

1 **TITLE 31. NATURAL RESOURCES AND CONSERVATION**

2 **PART 21. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT**

3 **COMMISSION**

4 **CHAPTER 675. PRELIMINARY RULES**

5 The Texas Low-Level Radioactive Waste Disposal Compact Commission
6 (“Commission”) proposes the adoption of a new rule, Rule 675.2 to be captioned
7 "Exportation and Importation of Waste," to be contained in Chapter 675, Part 21, Title
8 31, Texas Administrative Code, governing export and import of low-level radioactive
9 waste and fees associated with those activities.

10 **BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE**
11 **PROPOSED RULE**

12 Entry into the Texas Low-Level Radioactive Waste Disposal Compact was ratified by an
13 Act of the Texas Legislature and signed into law by Governor Ann Richards in 1993. The
14 initial party states were Texas, Maine and Vermont. Texas is the “host state” in that it is
15 the state that will host the disposal facility to accept low-level radioactive waste for
16 management and disposal in accordance with the terms of the compact.

17 With the passage of Public Law 105-236, “Texas Low-Level Radioactive Waste Disposal
18 Compact Consent Act,” (“Compact”) and signing into law by President Clinton in 1998,
19 the United States federal government allowed the Commission to come into existence.
20 Subsequent to U.S. ratification, Maine withdrew from the Compact.

21 As an instrumentality of the party states, the purpose of the Compact is to provide a
22 framework for a cooperative effort to limit the number of facilities needed to effectively,
23 efficiently, and economically manage low-level radioactive waste and to encourage the
24 reduction of the generation thereof. A further purpose is to cooperate among the party
25 states in the protection of the health, safety, and welfare of their citizens, and to distribute
26 the costs, benefits, and obligations among the party states; all in accordance with the
27 terms of the compact.

28 In November 2008, Texas Governor Rick Perry named the six Texas members of the
29 Commission. The State of Vermont also named two Commissioners with the last
30 Commissioner being named in March 2009. Subsequently, one Commissioner from
31 Vermont was replaced in November 2009. An alternate Commissioner for Vermont was
32 also appointed. The Commission held an inaugural organizational meeting on February
33 13, 2009.

34 Under the terms of § 3.03 of the Compact, the Commission is a legal entity, separate and
35 distinct from the party states. In enforcing that position, the Compact stipulates, “the
36 liabilities of the commission shall not be deemed liabilities of the party states.”
37 Functionally, the Commission has been established as an instrumentality of the party
38 states, and is authorized by the U.S. Congress in P.L. 105-236 to manage and restrict
39 interstate commerce in low level radioactive waste management and disposal within the
40 party states, as an exception to the “Dormant” Commerce Clause doctrine of the US.
41 Constitution.

42 A new rule, §675.2 *Exportation and Importation of Waste* is proposed to set out the
43 procedures and criteria by which such petitions for export and imports may be considered

44 and granted or denied by the Commission and by which permits for export and import
45 agreements may be granted. The rule sets and assesses fees associated with evaluating
46 and processing export petitions and proposed import agreements. The rule establishes
47 export permit fees and import agreement fees, but reserves for a later date the setting of
48 the amount of those fees.

49 **SECTION-BY-SECTION DISCUSSION (((TO BE CONFORMED TO TEXT OF**
50 **PROPOSED RULE)))**

51 § 675.2(a) Exportation of Waste by a Compact Generator to a Non-Party State for
52 Disposal

53 Proposed §675.21(a) prohibits exportation of low-level radioactive waste from the
54 Compact unless a person proposing to export has filed a written export petition with the
55 Commission and the Commission has approved the export petition and issued an export
56 permit in accordance with these rules.

57 Proposed §675.21(b) requires that a generator or group of generators proposing to export
58 low-level radioactive waste to a low level radioactive waste disposal facility outside the
59 party states to petition the Commission for an export permit.

60 Proposed §675.21(c) states that the form of the petition shall be on a form promulgated
61 by the Commission and made available to the generators and the public.

