



December 19, 2013

Robert Wilson  
Chairman  
Texas Low-Level Radioactive Waste Disposal Compact Commission  
333 Guadalupe St., #3-240  
Austin, TX 78701

**Subject: Informal Comments on Compact Commission Rules**

Dear Chairman Wilson,

The current rules for import, export and management were promulgated before the Compact Waste Facility (CWF) was open for operations and prior to legislative changes in Texas during the last session. Therefore, the Compact Commission has begun to consider rule changes to account for matters that have been encountered since operations have begun and to implement the Texas legislative changes. WCS was asked by the Compact Commission to provide informal comments on the current rules in advance of a formal rulemaking effort by the Commission. Our comments are below and redlined versions of the rules are attached for your consideration.

**Comments on the Export Rule (675.21):**

The export process has been more informal to date with no forms published by the Compact Commission. The main reason for the difference in the process for export and import has been the lack of “adequate resources” per 675.21(l). Since the Compact Commission is now funded by the Texas legislature, the export process should probably be formalized.

Section (d) – This section regarding fees for the evaluation and consideration of an export permit should be removed.

Section (e) – We recommend that the Certified mail and Texas Register posting requirements be removed as well as the requirement for the facility operator to provide electronic and mailed copies to the petitioner since all comments are posted to on the website.

Section (l) – This section regarding adequate resources should be removed as the Compact Commission is now funded through the Texas appropriations process.

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**Comments on the Management Rule (675.22):**

WCS had no comments or suggested changes to this section of the rules regarding export of waste for management and return to the Party State or CWF for disposal.

**Comments on the Import Rule (675.23):**

Section (b) – We added language to clarify that the license is the Compact Facility Operator’s license and to remove unnecessary words regarding the license. We also removed capacity report requirements as Texas statute requires TCEQ to provide the report. We also removed other sentences that are duplicated in other sections.

Section (d) – We removed subsection (1) as the volume and curie limits are now set forth in THSC 401.207(e) and the operator can’t exceed these amounts.

Section (g) – We reserved this section as fees for the Compact Commission are now addressed in Texas statute.

Section (h) – We removed the requirement for “certified” mail. Electronic mail is the preferred method and regular mail should be adequate for redundancy. Same for subsection (h)(2).

Section (h)(3) – We modified the official received date from the beginning of the following month to the day it is received. We removed the posting requirements to the Texas Register. Posting to the Compact Commission website with an email to the distribution list should be adequate.

Section (h)(4) – We changed the notice period to 10 days from 25 days. Typically, only the operator comments on import applications and a 10 day period is adequate to allow comments to be received. This would also streamline the process and reduce the amount of time from submittal of an import application to a decision on the import agreement.

Section (i) – We modified the review criteria to include THSC 401.207(e) and reduce words and redundancy. We also reduced the time period to a minimum of 10 days and a maximum of 45 days for the review of an application.

Section (i)(1) – (13) – We replaced criteria (1) with a modified version of criteria (11) as the total volume and curies are more important than the characteristics of the waste. We removed criteria (4) as authorization from TCEQ to dispose of the proposed waste is not required other than under these rules. Given the operational history to date, this criteria is providing a burden to TCEQ, but no benefit to the Compact Commission or operator. We removed criteria (5) as it is included

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in revised criteria (1). We modified criteria (6) to be violations with the TCEQ as violations with NRC unrelated to disposal shouldn't factor into a decision. We modified criteria (8) to remove unnecessary words as it appeared that anyone could comment. We removed criteria (10) as disposal rates should not be a factor for the Compact Commission. The economic impact is still included in criteria (3).

Section (j) – We added the ability of a committee, employee or designated contractor, the ability to approve import agreements. This could reduce the number of meetings required each year and streamline the review and approval of import agreements. We also reduced the decision timeline from 120 days to 90 days.

Section (l) – We removed fees as they are now addressed in Texas statute.

Section (l)(1) – We removed the requirement that TCEQ certify that waste under each import application is authorized as this is a responsibility of the operator. This will reduce the burden on TCEQ to certify these in advance. The TCEQ resident inspectors will still review the waste upon shipment to determine if it is acceptable for disposal.

Section (l)(2.1) – We added the ability for amendments of less than 10% of the originally approved volume and activity to be approved without public comment. There have been several instances where a generator miscalculated the amount needed to ship for disposal by a small fraction of volume or activity and needed an amendment. This would allow those situations to have prompt resolution and not punish generators that didn't overstate their import application amounts.

