

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 The Commission is required to conduct its business, hold meetings, and maintain public
43 records pursuant to laws of the host state. The Commission may adopt bylaws and rules

44 necessary to carry out the terms of the Compact. Under the provisions of the Compact,
45 any rules promulgated by the commission must be adopted in accordance with the
46 Administrative Procedure Act (GC §2001).

47 The text of the Compact is set out in the Texas Health and Safety Code, §403.006.
48 Article VI, §§ 6.01 and 6.02 prohibit export and import of low level radioactive waste,
49 respectively, with exceptions granted in both cases if the requirements of §§ 3.05(7)
50 (governing the exportation of waste) and 3.05(6) (governing the importation of waste),
51 are respectively met. Article IV, § 4.02 also allows exportation if the requirements of §
52 3.05(7) are met.

53 Under the terms of § 3.05(7) of the Compact, the Commission may, upon petition, allow
54 an individual generator, a group of generators, or the host state of the compact to export
55 low-level radioactive waste to a low-level radioactive waste disposal facility located
56 outside the party states. The permission to export low-level radioactive waste shall be
57 effective for that period of time and for the specified amount of low-level radioactive
58 waste, and subject to any other term or condition, as is determined by the Commission.

59 Under the terms of §3.05(6) of the Compact, the Commission may enter into an
60 agreement with any person, state, regional body, or group of states for the importation of
61 low-level radioactive waste into the compact for management or disposal, provided that
62 the agreement receives a majority vote of the commission. The Commission may adopt
63 such conditions and restrictions in the agreement as it deems advisable”

64 Nothing in the Compact or the Texas Radiation Control Act expressly prohibits the
65 Compact Commission from collecting fees as part either export permits or import
66 agreements.

67 The Texas Commission on Environmental Quality (“TCEQ”) has the primary authority
68 for setting low level radioactive waste disposal rates under the Texas Radiation Control
69 Act and the Compact (§ 4.04(4)). This authority exists separate and apart from the
70 Compact Commission’s authority to negotiate fees through export and import
71 agreements.

72 When promulgating its rate-setting rules for establishing disposal rates, TCEQ expressly
73 recognized the difference between its own rate-setting authority and the Compact
74 Commission’s importation authority [34 Tex. Reg. 1688, 1697 (Mar. 6, 2009)]. In
75 preamble discussion accompanying its rate-setting rules, TCEQ noted that “under the
76 terms of the compact, new states can be added as party states to the compact or the
77 Compact Commission can approve a contract for the importation of waste into the host
78 state for disposal.” The TCEQ stated that its rate- setting rules were intended to establish
79 the same maximum disposal rates for both imported low level radioactive waste and for
80 in-Compact low level radioactive waste.

81 At the same time, TCEQ recognized the potential need for an importation fee, and TCEQ
82 made clear that its rate-setting rules were not intended to interfere with the assessment of
83 an importation fee by the Compact Commission:

84 “These rules establish procedures the TCEQ will use to determine a disposal rate
85 which may only be a component of a Compact Commission disposal rate under

86 the provisions of the Compact. The disposal rate subject to these rules does not
87 include any surcharges, importation fees, or any other fees that may be assessed to
88 waste from other entities that is contracted for disposal under the provisions of the
89 Compact.” [34 Tex. Reg. 1688, 1697 (Mar. 6, 2009)]

90 Nothing in the Compact or the Texas Radiation Control Act expressly prohibits the
91 Compact Commission from collecting export or import fees as part of a an agreement-
92 setting or permitting process. To the contrary, the Compact specifies that for importation,
93 “the Commission may adopt such conditions and restrictions in the agreement as it deems
94 advisable,” [§3.05(6)], and for exportation, “The permission to export low-level
95 radioactive waste shall be subject to any other term or condition, as is determined by the
96 commission” [§3.05(7)].