62 Proposed §675.21(d) assesses and sets non-refundable fees that must accompany the
63 petition form before any action will be taken by the Commission, sets forth procedures
64 for setting conditions and restrictions upon granting the export permit to include cost

65 recovery of actual expenses of the Commission in evaluating and processing the petition,
66 and provides an appeals process for the amount of the fee that may be assessed.

67 Proposed §675.21(e) requires a petitioner to file an export petition by certified mail with
68 the Commission prior to the date of export of waste. Likewise, the Compact facility
69 operator shall deliver to the petitioner any comments submitted to the Commission at the
70 time of filing. Any comments on the petition shall be filed with the Commission within
71 20 days after the petition has been received by the Commission. The Commission shall
72 distribute the export petition and comments received on the petition to the
73 Commissioners, the petitioner and the Compact facility operator.

74 Proposed §675.21(f) requires the Commission to meet promptly, but no sooner than 90
75 days nor later than 120 days after the petition was filed to consider the export petition.
76 The factors to be utilized in consideration of the petition are also provided.

77 Proposed §675.21(g) lists the actions the Commission may take on an export petition and
78 provides for the imposition of any terms or conditions on the export permit.

79 Proposed §675.21(h) states that the Commission may impose any terms or conditions on
80 the export permit reasonably related to furthering the policy and purpose of the Compact
81 and the Commission's Rules.

82 Proposed §675.21(i) requires an export permit to be issued for a term certain, and further
83 provides for amendment, revocation, or renewal of the permit. This section also requires
84 the permit holder to file with the Commission an export report describing the disposal of
85 waste occurring during the preceding calendar year. Finally, this section also addresses
86 export permit fees.

87 Proposed §675.21(j) establishes that nothing in the rule shall limit the authority of the
88 Commission, nor shall the rule prohibit the storage or management of low-level
89 radioactive waste by a generator.

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

92 Proposed §675.21(l) states that the definitions in this rule shall have the same meaning
93 ascribed to them in the Compact.

94

95 § 675.22 *Exportation of Waste to a Non-Party State for Management or Processing and*
96 *Return to the Party States for Management or for Disposal in the Compact Facility.*

97 Proposed 675.22(a) requires party state generators to notify the Commission when waste
98 is shipped to a non-Party State facility for the purpose of management or processing and
99 ultimate return to Party States for management by the generator or disposal at the
100 Compact Facility.

101 Proposed 675.22(b) requires party state generators to notify the Commission when waste
102 is returned to the generator for management or upon receipt at the Compact Facility for
103 disposal and the time requirement for making such notifications, and prohibits generators
104 from exporting waste for management and return to the party states in such a manner as
105 to cause an increase in total radioactivity in that waste.

106 675.23 *Importation of Waste for Management or Disposal by a Non-Compact Generator*

107 Proposed §675.23(a) disallows the consideration of import petitions for disposal prior to
108 the Commission declaring the Compact Facility to be operational and ready to receive
109 waste and requires the Compact Facility to provide the Commission with a recommended
110 waste disposal volume to be used by importing parties that the Compact Facility certifies
111 will not affect Party State generator disposal capacity.

112 Proposed §675.23(b) prohibits any person from entering into an agreement with any
113 person, state, regional body, or group of states for the importation of low-level
114 radioactive waste into the compact for management or disposal, unless the Commission
115 has issued a permit allowing the importation of that waste pursuant to this Rule.

116 Proposed §675.23(c) prohibits importation of low-level radioactive waste from the
117 Compact unless a person proposing to import has filed a written, proposed import
118 agreement with the Commission and the Commission has approved the import petition
119 and issued an import permit in accordance with these rules.

120 Proposed §675.23(d) states that the form of the agreement shall be on a form promulgated
121 by the Commission and made available to the generators and the public.

