribed by the Commission and shall be posted on the Commission's website, or may be obtained at a location that will be posted on the Commission's website.

(m) Agreements to Import--Nothing in this subchapter shall be construed to prohibit the storage or management of low-level radioactive waste by a generator, nor its disposal pursuant to 10 CFR §20.2002.

(n) Form of Import Agreement--The import agreement shall be on a form promulgated by the Commission, posted on the Commission's website, and shall contain at a minimum the criteria contained in subsection (h) of this section. The form may be amended by the Commission from time to time.

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

Exhibit B

**WCS Proposed Changes to the Proposed Rules
Blacklined Version**

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 nonparty 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 petitioners seeking to export 100 cubic feet or less shall pay an application fee of \$50. Payments shall be made by check or money order, made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission. No action shall be taken on any petition until the application fee is paid in full.

(2) Export Petition Evaluation Fee. An export petition evaluation fee may be assessed based on the actual time and expenses incurred in evaluating and acting on the petition, if the expense exceeds the export petition application fee. Payments shall be made by check or money order, made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(A) The evaluation fee will be based on the actual cost of evaluating the petition and may include, but not be limited to, these factors:

(i) staff expenses;

(ii) supplies;

(iii) direct and indirect expenses;

(iv) purchased services of consultants such as engineers, attorneys or consultants, and

(v) other expenses reasonably related to the evaluation.

(B) The evaluation fee will be due and payable within 30 days of issuance of fee bill.

(C) A petitioner may appeal the assessment of the evaluation fee by requesting a public hearing before the Commission within 30 days of the assessment. Such hearing shall be held as soon as practicable after the request, but no sooner than 60 days or longer than 120 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 proposed export petition shall be accompanied by a certification by the disposal facility operator receiving the waste that the waste acceptance criteria have been met for the proposed waste exportation. By electronic mail, the petitioner shall deliver to the Compact Facility operator a copy of the export petition (and any supplements or amendments thereto) at the time of filing with the Commission, and a copy shall also be delivered by Certified mail. Upon receipt, the Commission shall post the export petition to the Commission's web site and to the *Texas Register*. Any comments by the Compact Facility operator on the export petition shall be filed in writing with the Commission no later than 20 days after the date the petition was received by the Commission. By electronic mail, the Compact Facility operator shall deliver to the petitioner a copy of all comments (and any supplements or amendments thereto) submitted to the Commission at the time of filing with the Commission, and a copy shall also be delivered by Certified mail. The Commission shall distribute the export petition and comments received from the Compact Facility operator, petitioner, and public to other interested parties by mail or email for information and comment and shall post the export petition, comments received and other pertinent information on the Commission's web site. ~~The Commission shall distribute the export petition and any comments received from the Compact Facility operator, or others, to the members of the Commission, and distribute comments from others to the Compact Facility operator and the petitioner.~~

(f) Review of Petition--After receiving the export petition and any comments that have been made thereon, the Commission, at a meeting held no sooner than 60 days or later than 120 days after the date the export petition was filed with the Commission, shall act on the export petition utilizing the following factors:

(1) The volume of waste proposed for exportation, the type of waste proposed for exportation, the approximate radioactivity of the waste, the specific radionuclides

contained therein, the time period of the proposed exportation, and the location and name of the facility ~~that~~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.

(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 the Commission deems appropriate to carry out the policies and purposes of the Compact~~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.

(4) An eExport pPermit 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 eExport pPermit 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 (f) of this section. The form may be amended by the Commission from time to time.

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

§675.22. Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or for Disposal in the Compact Facility.

(a) Where the sole purpose of the exportation is to manage or process the material for recycling or waste reduction and return it to the party states for disposal in the compact facility, party state generators are not required to obtain an export permit; however,

(b) The generator shall be required to file a report with the Commission prior to a proposed exportation 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;

(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 exceed one-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.

(b) Disposal capacity is reserved for Texas and Vermont calculated by total ~~expected pre-treatment "as disposed" volume to be disposed of in the Compact Facility~~ and total expected 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. A party Compact generator or the Compact Facility operator may also petition for a Commission review of such disposal capacity for Texas and Vermont upon on the basis of a material changes in conditions or assumptions as reflected in the most recent report

(c) No petition for an agreement to import low-level radioactive waste for disposal shall be granted by the Commission unless the Compact Facility operator has provided to the Commission a recommended total annual volume to be imported for disposal to the Compact Facility and certifies that the annual imported volumes will not impact the ability of the Compact Facility to accept the most recent estimates of total expected volume and activity of party state-generated waste. disposal of imported waste will not reduce capacity for Party-State-generated waste. The recommendation shall become final after Commission approval. The approval shall be based on timely renewal of the Compact Facility License by the licensee, assigns, or successors.

(d) Agreement Required--No person shall import any low-level radioactive waste for management or disposal that was generated in a non-party state unless the Commission has entered into an agreement for the importation of that waste pursuant to this rule.