Section (m) – We removed redundant language and clarified that only totals will be reported.

We appreciate the opportunity to provide input to the Commission. If you have any questions, please do not hesitate to call me at (972) 450-4235.

Sincerely,



Rod Baltzer  
President

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| <b><u>TITLE 31</u></b>     | NATURAL RESOURCES AND CONSERVATION                                     |
| <b><u>PART 21</u></b>      | TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL<br>COMPACT COMMISSION       |
| <b><u>CHAPTER 675</u></b>  | PRELIMINARY RULES  |
| <b><u>SUBCHAPTER B</u></b> | EXPORTATION AND IMPORTATION OF WASTE                                   |
| <b><u>RULE §675.23</u></b> | <b>Importation of Waste from a Nonparty Generator for<br/>Disposal</b> |

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(a) It is the policy of the Commission that any financial savings and other benefits 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) Vermont's disposal capacity reserve is 20% of the Compact Facility maximum volume stated in the Compact Facility operator's Radioactive Materials License dated September 10, 2009, as well as 20% of any additional maximum volume approved in a later license, and this capacity shall not be reduced by nonparty waste. ~~The Compact Facility's disposal capacity shall be established at least every 5 years by a report of the Commission. The Commission's report shall be based on relevant information including without limitation the annual report by the host State on the status of the facility, including projections of the facility's anticipated future capacity, and remaining radionuclide-specific radioactivity to comply with the Compact Facility Radioactive Materials License. In view of the requirements of Texas Health and Safety Code (THSC), §401.207, as amended by Senate Bill 1504, 82nd Texas Legislature, 2011, the Commission shall revisit the terms of this subsection no later than one year from the effective date of the first amendments to this rule adopted in calendar year 2012. In the meantime, the Commission will utilize the volumetric and curie limits set out in THSC, §401.207(b), (e), (e-1) (if applicable) and (f), as guidelines with respect to authorizing the import of waste.~~

(c) If a state or states in addition to Texas and Vermont becomes a member of the Compact, the waste from that state or states shall be deposited in space reserved for nonparty compact waste, to the extent such space is available at the time the waste is to be deposited; in no event shall waste from that state be deposited in space reserved for waste generated in Texas or Vermont.

(d) No application for an agreement to import low-level radioactive waste for disposal shall be granted by the Commission unless:

~~—(1) 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 pursuant to THSC, §401.207(b) that the disposal of imported Class A, Class B, or Class C low-level radioactive waste will not reduce capacity for Party State-generated waste, based on the currently licensed volume and activity. Any operator of a low-level radioactive waste disposal compact facility, as defined in §2.01 of THSC, §403.006, must in good faith and with commercially reasonable efforts apply for all necessary permits and licenses to maintain the facility in continual operation; and~~

~~—(2) T~~he agreement contains a provision acknowledging the right of the Commission to audit or cause to be audited compliance with the agreement.

(e) Agreement Required. No person shall import any low-level radioactive waste for 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. No radioactive waste of international origin shall be imported into the Compact Facility for disposal. Violations of this subsection 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.

(f) Form of Import Application and Import Agreement. When an applicant submits the application form prescribed by Annex A in paragraph (1) of this subsection, the applicant shall also submit a proposed agreement that addresses all of the terms set forth in the Term Sheet which is Annex B in paragraph (2) of this subsection.

(1) Annex A.

Attached Graphic

(2) Annex B.

Attached Graphic

(g) ~~Fee for Proposed Importation Agreements. The Commission shall consider no later than one year from the effective date of the first amendments to this rule adopted in calendar year 2012 whether to impose fees with respect to applications and/or agreements to import waste.~~Reserved.

