

TITLE 31	NATURAL RESOURCES AND CONSERVATION
PART 21	TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION
CHAPTER 675	PRELIMINARY RULES
SUBCHAPTER B	EXPORTATION AND IMPORTATION OF WASTE

RULE §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. Such disposal capacity shall be established at least every 5 years by a report of the Commission. 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, and remaining radionuclide-specific radioactivity to comply with the Compact Facility Radioactive Materials License.]~~

(b) (1) The Commission may approve for disposal at the Compact Facility nonparty compact waste that is classified as Class A, Class B, or Class C low-level radioactive waste to the extent that such acceptance does not diminish the disposal volume or curie capacity available to party states. The Compact Facility license holder may not accept more than 50,000 total cubic feet of nonparty compact waste annually. The Compact Facility license holder may

not accept more than 120,000 curies of nonparty compact waste annually, except that in the first year the license holder may accept 220,000 curies.

(2) Of the total initial licensed capacity of the Compact Facility:

(i) not more than 30 percent of the volume and curie capacity shall be for nonparty compact waste; and

(ii) of the remaining capacity, not less than 80 percent of the volume and curie capacity shall be for compact waste generated in the host state and 20 percent of the volume and curie capacity shall be for compact waste generated in Vermont.

(c) No ~~[petition]~~ application 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;]~~

~~[(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 that the disposal of imported 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 §2.01 of §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 (3) The~~ the Compact Commission bylaws have been finalized and approved.

(d) Agreement Required--No person shall import [~~any low level radioactive~~] nonparty compact 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. Only the generator of the nonparty compact waste may submit an application for an importation agreement. 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.

(e) [~~Form of Agreement--The form of the Agreement shall be promulgated by the Commission and~~] Procedures and Forms for Approval of Importation -- The procedures for the approval of the importation of nonparty compact waste are provided under §675.23(f)-(i). The forms of application and importation agreement are posted on the Commission's web site [or otherwise made readily accessible to generators and to the public.] and hereby incorporated by reference.

(f) Fee for Proposed Importation Agreements.

(1) Import Agreement Application Fee--A non-refundable, application fee of \$500 shall accompany the [~~proposed agreement~~] application for importation. 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~~] application 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 application and 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 application and 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.

(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.

(6) Any fees assessed pursuant to subsection (f) of this section are separate from and independent of any surcharges or other fees assessed by the Texas Commission on Environmental Quality.

(g) Notice and Timing of Agreement-- A ~~[person]~~ generator shall file an application and 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 Compact Facility that the waste acceptance criteria have been met for the proposed waste importation~~

~~(2) By electronic mail, the petitioner shall deliver to the Compact Facility operator a copy of the import agreement (and any supplements or amendments thereto) at the time of filing with the Commission, and a copy shall also be delivered by Certified mail.~~

~~(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 30 days after the deemed date of receipt of the proposed import agreement.]~~ By electronic mail, the generator shall deliver to the Compact Facility operator ~~[shall deliver to the petitioner]~~ a copy of ~~[all comments]~~ the

application and proposed agreement (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 web site as specified in paragraph (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.]~~

(h) Review of Proposed Import Agreement-- [~~After receiving the proposed import agreement and any comments that have been made thereon, the~~]-The Commission [~~at a meeting held~~] shall promptly, but no [~~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 [~~was~~] were filed with the Commission, [~~shall~~] act upon the application and proposed import agreement utilizing the following factors:

(1) The volume, type, physical form and [~~radionuclide-specific~~] total activity (radionuclide-specific activity, if needed) of waste proposed for importation;

(2) The policy and purpose of the Compact;

(3) [~~The availability of the Compact Facility for the disposal of the waste proposed to be imported;~~

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

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

(6) ~~The effect on the Compact Facility's total annual volume and radionuclide-specific activity 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)] (4) 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) 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]~~

(5) 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(e), (e-1) (if applicable), and (f)(1) of the Texas Health and Safety Code; and

~~[(12)]~~ (6) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

(i) Decision by the Commission--The Commission 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 may deny the ~~[petition]~~ application for:

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

~~[(2) Any low level radioactive waste that does not meet the waste acceptance criteria of the license;]~~

~~[(3)]~~ (2) International origin of the waste, or its original (i.e. pre-processing) generator; and

~~[(4)]~~ (3) Any other relevant issue. [Any person who was a proper party to the petition]-The Compact Facility or the generator applying for importation may petition the Commission to reconsider its decision on an application or proposed agreement within 20-days

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

(j) 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.

(k) 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]~~ application and shall remain in effect for that term unless amended by agreement of the Commission and the generator, 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 must include a condition requiring the Compact Facility to receive written certification from the Texas Commission on Environmental Quality that the waste is authorized for disposal under the license prior to the acceptance of waste under the importation agreement.

(2) The Commission may, on its own motion or in response to ~~[a petition]~~-an application 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.

(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.

(l) The Compact Facility operator shall file with the Commission a Quarterly Import Report, no later than 30 days after the end of each calendar quarter, describing the imported 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 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 Report 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]~~ set out in subsection (h) of this section. ~~[The form may be amended by the Commission from time to time.]~~

(o) ~~[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. (p)]~~ Definitions--Terms used in this subchapter shall have the meaning ascribed to them in the Compact, except as specifically defined below. Where time requirements are specified in "days," that shall be in calendar days.

(1) "Curie capacity" means the amount of the radioactivity of the waste that may be accepted by the Compact Facility as determined by the commission in the compact waste disposal facility license.

(2) "Nonparty compact waste" means low-level radioactive waste imported from a state other than a party state as authorized under Section 3.05(6) of the compact.

(3) "Party state compact waste" means low-level radioactive waste generated in a party state.

(4) "Waste of international origin" means low-level radioactive waste that originates outside of the United States or a territory of the United States, including waste subsequently stored or processed in the United States.