97 The Commission’s levying of fees as part of import and export policies is consistent with
98 the Compact itself as well as TCEQ’s past interpretation of the relationship between the
99 Compact Commission’s importation authority and TCEQ’s rate-setting authority. The
100 TCEQ has not espoused a position on exportation given that (1) any fees it may set only
101 apply to waste disposed of within the host state, and (2) control over the exportation of
102 waste from the Compact region falls solely to the Commission.

103 Given that the party states have entered into the Compact with the expressed intent of
104 managing and restricting interstate commerce in the area of low-level radioactive waste
105 on a regional basis, discouraging export through the imposition of fees and only allowing
106 limited importation only at a premium is entirely in keeping with the entire premise of the
107 Compact. Further, the practice of imposing fees on both import and export of low level

108 waste into and out of U.S. compacts formed under the authority of the Low Level Waste
109 Policy Act of 1980 (P.L. 96-573) is a long-established practice throughout the country.

110 The Commission may evaluate export and import petitions with respect to issues such as,
111 but not limited to:

- 112 • the volume and type of waste to be exported or imported,
- 113 • the proposed time period for which export or import is proposed to occur,
- 114 • the economic impacts to the host county, the host state, the compact facility
115 operator and the petitioner,
- 116 • the ability of the proposed waste facility (Compact facility for import and non-
117 Compact facility for export) to accept the proposed waste under its waste
118 acceptance criteria (which addresses the environment, safety and health aspects of
119 the proposed activity), and
- 120 • the policy implications of exporting or importing waste.

121 The Commission anticipates that it will incur expenses in the evaluation and processing
122 of any export or import petition. To ensure that initial costs of evaluation are recovered,
123 whether or not the petition may be approved, the Commission requires a non-refundable
124 petition fee of \$500 that must be submitted before any action will be taken on the
125 petition. This fee recovers the initial (estimated) administrative, legal, and operational
126 costs and is paid regardless of whether or not a petition is granted. . If the evaluation of
127 an individual petition exceeds the estimated cost represented by the petition fee, the

128 Commission reserves the right to recoup those fees through the terms of any subsequent
129 permit, contractual agreement, or denial of petition.

130 Prior to the initiation of facility operations, only proposed import agreements for
131 management and export petitions will be received and processed; and given that only
132 export (and not disposal at the Compact Facility) may occur prior to facility operations,
133 only the non-refundable export petition fee will be in effect until such time that the
134 Compact Facility begins receiving waste. After the Compact Facility becomes
135 operational, both the petition fees and per unit export permit and import agreement fees
136 will be in effect.

137 A petitioner may contest any subsequent permit fee by requesting a public hearing before
138 the Commission within 30 days of the assessment of the fee.

139

140 A new rule, §675.2 *Exportation and Importation of Waste* is proposed to set out the
141 procedures and criteria by which such petitions for export and imports may be considered
142 and granted or denied by the Commission and by which permits for export and import
143 agreements may be granted. The rule sets and assesses fees associated with evaluating
144 and processing the export and import petitions and the granting of export and import
145 permits.

146 **SECTION-BY-SECTION DISCUSSION**

147 § 675.2(a) *Exportation of Waste by a Compact Generator to a Non-Party State for*
148 *Disposal*

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

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

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

158 Proposed §675.21(d) assesses and sets non-refundable fees that must accompany the
159 petition form before any action will be taken by the Commission, sets forth procedures
160 for setting conditions and restrictions upon granting the export permit to include cost
161 recovery of actual expenses of the Commission in evaluating and processing the petition,
162 and provides an appeals process for the amount of the fee that may be assessed.

163 Proposed §675.21(e) requires a petitioner to file an export petition by certified mail with
164 the Commission prior to the date of export of waste. Likewise, the Compact facility
165 operator shall deliver to the petitioner any comments submitted to the Commission at the
166 time of filing. Any comments on the petition shall be filed with the Commission within
167 20 days after the petition has been received by the Commission. The Commission shall
168 distribute the export petition and comments received on the petition to the
169 Commissioners, the petitioner and the Compact facility operator.

