

§675.23. Importation of Waste from a Non-Compact Generator for Disposal.

(a) It is the policy of the Commission that any savings generated by importation accrue to the benefit of the party states. It is also the policy of the Commission that it will not accept the importation of low-level radioactive waste of international origin.

(b) Vermont’s disposal capacity reserve is 20% of the Compact Facility maximum volume stated in the 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 non-Compact 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~~ ~~be informed by~~ the annual report by the host State on the status of the facility, including projections of the facility’s anticipated future capacity, and remaining radionuclide-specific radioactivity to comply with the Compact Facility Radioactive Materials License. In view of the requirements of Section 401.207, Texas Health and Safety Code as amended by SB 1504, 82<sup>nd</sup> Texas Legislature, 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 Sections 401.207(b),(e)and (f), Texas Health and Safety Code as guidelines with respect to authorizing the import of waste.

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

~~(1) The Commission has issued a report on disposal capacity as required in subsection (b) of this section;~~

~~(1)~~ (2) 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 Section 401.207 (b), Texas Health and Safety Code 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. ~~The Compact Facility will provide the Commission with radionuclide specific radioactivity amounts for the recommended total annual volume proposed to be imported for disposal. 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.~~ Any operator of a low-level radioactive waste disposal compact facility, as defined in Section 2.01 of Chapter 403.006 of the Texas Health and Safety Code, 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)~~ (3) The Compact Commission bylaws have been enacted finalized and approved.

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~~(ed)~~ 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.

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

~~(gf)~~ Fee for Proposed Importation Agreements. The Commission shall consider on or before the anniversary date of the first amendment to this rule that is adopted in calendar year 2012 whether to impose fees with respect to applications and/ or agreements to import waste.

~~(1) Import Agreement Application Fee A non-refundable, application fee of \$500 shall accompany the proposed agreement. Payments shall be made by check, money order or electronic funds transfer 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 fees are paid.~~

~~(3) Import Agreement Evaluation Fee Prior to any action on the proposed agreement by the Commission, an additional, non-refundable fee may be assessed based on the estimated time and expenses to be incurred in evaluating and acting on the proposed agreement, if the expense exceeds the application fee. The estimated fee shall be based on a fee schedule as adopted by the Commission. This fee shall be paid by check, money order, or electronic transfer and made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.~~

~~(4) The fee schedule will be based on the estimated cost of evaluating the proposed agreement and may include, but not be limited to these factors:~~

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

~~(B) staff expenses;~~

~~(C) supplies;~~

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

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

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

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~~(5) This import agreement evaluation fee will be due regardless of whether or not an import agreement is issued and shall be made by check or money order made payable to the Texas Low-Level Radioactive Waste Disposal Compact Commission.~~

(~~hg~~) Notice and Timing of Agreement—~~A generator or broker shall file. A person shall file an application and~~ a proposed import agreement with the Commission and receive approval by the Commission prior to the proposed importation date.

(1) The proposed import agreement shall be accompanied by a certification by the applicant Compact Facility that the waste acceptance criteria promulgated by the TCEQ will be ~~have been~~ met for the proposed waste importation.

(2) ~~By electronic mail, †The applicant petitioner~~ shall deliver to the Compact Facility operator 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 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. Within 20-15 days of the date of receipt, the Commission shall post the application and the proposed import agreement to the Commission's web site and transmit it to the *Texas Register*.

~~(4) Any comments by the Compact Facility operator on the import agreement shall be filed in writing with the Commission not later than 30 days after the deemed date of receipt of the proposed import agreement. By electronic mail, the Compact Facility operator shall deliver to the petitioner a copy of all comments (and any supplements or amendments thereto) submitted to the Commission at the time of filing with the Commission, and a copy shall also be delivered by Certified mail.~~

~~(5) Within 15 days of the date of receipt of the Compact Facility operator comments, the Commission shall post the import agreement to the Commission's web site.~~

~~(4)~~ (6) Comments on the proposed import application may be submitted by any person, ~~other than the Compact Facility operator,~~ during the 20-day ~~60-day~~ period following the date of posting to the Commission's web site as specified in paragraph ~~(3)~~(5) of this subsection.