122 Proposed §675.23(e) assesses and sets non-refundable fees that must accompany the
123 proposed agreement form before any action will be taken by the Commission, sets forth
124 procedures for setting conditions and restrictions upon granting the import agreement to
125 include cost recovery of actual expenses of the Commission in evaluating and processing
126 the proposed agreement, and provides an appeals process for the amount of the fee that
127 may be assessed.

128 Proposed §675.23(f) requires a petitioner to file a proposed agreement by certified mail
129 with the Commission prior to the date of import of waste. Likewise, the Compact facility
130 operator shall deliver to the petitioner any comments submitted to the Commission at the
131 time of filing. Any comments on the petition shall be filed with the Commission within
132 20 days after the petition has been received by the Commission. The Commission shall
133 distribute the proposed import agreement and comments received on the proposed
134 agreement to the Commissioners, the petitioner and the Compact facility operator.

135 Proposed §675.23(g) requires the Commission to meet promptly, but no sooner than 90
136 days nor later than 120 days after the petition was filed to consider the proposed import
137 agreement. The factors to be utilized in consideration of the proposed agreement are also
138 provided.

139 Proposed §675.23(h) lists the actions the Commission may take on an import petition and
140 provides for the imposition of any terms or conditions on the import permit.

141 Proposed §675.23(i) states that the Commission may impose any terms or conditions on
142 the import agreement reasonably related to furthering the policy and purpose of the
143 Compact.

144 Proposed §675.23(j) requires an import agreement to be issued for a term certain, and
145 further provides for amendment, revocation, or renewal of the agreement. This section
146 also requires the agreement holder to file with the Commission an import report
147 describing the disposal of waste occurring during the preceding calendar year. Finally,
148 this section addresses import fees.

149 Proposed §675.23(k) requires the Compact Facility operator to file quarterly reports with
150 the Commission and describes the form and content of each report.

151 Proposed §675.23(l) establishes that nothing in the rule shall limit the authority of the
152 Commission, nor shall the rule prohibit the storage or management of low-level
153 radioactive waste by a generator.

154 Proposed §675.23(m) states the import agreement shall be on a form promulgated by the
155 Commission and made available to the public.

156 Proposed §675.23(n) states that the definitions in this rule shall have the same meaning
157 ascribed to them in the Compact.

158

159 **IMPACT TO STATE OF TEXAS**

160 Wastes imported into Texas and disposed in the compact facility will have a positive
161 effect on the State of Texas General Revenue Fund. As required by statute, the compact
162 facility holder will transfer to the State of Texas General Revenue Fund five percent of
163 the gross receipts per quarter. Waste exported will have a negative effect on the State of
164 Texas General Revenue Fund because gross receipts would decrease with the reduction in
165 disposal. The dollar amount of gross receipts cannot be estimated at this time because
166 disposal fees have not been established in rule.

167

168 **LOCAL EMPLOYMENT IMPACT STATEMENT**

169 Local employment could be negatively impacted due to export of waste. Currently, the
170 facility operator employs 150 positions. Exports may reduce the number of positions the
171 facility employs as business volumes decline or make the disposal facility uneconomical
172 to operate and result in discontinuance of operation. Local employment could be
173 positively impacted if import agreements are issued to allow additional disposal of low
174 level radioactive waste in Texas provided the waste facility has received authorization
175 from the state licensing agency for the additional capacity. Currently, the facility
176 operator employs 150 positions and will add 75 positions when the site opens for
177 disposal. If agreements are issued to permit additional import, an estimated 75 positions
178 will be created, impacting local employment positively. Additionally, indirect
179 employment may result from the additional direct employment impact.

180 Additionally, the Compact provisions requires the compact waste disposal facility license
181 holder to transfer each quarter to the commissioners court of the host county five percent
182 of the gross receipts from compact waste received at the compact waste disposal facility.
183 The commissioners court of the host county may spend the money for public projects in
184 the host county or disburse the money to other local entities or to public nonprofit
185 corporations to be spent for local public projects. The dollar amount of gross receipts
186 cannot be estimated at this time because disposal fees have not been established in rule.
187 However, it is anticipated that the increase in local government revenue resulting from
188 disposal of imported waste would result in additional local employment as well.

