

Motion to amend §675.23(a) to read as follows:

(a) It is the policy of the Commission that any savings generated by importation accrue to the benefit of the party states - generators and that the legislatures and administering agencies for the party states have asserted a demonstrated willingness to allow out-of-compact waste into the Compact facility for management and/or disposal. It is also the policy of the Commission that it will not accept the importation of low-level radioactive waste of international origin.

- Compact Commission needs to recognize the Texas Legislature and the state licensing agency should approve of importation before allowing waste from non-Compact states.
- The Compact facility should not be available for the disposal of foreign waste.

Motion to amend §675.23(b) to read as follows:

(b) Disposal capacity is reserved for Texas and Vermont ~~calculated by- for total pre-treatment~~ volume and total activity, and neither shall be reduced ~~pre-treatment~~ by non-Compact waste. Any such disposal capacity available for imports shall be established at least every 5-years by a report of the Commission based upon the host state's demonstrated willingness to receive specific volumes of waste from non-Compact generators. The Commission's report shall 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.

- The 2.3 Million cubic feet of capacity should be utilized by compact generators first. Whatever capacity is left over, if any, can be used for importation.
- Available disposal capacity for importation should be determined by the Compact Commission every 5 years and reduced to a report, assuming the Legislature continues to be willing to accept certain volumes of waste from outside the Compact.
- Disposal capacity shall be estimated based on the total volume and activity to be used in the Compact facility without consideration of any volume reduction treatment.
- Susan Q: Does the state currently have a capacity report, and if not how long will it take to complete a capacity report?
- WCS/Susan Q: Can you explain and discuss your understanding of the 80/20% statutory capacity?

- Motion to amend §675.23(c) to read as follows:

(c) No petition for an agreement to import low-level radioactive waste for management or 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 certify that the disposal of imported waste will not reduce capacity for Party State generated waste based on the currently licensed volume and activity. The recommendation shall become final after Commission approval.~~

(1) The Compact disposal Facility is fully open, operational, and Texas owned.

- This insures the Compact Commission does not consider any import petitions prior to the compact facility being able to dispose of any waste.
- WCS/Susan Q: What is the current status of construction terms; are there pending matters?
- WCS/Susan Q: Since the state of Texas takes ownership of all of this waste, when does ownership take place, does the state have a deed, or how does that work?

(2) The host state, has submitted an annual report to the Commission on the status of the facility, including the state's estimate of any waste volume and activity capacity in the Compact disposal facility available for consumption by imported waste from non-Compact generators during the next fiscal year, considering the volume of disposal capacity remaining under the existing disposal license and the volume capacity Compact states will require through 2045;

- The TCEQ needs to update the capacity report to have the most current data in order to determine if capacity is available for imports.

(3) The rate for the disposal of out-of-Compact generated waste has been approved by the TCEQ and there is a funding in the Compact Commission account to cover the cost of reviewing, monitoring, and defending itself from legal challenges related to the approval or disapproval of import petitions;

- The rate case application has just been filed. It needs to be completed and funding made available before the Compact Commission should accept any import petitions.

(4) The Compact Commission has at least \$1,000,000 in unencumbered funds in its checking account to fund staff support and legal challenges to the approval and/or the denial of import and export petitions;

- This amount will insure the Compact Commission has sufficient funds to handle all litigation that will ensue from waste import petitions.

(5) The 2011 Texas and Vermont legislative sessions have transpired without the passage of legislation to prohibit the import of non-Compact LLR waste or materials for management or disposal in the Compact facility;

- The Texas and Vermont Legislatures should expressly indicate their intent for the Compact facility to accept waste from non-compact states.

(6) The Compact Commission Bylaws have been finalized and approved;

- The Compact should complete its bylaws to provide a clear process for considering import petition.

(7) The Nuclear Regulatory Commission has completed its pending low level radioactive waste rulemaking process and guidance documents regarding:

(A) downblending, and

(B) depleted uranium storage and disposal and TCEQ and the Compact Commission have reviewed and adopted;

- The NRC action could significantly increase of total volume and activity that could be available for disposal at a low-level facility through import petitions.
- Mr. Chairman, in addition to the Texas Water Development Board and the Bureau of Economic Geology, I would like to also request a report from the Texas Department of State Health Services for input on transportation.

(8) Texas, the host state, and each party state has met its obligation under Texas Health and Safety Code Title 5, Subtitle D, Chapter 403, Sections 4.04 and 4.05.

- This means Texas should:
  - make sure the Compact facility is opened
  - make sure the Compact facility is operating properly
  - establish reasonable disposal fees
  - establish fees sufficient to support the Compact Commission
  - update the annual report on future capacity
  - regulate the means and routes of transportation of the waste in Texas
- This also means Texas and Vermont should:
  - develop and enforce packaging procedures
  - maintain a registry of all generators in the state

- enforce procedures to minimize the volume of waste
- Given the discussion earlier about Texas' liability and the concern over financial assurance, I believe we should consider additional rates.

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Motion to amend §675.23(d) to read as follows:

(d) It is the policy of the Commission that the host state receive monetary benefit from any import agreement through a liability surcharge and access surcharge imposed by the Commission. The additional charges will be paid directly to the Texas Comptroller of Public Accounts.

- (1) Each import agreement will include a liability fee of at least \$55.00 per cubic foot for disposal into the compact facility with funds to benefit dedicated Fund 0088 of the state of Texas.
- (2) Each import agreement will include an access fee of at least \$240.00 per cubic foot for disposal into the compact facility with funds to benefit the general revenue of the state of Texas.