~~(7) Concurrently with the posting on the web site as specified in paragraph (5) of this subsection, the Commission will distribute the import agreement and comments received from the Compact Facility operator, petitioner, and public to other interested parties by mail or email for information and comment and shall post the import agreement, comments received and other pertinent information on the Commission's web site. The Commission shall distribute the proposed import agreement and any comments received from the Compact Facility or others to the members of the Commission, and distribute comments from others to the Compact Facility operator, the petitioner, and the public.~~

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~~(ih)~~ Review of Proposed Import Agreement--~~After receiving the proposed import agreement and any comments that have been made thereon, the~~ The Commission shall at a meeting held promptly, but not sooner than 20 days or sooner than 60 days nor later than 365 days, subject to the financial resources of the Commission, 60 days after the date the application and proposed import agreement were posted on the Commission's website ~~was filed with the Commission,~~ shall review ~~act upon~~ the application and proposed import agreement utilizing the following factors:

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

(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 availability of the Compact Facility for the disposal of the waste proposed to be imported;~~

~~(3)~~ (4) 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) Whether the Compact Facility operator has or will obtain, prior to importation, authorization from TCEQ to dispose of the proposed waste;~~

~~(5)~~ (6) The effect of the Commission's approval of the proposed import agreement on the Compact Facility's total annual volume and radionuclide-specific activity recommended for importation;

~~(6)~~ (7) The existence of unresolved violations pending against the applicant-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;

~~(7)~~ (8) Any unresolved violation, complaint, unpaid fees, or past due report that the applicant petitioner has with the Commission;

~~(8)~~ (9) Any relevant comments received from the Compact Facility operator, in-compact generators, the applicant person proposing to export the waste, the Host County, the Host State, other party states, interested state or federal regulatory agencies, or the public;

~~(9)~~ (10) The authorization of an applicant a person to export (if applicable);

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

~~(11)~~ (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 Sections 401.207 (b), (e), (e-1) (if applicable), and (f)(1) of the Texas Health and Safety Code ~~The impacts, if any, on the availability of disposal capacity on the Compact Facility to meet the current and future needs of Compact generators;~~ and

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~~(1242)~~ Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

~~(j)~~ Decision by the Commission—Within 120 days of receipt. ~~The Commission shall may~~ 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. The Commission may deny the application petition for:

(1) Lack of current or anticipated capacity beyond that required by party state generators;

(2) Containing aAny low-level radioactive waste destined for the facility that does not approved by the meet the waste acceptance criteria of the license issued by TCEQ;

(3) Containing waste of ~~i~~International origin as defined in Section 401.2005(9), Texas Health and Safety Code of the waste, or its original (i.e. pre-processing) generator; ~~or and~~

(4) Any other relevant issue. ~~Any person who was a proper party to the petition may petition the Commission to reconsider its decision within 20 days of the Commission decision.~~

~~The Commission decision on the petition to reconsider its decision is final and unappealable.~~

~~(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 Rule.

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

(1) An importation agreement shall be issued remain in effect for the term specified in the ~~agreement~~agreement and shall remain in effect for that term unless amended by agreement of the Commission and the applicant, or revoked, ~~or canceled~~ by the Commission prior to importation. A condition of every importation agreement shall be that any ~~petitioner or~~ generator of low-level radioactive waste must agree to comply with Section 8.03 of the Compact. In addition, every importation agreement approved by the Commission shall include a condition requiring the Compact Facility 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 a petition by the agreement holder, ~~for amendment of an importation agreement for which prior written notice has been given to the agreement holder and the Compact Facility operator, revoke the agreement, add or delete requirements or limitations to the agreement.~~ 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 during which period no imports shall be made pursuant to such agreement.

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(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, Greater Than Class C), the state or U.S. Territory 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 disposed of in prior quarters under this Agreement. ~~The forms of the Quarterly Import Reports shall be prescribed by the Commission and shall be posted on the Commission's web site, or may be obtained at a location that will be posted on the Commission's web site.~~

~~(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 web site, 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.~~

~~(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 Rule. Notwithstanding any other provision of this section, the Commission shall receive but will not begin to process applications for agreements to import waste from a non compact generator for disposal under this section 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 to enter into agreements prior to entering into such agreements and thereafter to enforce the terms and conditions of such agreements as are entered into.~~

~~(o) Definitions—~~

~~(1) Terms used in this subchapter shall have the meaning ascribed to them in the Compact and in Section 401.2005, Texas Health and Safety Code.~~

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(2) Where time requirements are specified in “days,” that shall be in calendar days.

(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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