189

190 **PUBLIC BENEFITS; SMALL AND MICRO BUSINESS COSTS**

191 The Commission has determined that for each of the first five years the proposed rules
192 are in effect, the public benefit anticipated from the adoption of the proposed rules will be
193 compliance with state and federal law, clear and concise guidance for affected entities,
194 and protection of the public health and environment by ensuring proper disposal of low
195 level radioactive waste at properly licensed facilities. There are approximately 2500
196 licensed generators of low level radioactive waste in Texas and Vermont. Of these,
197 approximately 100 are estimated to be small or micro-businesses that would be subject to
198 the provisions of this rule. The Commission estimates the economic impact of the cost
199 of compliance with this rule to these businesses will be associated with accessing their
200 existing inventory records in order to supply information about the radioactive waste for
201 which they are requesting export approval. This information on radioactive materials
202 should be readily available to them for compliance with other radiation control
203 regulations. Submission costs should be minimal for data preparation and submission of
204 a petition. The Commission has designated a reduced fee of \$50.00 for generators
205 submitting export petitions for 100 or fewer cubic feet to lessen the impact on these
206 generators. Additionally, those generators are unlikely to need to export low level
207 radioactive waste once the disposal site in the host state of Texas begins operations,
208 estimated to happen in early 2011. Therefore, this fee impact will have limited duration.

209 The Commission developed the proposed rule according to the provisions of state and
210 federal statutes. Variance from the state and federal requirements would be inconsistent
211 with the compact provisions. Consequently, any variance from such requirements would
212 not be consistent with the state and federal statutes and therefore, no alternative
213 regulatory methods have been considered.

214

215 **TAKINGS IMPACT ASSESSMENT**

216 The Commission has determined that this proposal does not restrict or limit an owner's
217 right to his or her property that would otherwise exist in the absence of government
218 action and, therefore, does not constitute a taking under § 2007.43, Texas Government
219 Code.

220 **REGULATORY ANALYSIS**

221 The Commission has determined that this proposal is not a "major environmental rule" as
222 defined by § 2001.0225, Texas Government Code. "Major environmental rule" is defined
223 to mean a rule the specific intent of which is to protect the environment or reduce risk to
224 human health from environmental exposure and that may adversely affect, in a material
225 way, the economy, a sector of the economy, productivity, competition, jobs, the
226 environment or the public health and safety of the state or a sector of the state.

227 **LOCAL EMPLOYMENT IMPACT STATEMENT**

228 The Commission has reviewed this proposed rulemaking and determined that local
229 employment could be adversely impacted if a sufficient rate of waste volume disposal is
230 not maintained at the Compact Facility and rates have to be increased to the point where
231 the Compact Facility is no longer economically viable. Disposal volume rates are
232 directly related to the waste disposal policies enacted by the Commission and carried out
233 by these rules.

234 **PUBLIC COMMENT**

235 Written comments may be submitted to Ms. Margaret Henderson, Interim Executive
236 Director, by mail at 3616 Far West Boulevard, Suite 117, #294, Austin, Texas 78731 or
237 by electronic mail to margaret.henderson@tllrwdcc.org. The comment period closes 30
238 days from the day this proposed rule is published in the Texas Register.

239 **31 TAC §675.2**

240 STATUTORY AUTHORITY

241 The Rule is being proposed under authority of §3.05(4) of the Texas Low- Level
242 Radioactive Waste Compact (P.L. 105-236), as set out in §403.006, Texas Health and
243 Safety Code.