(e) Form of Agreement--The form of the Agreement shall be promulgated by the Commission and posted on the Commission's web site, or otherwise made readily accessible to generators and to the public.

(f) Fee for Proposed Importation Agreements.

(1) Importation 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.~~ 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 application requisite fees are paid.~~

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

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

_____ (A) staff expenses;

_____ (B) supplies;

_____ (C) direct and indirect expenses;

_____ (D) purchased services of consultants such as engineers, attorneys or consultants, and

_____ (E) other expenses reasonably related to the evaluation.

~~(5) The application and evaluation fees 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.~~

(6) The application and evaluation fees will be due and payable within 30 days of issuance of fee bill.

(7D)An applicant may appeal the assessment of the evaluation fee by requesting a public hearing before the Commission within 30 days of the assessment. Such hearing shall be held as soon as practicable after the request, but no sooner than 60 days or longer than 120 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.

(g) Notice and Timing of Agreement--A person shall file a proposed import agreement with the Commission and receive approval by the Commission prior to the proposed importation date. The proposed import agreement shall be accompanied by a certification by ~~Texas Commission on Environmental Quality~~ the Compact Facility operator that the waste acceptance criteria ~~have been~~ will be met for the proposed waste importation prior to disposal. By electronic mail, the petitioner shall deliver to the Compact Facility operator a copy of the import agreement (and any supplements or amendments thereto) at the time of filing with the Commission, and a copy shall also be delivered by Certified mail. Upon receipt, the Commission shall post the import agreement to the Commission's web site and to the *Texas Register*. Any comments by the Compact Facility operator on the import agreement shall be filed in writing with the Commission not later than 20 days after the date the proposed import agreement was received by the Commission. By electronic mail, the Compact Facility operator shall deliver to the petitioner a copy of all comments (and any supplements or amendments thereto) submitted to the Commission at the time of filing with the Commission, and a copy shall also be delivered by Certified mail. The Commission shall distribute the import agreement and comments received from the Compact Facility operator, petitioner, and public to other interested parties by mail or email for information and comment and shall post the import agreement, comments received and other pertinent information on the Commission's web site. ~~The Commission shall distribute the proposed import agreement and any comments received from the Compact Facility or others to the members of the Commission, and distribute comments from others to the Compact Facility operator, the petitioner, and the public.~~

(h) Review of Proposed Importation 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 ~~365-120~~ 120 days, ~~subject to the financial resources of the Commission,~~ after the date the proposed import agreement was filed with the Commission, shall act upon the import agreement utilizing the following factors:

- (1) The volume, type, physical form and activity of waste proposed for importation;
- (2) The policy and purpose of the Compact;
- (3) The availability of the Compact Facility for the disposal of the waste proposed to be imported;

(4) The economic impact, including both potential benefits and liabilities, on the Host County, the Host State, and the Compact Facility operator of entering into the import agreement;

(5) Whether the Compact Facility operator has or will obtainseek, prior to importation, authorization from the 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, the person proposing to ~~export~~import 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) The impacts, if any, on the availability of disposal capacity on the Compact Facility to meet the current and future needs of Compact generators;

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

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

(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 policies and purposes 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~~ importer and the Compact Facility operator to make the changes necessary to comply with any additional requirements imposed by the Commission.

(3) An Importation Agreement is not assignable or transferable to any other person. ~~The Commission may also approve an importation agreement that allows the Compact Facility operator, after approval, to solicit bids from one or more generators that have waste that meets the volume, type, activity, and other restrictions on waste described in the importation agreement. provided that A single importation agreement can may cover the authorize the importation of waste effrom more than one generator. however, an Import Agreement may be given to a broker or other similar entity to import on behalf of another person(s).~~

(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 low-level radioactive waste that was disposed of or and-stored at the Compact Facility under anthe import agreement during the quarter by the Compact Facility, including the physical, radiological and chemical properties of the waste consistent with the identification required by the Compact Waste Facility license. Each Quarterly Import Report will provide the manifested volume and activity of each imported class of waste (A, B, and C, or in the case of waste imported for management, Greater Than Class C), the state or other place of origin, and the date(s) of waste disposal, if applicable. The Quarterly Report shall provide this information for the imported waste disposed of during the most recent quarter, as well as the cumulative information for imported waste managed or disposed of in prior quarters under this Agreement. The forms of the Quarterly Import Report shall be prescribed by the Commission and shall be posted on the Commission's website, or may be obtained at a location that will be posted on the Commission's website.

(m) Agreements to Import--Nothing in this subchapter shall be construed to prohibit the storage or management of low-level radioactive waste by a generator, nor its disposal pursuant to 10 CFR §20.2002.

(n) Form of Import Agreement--The import agreement shall be on a form promulgated by the Commission, posted on the Commission's website, and shall contain at a minimum the criteria contained in subsection (h) of this section. The form may be amended by the Commission from time to time.

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