- Texas should receive a greater percentage of revenue from non-Compact waste than the 5% of gross receipts because non-Compact generators have not contributed financially to the Compact like Vermont and the non-Compact generators should pay Texas for the long-term liability associated with Texas taking title to that waste once accepted into the Compact facility.

Motion to amend §675.23(e) to read as follows:

(ee) The approval shall be based on timely renewal of the Compact Facility License by the licensee, assigns, or successors, and the host state's willingness to accept imports from non-Compact generators. Import volumes for disposal shall not exceed the five-year estimate update of the volume capacity Compact states will need to reserve through 2045. All waste disposal in the Compact facility must be characterized for disposal at the original point of waste generation and the pedigree of the waste must be described and revealed within the final disposal waste characterization.

- The Compact facility should not accept any waste unless Texas can trace the waste back to a domestic generator and ensure itself the waste has not been downblended.

Motion to amend §675.23(f) to read as follows:

(f) 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. Neither mixed radioactive and hazardous waste nor foreign radioactive waste shall be imported in the Compact facility for management or disposal

(1) Violations of paragraph e 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.

- Texas should not accept mixed waste into the Compact facility because of the unknown impacts on the low-level radioactive waste and the Compact facility liner system.
- Texas also should not use up valuable low-level radioactive waste capacity on foreign generated waste.



Motion to amend §675.23(g) to read as follows (No Change):

(ge) 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. Each import agreement must be entered into by the Compact with:

(1) a state,

(2) a regional body, or

(3) group of states.

- The Compact Commission could be overwhelmed with petitions if it has to deal directly with all non-Compact generators. This rule allows the Compact Commission to instead enter into Compact agreements with entities that can represent the individual waste generators.

Motion to amend §675.23(h) to read as follows:

(hf) Fee for Proposed Importation Agreements.

(1) Import 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.

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

(3) Import Agreement Evaluation Fee—~~When~~ Prior to any action on the proposed agreement ~~is reviewed and acted upon~~ by the Commission, an additional, nonrefundable fee may be assessed based on the ~~actual~~ estimated time and expenses 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 by check, ~~or~~ 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-expected cost assessed to recover the actual cost~~ of evaluating the proposed agreement and may ~~consider~~ include, 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) 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. Any refunds for any overpayment of Evaluation Fees shall be made following the approval of a refund by the Commission.

- The Compact Commission should not use any resources in the review of any import agreements until it receives the fees to fund the review.

Motion to amend §675.23(i) to read as follows:

(ig) Notice and Timing of Agreement—A person shall file a proposed import agreement with the Commission and receive approval by the Commission prior to any importation of waste for management or disposal. ~~The proposed importation date.~~

(1) The proposed import agreement shall be accompanied by a ~~certification by a~~ verification from the Texas Commission on Environmental Quality ~~Texas Commission on Environmental Quality the Compact Disposal Facility~~ that the waste acceptance criteria have been met for the proposed waste importation.

- Why should we trust WCS to certify?

(2) By electronic mail, the petitioner shall deliver to the Compact Facility operator a copy of the proposed 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.~~

(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 15-days of the date of receipt, the Commission shall post the 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 ~~2030~~ days after the deemed date of receipt of 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.

(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.~~

(6) ~~Comments on the proposed import application may be submitted by any person, other than the Compact Facility operator, during the 60-day period following the date of posting to the Commission's website.~~

(7) 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.

Motion to amend §675.23(j) to read as follows:

~~(j)~~ Review of Proposed Import Agreement— After import petitions are eligible to be considered by the Commission as identified under §675.23(c) and 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 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 follow 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 ~~disposal capacity not needed by party states in~~ 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 TCEQ to dispose of the proposed waste;
- (6) The effect on the Compact Facility's total annual volume ~~allowed 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, ~~compact generators,~~ the person proposing to export 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) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact; and~~
- ~~(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; and~~
- ~~(12) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact; and~~

13. The Host State's demonstrated willingness to receive the specific waste import into its Compact facility.

Motion to amend §675.23(k) to read as follows:

| ~~(j)~~ **(k)** 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; or request additional information needed for a decision.

Motion to amend §675.23(l) to read as follows (No Change):

(l) Terms and Conditions—The Commission may impose any terms or conditions on the import agreement reasonably related to furthering the pPolicy and pPurpose of the Compact.

Motion to amend §675.23(m) to read as follows:

(m\*) 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 ~~agreement holder exporter~~ and the Compact Facility operator to make the changes necessary to comply with any additional requirements imposed 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.



Motion to amend §675.23(n) to read as follows:

(n†) 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 managed or disposed and stored under the 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 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.

Motion to amend §675.23(o) to read as follows:

| ~~(o)~~ 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.  
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Motion to amend §675.23(p) to read as follows (No Change):

| ~~(p)~~ 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.

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Motion to amend §675.23(q) to read as follows (No Change):

(q) Notwithstanding any other provision of this Section 675.23, the Commission shall receive but will not begin to process applications for agreements to import waste from a non-compact generator for management or disposal under Section 675.23 until such time as the Commission determines by vote taken pursuant to Section 3.02 of the Compact as compiled at Section 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.

- Section 3.02 requires a majority vote of the Compact Commission members to approve an official act of the Commission.

Motion to amend §675.23(r) to read as follows (No Change):

(re) Definitions—Terms used in this subchapter shall have the meaning ascribed to them in the Compact. Where time requirements are specified in “days,” that shall be in calendar days.