244 *§675.2 Exportation and Importation of Waste*

245 *§ 675.21 Exportation of Waste to a Non-Party State for Disposal*

246 *§675.21(a) Permit Required - No person shall export any low-level radioactive waste*
247 *generated within a party state for disposal in a non-party state unless the Commission has*
248 *issued an export permit allowing the exportation of that waste pursuant to this rule.*

249 *§675.21(b) Petition Required - A generator or group of generators proposing to export*
250 *low-level radioactive waste to a low level radioactive waste disposal facility outside the*
251 *party states shall submit to the Commission a petition for an export permit.*

252 *§675.21(c) Form of Petition - The petition shall be in writing and on a form promulgated*
253 *by the Commission and posted on the Commission's web page, or otherwise made*
254 *readily accessible to generators and to the public.*

255 *§675.21(d) Petition Fees –*

256 §675.21(d)(1) Export Petition Application Fee - A non-refundable, application fee of
257 \$500 shall accompany the petition, except that for petitioners seeking to export 100 cubic
258 feet or less shall pay an application fee of \$50. Payments shall be made by check or
259 money order, made payable to the Texas Low Level Radioactive Waste Disposal
260 Compact Commission. No action shall be taken on any petition until fees are paid in full.

261 §675.21(d)(2). Export Petition Evaluation Fee. An export petition evaluation fee may be
262 assessed based on the actual time and expenses incurred in evaluating and acting on the
263 petition, if the expense exceeds the export petition application fee.

264 §675.21(d)(2)(A). The fee will be based on the actual cost of evaluating the petition and
265 may include, but not be limited to, these factors:

266 (i) staff expenses

267 (ii) supplies

268 (iii) direct and indirect expenses

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

270 (v) other expenses reasonably related to the evaluation.

271 §675.21(d)(2)(B). This fee will be due and payable within 30 days of issuance of fee bill.

272 §675.21(d)(2)(C). A petitioner may appeal the assessment of the fee by requesting a
273 public hearing before the Commission within 30 days of the assessment. Such hearing
274 shall be held as soon as practicable after the request, but no longer than 45 days after the
275 request is received by the Commission. The Commission's order shall be issued within
276 30 days after the hearing. If required by Commission order, payments are due within 30
277 days of the final order.

278 §675.21(e) Notice and Timing of Petition - A petitioner shall file an export petition with
279 the Commission and receive approval by the Commission prior to export. By electronic
280 mail, the petitioner shall deliver to the Compact Facility operator a copy of the export
281 petition (and any supplements or amendments thereto) at the time of filing with the
282 Commission, and a copy shall also be delivered by Certified mail. Any comments by the
283 Compact Facility operator on the export petition shall be filed in writing with the
284 Commission no later than 20 days after the date the petition was received by the
285 Commission. By electronic mail, the Compact Facility operator shall deliver to the
286 petitioner a copy of all comments (and any supplements or amendments thereto)
287 submitted to the Commission at the time of filing with the Commission, and a copy shall
288 also be delivered by Certified mail. The Commission may distribute the export petition
289 and Compact Facility operator's comments to other interested parties for information and
290 comment. The Commission shall distribute the export petition and any comments
291 received from the Compact Facility operator, or others, to the members of the
292 Commission, and distribute comments from others to the Compact Facility operator and
293 the petitioner.

294 §675.21(f) Review of Petition - After receiving the export petition and any comments that
295 have been made thereon, the Commission at a meeting held no sooner than 90 days or
296 later than 120 days after the date the export petition was filed with the Commission, shall
297 act on the export petition utilizing the following factors:

298 §675.21(f)(1). The volume of waste proposed for exportation, the type of waste proposed
299 for exportation, and the time period of the proposed exportation;

300 §675.21(f)(2) The policy and purpose of the Compact;

301 §675.21(f)(3) The availability of the Compact Facility for the disposal of the waste
302 involved;

303 §675.21(f)(4) The economic impact on the Host County, the Host State, and the Compact
304 Facility operator of granting the export permit;

305 §675.21(f)(5). The economic impact on the petitioner;

306 §675.21(f)(6). Whether the proposed disposal facility has authorization to import the
307 waste into the region in which the disposal is to take place;

308 §675.21(f)(7). The existence of unresolved violations pending against the petitioner with
309 any other regulatory agency, and any comments by the regulatory agency with which the
310 petitioner has unresolved violations;

311 §675.21(f)(8). Any unresolved violation, complaint, unpaid fee, or passed due report that
312 the petitioner has with the Commission;

313 §675.21(f)(9). Any relevant comments received from the Compact Facility, the petitioner,
314 the Host County, the Host State, or the public; and

315 §675.21(f)(10). Any other factor the Commission deems relevant to carry out the policy
316 and purpose of the Compact.