(h) Notice and Timing of Agreement. A person who is a generator, a broker acting on behalf of one or more small generators, or an authorized representative of the Department of Defense shall file an application and a proposed import agreement with the Commission ~~by electronic~~ally and ~~certified~~ mail and must receive approval by the Commission prior to the shipment date, and:

(1) The proposed import agreement shall be accompanied by a certification by the applicant that the waste acceptance criteria promulgated by the Texas Commission on Environmental Quality (TCEQ) will be met for the proposed waste importation;

(2) The applicant shall deliver to the Commission, Compact Facility operator and TCEQ a copy of the application and the proposed import agreement (and any supplements or amendments thereto) by electronic mail at the time of filing with the Commission, and a copy shall also be delivered to the Compact facility and the TCEQ by ~~certified~~ mail;

(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 when received.~~ Within seven days of the date of receipt, the Commission shall ~~transmit notice of the receipt of the application and the proposed import agreement to the Texas Register for publication according to the schedule of the Texas Register and shall~~ publish the application and proposed import agreement on the Commission's Web site and notify the distribution list by email; and

(4) Comments on the proposed import application may be submitted to the Commission by any person by electronic or certified mail during the ~~1025~~-day period following the earlier of the date of posting and the date of transmittal as specified in paragraph (3) of this subsection.

(i) Review of Proposed Import Agreement. The Commission, a committee of the ~~e~~Commission,

or other persons employed or retained by the Commission shall promptly, but not sooner than 1025 days or more than 4560 days after the ~~earlier of the dates the~~ application and proposed import agreement were posted on the Commission's Web site ~~and the date of transmittal to the Texas Register~~, review the application and proposed import agreement utilizing the following factors:

(14) Whether by acceptance of the waste for disposal, the Compact Facility will remain below the applicable annual and total volume and curie capacity disposal limits set forth in THSC, §401.207 (b), (c), (e-1) (if applicable), and (f);

~~-(1) The characteristics of the waste proposed for importation including (but not limited to) volume, type, physical form, total radioactivity and certain radionuclide-specific activities subject to subsection (d)(1) of this section;~~

(2) The policy and purpose of the Compact as set out in Public Law 105-236, a federal law known as the "The Texas Low-Level Radioactive Waste Disposal Compact Consent Act";

(3) The economic impact, including both potential benefits and liabilities, on the Host County, the Host State, other party states, the in-compact generators, and the Compact Facility operator of entering into the import agreement;

~~-(4) Whether the Compact Facility Operator has obtained authorization from TCEQ to dispose of the proposed waste;~~

~~-(5) The effect of the Commission's approval of the proposed import agreement on the Compact Facility's total annual volume and radionuclide-specific activity;~~

~~(64) The existence of unresolved 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 petitioner has unresolved violations the TCEQ;~~

(75) Any unresolved violation, complaint, unpaid fees, or past due report that the applicant has with the Commission;

~~(86) Any relevant comments received from the Compact Facility operator, in-compact generators, the applicant, the Host County, the Host State, other party states, interested state or federal regulatory agencies, or the public;~~

(97) The authorization of an applicant to export (if applicable);

~~-(10) The projected effect on the rates to be charged for disposal of party state compact waste;~~

~~-(11) Whether by acceptance of the waste for disposal, the Compact Facility will remain below the applicable annual and total volume and curie capacity disposal limits set forth in THSC, §401.207 (b), (c), (e-1) (if applicable), and (f);~~

~~(128) To the extent applicable, compliance with the rules related to commingling adopted by TCEQ in coordination with the Commission pursuant to THSC, §401.207(k); and~~

~~(139) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.~~

(j) Decision by the Commission. Within 90+20 days of receipt, the Commission, a committee of the Commission, or other persons employed or retained by the Commission shall take one of the following actions on the application for a proposed importation agreement, in whole or in part:

approve the proposed agreement; deny the proposed agreement; approve the proposed agreement subject to terms and conditions as determined by the Commission; or request additional information needed for a decision. The Commission's decision to approve, approve in whole or in part, deny, or approve subject to terms and conditions is final and unappealable. However, after the Commission has acted on an applicant's proposed importation agreement, an applicant immediately may file another application. The Commission may deny the application for any of the reasons set out as follows:

- (1) Lack of current or anticipated capacity beyond that required by party state generators;
  - (2) The waste destined for the facility is not in accord with the license issued by TCEQ to the Compact Facility;
  - (3) The shipment contains waste of international origin as defined in THSC, §401.2005(9); or
  - (4) Any other relevant issue.
- (k) Terms and Conditions. The Commission may impose any terms or conditions on the import agreement reasonably related to furthering the policy and purpose of the Compact including, but not limited to, the policies referenced in subsection (a) of this section.

(l) Importation Agreement Duration, Amendment, Revocation, Indemnification, Reporting, and Assignment ~~and Fees~~.