317 §675.21(g) Decision by the Commission - The Commission may take one of the
318 following actions on the export petition, in whole or in part: approve the export petition;
319 deny the export petition; or approve the export petition subject to terms and conditions as
320 determined by the Commission and as ultimately documented in the export permit.

321 §675.21(h) Terms and Conditions - The Commission may impose any terms or
322 conditions on the export permit reasonably related to furthering the policy and purpose of
323 the Compact and the Commission's Rules.

324 §675.21(i) Permit Duration, Amendment, Revocation, Reporting, Assignment and Fees

325 §675.21(i)(1) An export permit shall be issued for the term specified in the permit and
326 shall remain in effect for that term unless amended, revoked, or canceled by the
327 Commission.

328 §675.21(i)(2) The Commission may, on its own motion or in response to a petition for
329 amendment of an export permit for which prior written notice has been given to the
330 permit holder and the Compact Facility operator, add or delete requirements or
331 limitations to the permit. The Commission may provide a reasonable time to allow the
332 existing permit holder to make any changes necessary to comply with the additional
333 requirements or limitations imposed by the Commission.

334 §675.21(i)(3) Not later than October 31 of each calendar year, a person who holds an
335 export permit shall file with the Commission a report describing the amount and type of
336 waste exported in the period from September 1 to August 31. The form of the report shall
337 be prescribed by the Commission and shall be available on the Commission's web site, or
338 may be obtained at a location that will be posted on the Commission's website. Failure to
339 timely file this report may result in denial of future export petitions.

340 §675.21(i)(4) An Export Permit is not assignable or transferable to any other person.

341 §675.21(i)(5) Export Permit Fees – RESERVED

342 §675.21(j) Agreements to Export - Nothing in this Rule shall limit the authority of the
343 Commission to enter into agreements with the United States, other regional compact
344 commissions, or individual states for the exportation or management of low-level
345 radioactive waste. Nothing in this Rule shall be construed to prohibit the storage or
346 management of low-level radioactive waste by a generator, or its disposal pursuant to 10
347 C.F.R. §20.302 (now 10 CFR §20.2002).

348 §675.21(k) Form of Export Permit - The Export Permit shall be on a form promulgated
349 by the Commission and posted on the Commission's website. The form may be amended
350 by the Commission from time to time.

351 §675.21(l) Definitions -Terms used in this Rule shall have the meaning ascribed to them
352 in the Compact.

353 **§675.22 Exportation of Waste to a Non-Party State for Management or Processing**
354 **and Return to the Party States for Management or for Disposal in the Compact**
355 **Facility.**

356 §675.22(a) Where the sole purpose of the exportation is to manage or process the material
357 for recycling or waste reduction and return it to the party states for disposal in the
358 compact facility, party state generators are not required to obtain an export permit;
359 however,

360 §675.22(b) The generator shall be required to file a report with the Commission prior to
361 proposed export of waste. The report shall include the following information:

362 §675.22(b)(1) The volume, physical form and activity of the waste exported;

363 §675.22(b)(2) The type of waste management employed at the waste management
364 facility;

365 §675.22(c) Upon return of the waste to the generator, the generator shall file a report
366 informing the Commission of:

367 §675.22(c)(1) The volume, physical form and activity of the waste returned to the party
368 state generator; and

369 §675.22(c)(2) A certification by the generator that the waste has not been mixed or
370 comingled with low-level radioactive waste that was not generated in the party states,
371 except for incidental and de minimus amounts.

372 **§675.23 Importation of Waste from a Non-Compact Generator for Management or**
373 **Disposal**

374 §675.23(a) No petition for an agreement to import low-level radioactive waste for
375 disposal shall be granted by the Commission unless the Compact Facility operator has
376 provided to the Commission a recommended total annual volume to be imported for
377 disposal to the Compact Facility and certify that the disposal of imported waste will not
378 reduce capacity for Party State generated waste. The recommendation shall become final
379 after Commission approval.

380 §675.23(b) Agreement Required - No person shall import any low-level radioactive waste
381 for management or disposal that was generated in a non-party state unless the
382 Commission has entered into an agreement for the importation of that waste pursuant to
383 this rule.

384 §675.23(c) Form of Agreement - The form of the Agreement shall be promulgated by the
385 Commission and posted on the Commission's web site, or otherwise made readily
386 accessible to generators and to the public.

387 §675.23(d) Fee for Proposed Importation Agreements

388 §675.23(d)(1) Import Agreement Application Fee - An non-refundable, application fee of
389 \$500 shall accompany the proposed agreement. Payments shall be made by check or
390 money order made payable to the Texas Low Level Radioactive Waste Disposal Compact
391 Commission.

392 §675.23(d)(2) No action shall be taken on any proposed agreement until the requisite
393 fees are paid.

394 §675.23(d)(3) Import Agreement Evaluation Fee - When the proposed agreement is
395 reviewed and acted upon by the Commission, an additional, nonrefundable fee may be
396 assessed based on the actual time and expenses incurred in evaluating and acting on the
397 proposed agreement, if the expense exceeds the application fee. This fee shall be by
398 check or money order and made payable to the Texas Low Level Radioactive Waste
399 Disposal Compact Commission.

400 §675.23(d)(4) The fee will be assessed to recover the actual cost of evaluating the
401 proposed agreement and may consider, but not be limited to these factors:

402 (A) staff expenses

403 (B) supplies

404 (C) direct and indirect expenses

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

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

407 §675.23(d)(5) This fee will be due regardless of whether or not an import permit is issued
408 and shall be made by check or money order made payable to the Texas Low Level
409 Radioactive Waste Disposal Compact Commission.

410 §675.23(e) Notice and Timing of Agreement - A person shall file a proposed import
411 agreement with the Commission and receive approval by the Commission prior to the
412 proposed importation date. By electronic mail, the petitioner shall deliver to the Compact
413 Facility operator a copy of the import agreement (and any supplements or amendments
414 thereto) at the time of filing with the Commission, and a copy shall also be delivered by
415 Certified mail. Any comments by the Compact Facility operator on the import agreement
416 shall be filed in writing with the Commission not later than 20 days after the date the
417 proposed import agreement was received by the Commission. By electronic mail, the
418 Compact Facility operator shall deliver to the petitioner a copy of all comments (and any
419 supplements or amendments thereto) submitted to the Commission at the time of filing
420 with the Commission, and a copy shall also be delivered by Certified mail. The
421 Commission may distribute the import agreement and Compact Facility operator's
422 comments to other interested parties for information and comment. The Commission
423 shall distribute the import agreement and any comments received from the Compact
424 Facility or others to the members of the Commission, and distribute comments from
425 others to the Compact Facility operator and the petitioner.

426 §675.23(f) Review of Proposed Import Agreement - After receiving the proposed import
427 agreement and any comments that have been made thereon, the Commission at a meeting
428 held promptly, but no sooner than 90 days or later than 120 days after the date the

429 proposed import agreement was filed with the Commission, shall act upon the import
430 agreement utilizing the following factors:

431 §675.23(f)(1) The volume, type, physical form and activity of waste proposed for
432 importation;

433 §675.23(f)(2) The policy and purpose of the Compact;

434 §675.23(f)(3) The availability of the Compact Facility for the disposal of the waste
435 proposed to be imported;

436 §675.23(f)(4) The economic impact on the Host County, the Host State, and the Compact
437 Facility operator of entering into the import agreement;