(1) An importation agreement shall remain in effect for the term specified in the agreement and shall remain in effect for that term unless amended by agreement of the Commission and the applicant, or revoked by the Commission prior to importation. A condition of every importation agreement shall be that any generator of low-level radioactive waste must agree to comply with §8.03 of the Compact. ~~In addition, every importation agreement approved by the Commission shall include a condition requiring the Compact Facility operator to receive written certification from the TCEQ that the waste is authorized for disposal under the license prior to the acceptance of waste under the importation agreement.~~

(2) The Commission may revoke or amend an agreement, on its own motion or in response to an application by the agreement holder. The Commission may provide a reasonable time to allow the agreement holder and the Compact Facility operator to make the changes necessary to comply with any additional requirements imposed by the Commission. No imports shall be allowed until the appropriate changes, based on additional requirements imposed by the Commission, are implemented.

(2.1) Amendments with changes of less than 10% of the originally approved volume or activity may be approved without comment by the Commission, a committee of the Commission, or other persons employed or retained by the Commission.

(3) An import agreement is not assignable or transferable to any other person.

~~-(4) The Commission continues to consider the policy issues related to assessment of fees for the importation of low-level radioactive waste based on volume or activity of the waste. Upon conclusion of consideration of this issue, the Commission may provide for such fees in this section.~~

(m) 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 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 identity of the generator, the manifested volume and activity of each imported class of waste (A, B, and C, or in the case of waste imported for management or processing, greater than Class C), the state or United States Territory 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 disposed of in prior quarters under this Agreement. The Quarterly Import Report totals shall be posted on the Commission's Web site.

(n) Small Generators. A Small Generator may use a broker to file import applications and proposed agreements with the Commission on its behalf. Such applications and proposed agreements shall comply in all respects with this section.

(o) Definitions.

(1) Terms used in this subchapter shall have the meaning ascribed to them in the Compact and in THSC, §401.2005.

(2) Where time requirements are specified in "days," that shall be in calendar days unless otherwise specified.

(3) "Small Generator" means a generator of low-level radioactive waste who generates no more than 100 cubic feet of such waste per year, provided that the curie level of such waste is minimal as compared to the Compact Facility's license.

(4) "Commission" means the Texas Low-Level Radioactive Waste Disposal Compact Commission.

(5) "TCEQ" means the Texas Commission on Environmental Quality.



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| <b><u>TITLE 31</u></b>     | <b>NATURAL RESOURCES AND CONSERVATION</b>                                |
| <b><u>PART 21</u></b>      | <b>TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL<br/>COMPACT COMMISSION</b> |
| <b><u>CHAPTER 675</u></b>  | <b>PRELIMINARY RULES</b>   |
| <b><u>SUBCHAPTER B</u></b> | <b>EXPORTATION AND IMPORTATION OF WASTE</b>                              |
| <b>RULE §675.21</b>        | <b>Exportation of Waste to a Non-Party State for Disposal</b>            |

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(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, group of generators, or the host state 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—Reserved~~

~~—(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, 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 fee is paid in full.~~

~~—(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 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 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 proposed export petition shall be accompanied by a certification by the 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~~emailed to the distribution list. Any comments by the Compact Facility operator on the export petition shall be filed in writing with the Commission no later than 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:

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

(9) Any relevant comments received from the Compact Facility [operator](#), the petitioner, the Host County, the Host State, or the public; and

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

(g) Decision by the Commission--The Commission may take one of the following actions on the export petition, in whole or in part: approve the export petition; deny the export petition; or approve the export petition subject to terms and conditions as determined by the Commission and as ultimately documented in the export permit.

(h) Terms and Conditions--The Commission may impose any terms or conditions on the export permit as is determined by the Commission.

(i) Permit Duration, Amendment, Revocation, Reporting, and Assignment.

(1) An export permit shall be issued for the term specified in the permit and shall remain in effect for that term unless amended, revoked, or canceled by the Commission. The specified term in the export permit shall not authorize shipments of waste to occur more than 12 months from the date the export permit is issued.

(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 web site. 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 web site. The form may be amended by the Commission from time to time.

~~(l) Notwithstanding any other provision of this section, the Commission shall receive but will not begin to process applications for exportation of waste under this section by a compact generator to a non-party state for disposal until such time as the Commission determines by vote taken~~

~~pursuant to §3.02 of the Compact as compiled at §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 §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 §3.02 of the Compact.~~Reserved.

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