438 §675.23(f)(5) Whether the Compact Facility operator has authorization to dispose of the
439 proposed waste;

440 §675.23(f)(6) The effect on the Compact Facility's total annual volume recommended for
441 importation;

442 §675.23(f)(7) The existence of unresolved violations pending against the petitioner with
443 any other regulatory agency, and any comments by the regulatory agency with which the
444 petitioner has unresolved violations;

445 §675.23(f)(8) Any unresolved violation, complaint, unpaid fee, or passed due report that
446 the petitioner has with the Commission;

447 §675.23(f)(9) Any relevant comments received from the Compact Facility operator, the
448 person proposing to export the waste, the Host County, the Host State, interested state or
449 federal regulatory agencies, or the public; and

450 §675.23(f)(10) The authorization of a person to export (if applicable);

451 §675.23(f)(11) Any other factor the Commission deems relevant to carry out the policy
452 and purpose of the Compact.

453 §675.23(g) Decision by the Commission - The Commission may take one of the
454 following actions on the proposed importation agreement, in whole or in part: approve
455 the proposed agreement; deny the proposed agreement; or approve the proposed
456 agreement subject to terms and conditions as determined by the Commission.

457 §675.23(h) Terms and Conditions - The Commission may impose any terms or conditions
458 on the import agreement reasonably related to furthering the policy and purpose of the
459 Compact.

460 §675.23(i) Importation Agreement Duration, Amendment, Revocation, Reporting,
461 Assignment and Fees

462 §675.23(i)(1) An importation agreement shall be issued for the term specified in the
463 agreement and shall remain in effect for that term unless amended, revoked, or canceled
464 by the Commission.

465 §675.23(i)(2) The Commission may, on its own motion or in response to a petition for
466 amendment of an importation agreement for which prior written notice has been given to
467 the permit holder and the Compact Facility operator, add or delete requirements or
468 limitations to the agreement. The Commission may provide a reasonable time to allow
469 the existing exporter and the Compact Facility operator to make the changes necessary to
470 comply with any additional requirements imposed by the Commission.

471 §675.23(i)(3) An Import Agreement is not assignable or transferable to any other person.

472 §675.23(i)(4) Import Agreement Fees – RESERVED

473 §675.23(j) The Compact Facility operator shall file with the Commission a Quarterly
474 Import Report, no later than 30 days after the end of each calendar quarter, describing the
475 imported waste that was disposed under the Agreement during the quarter by the
476 Compact Facility, including the physical, radiological and chemical properties of the
477 waste. Each Quarterly Import Report will provide the manifested volume and activity of
478 each imported class of waste (A, B, and C, or in the case of waste imported for
479 management, Greater Than Class C), the state or other place of origin, and the date(s) of
480 waste disposal, if applicable. The Quarterly Report shall provide this information for the
481 imported waste disposed of during the most recent quarter, as well as the cumulative
482 information for imported waste managed or disposed of in prior quarters under this
483 Agreement. The forms of the Quarterly Import Report shall be prescribed by the
484 Commission and shall be posted on the Commission's website, or may be obtained at a
485 location that will be posted on the Commission's website.

486 §675.23(k) Agreements to Import - Nothing in this Rule shall be construed to prohibit the
487 storage or management of low-level radioactive waste by a generator, nor its disposal
488 pursuant to 10 C.F.R. § 20.2002.

489 §675.23(l) Form of Import Agreement - The import agreement shall be on a form
490 promulgated by the Commission, posted on the Commission's website, and shall contain
491 at a minimum the criteria contained in §675.23(f). The form may be amended by the
492 Commission from time to time.

493 §675.23(m) Definitions -Terms used in this Rule shall have the meaning ascribed to them
494 in the Compact.

495

496 The Commission certifies that the proposed rule has been reviewed by legal counsel and

497 found to be within the agency's legal authority to adopt.

498 Issued in Austin, Texas on December 11, 2009.