170 Proposed §675.21(f) requires the Commission to meet promptly, but no sooner than 90
171 days nor later than 120 days after the petition was filed to consider the export petition.

172 The factors to be utilized in consideration of the petition are also provided.

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

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

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

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

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

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

190

191 § 675.22 Exportation of Waste to a Non-Party State for Management or Processing and
192 Return to the Party States for Management or for Disposal in the Compact Facility.

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

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

202 675.23 Importation of Waste for Management or Disposal by a Non-Compact Generator

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

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

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

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

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

224 Proposed §675.23(f) requires a petitioner to file a proposed agreement by certified mail
225 with the Commission prior to the date of import of waste. Likewise, the Compact facility
226 operator shall deliver to the petitioner any comments submitted to the Commission at the
227 time of filing. Any comments on the petition shall be filed with the Commission within
228 20 days after the petition has been received by the Commission. The Commission shall
229 distribute the proposed import agreement and comments received on the proposed
230 agreement to the Commissioners, the petitioner and the Compact facility operator.

231 Proposed §675.23(g) requires the Commission to meet promptly, but no sooner than 90
232 days nor later than 120 days after the petition was filed to consider the proposed import

233 agreement. The factors to be utilized in consideration of the proposed agreement are also
234 provided.

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

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

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

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

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

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

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

254

255 **FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT**

256 The Commission has determined that there will be the following fiscal implications to
257 state and local governments as a result of the establishment, administration or
258 enforcement of the proposed rules.

259 EXPORT

260 LOCAL PUBLIC IMPACT TO HOST COUNTY AND PUBLIC AT LARGE

261 Wastes exported from Texas and not disposed in the compact facility will have a negative
262 fiscal effect on local government of the host county and the public at large. *Texas Health
263 and Safety Code Sec. 401.244. HOST COUNTY PUBLIC PROJECTS* requires the
264 compact waste disposal facility license holder to transfer each quarter to the
265 commissioners court of the host county five percent of the gross receipts from compact
266 waste received at the compact waste disposal facility. The commissioner's court of the
267 host county may spend the money for public projects in the host county or disburse the
268 money to other local entities or to public nonprofit corporations to be spent for local
269 public projects. Money received from the compact waste disposal facility license holder
270 under this section may be spent only for public projects in the host county that are for the
271 use and benefit of the public at large. Gross receipts are defined in Texas Health and
272 Safety Code, Sec. 401.003. DEFINITIONS. (12-a). The dollar amount of gross receipts
273 cannot be estimated at this time because disposal fees have not yet been established in
274 rule. Additional indirect fiscal impacts may result with decrease in public projects and
275 linkages to other industry sectors.

276 IMPACT TO STATE OF TEXAS GENERAL REVENUE

277 Wastes exported from Texas and not disposed in the compact facility will have a negative
278 effect on the State of Texas General Revenue Fund. *Texas Health and Safety Code, Sec.*
279 *401.2445. STATE FEE* requires the compact waste disposal facility license holder to
280 transfer to the state general revenue fund each quarter five percent of the gross receipts
281 from compact waste received at the compact waste disposal facility. Gross receipts are
282 defined in Texas Health and Safety Code, Sec. 401.003. DEFINITIONS. (12-a). The
283 dollar amount of gross receipts cannot be estimated at this time because disposal fees
284 have not yet been established in rule.

285 IMPACT TO COMPACT WASTE GENERATORS

286 Wastes exported from Texas and not disposed in the compact facility may have a
287 negative effect on compact generators of waste based on the amount of the disposal fees
288 ultimately charged for disposal in the compact facility when it opens. *Texas Health and*
289 *Safety Code Sec. 401.245. COMPACT WASTE DISPOSAL FEES* requires a compact
290 waste disposal facility license holder who receives low-level radioactive waste for
291 disposal pursuant to the Texas Low-Level Radioactive Waste Disposal Compact to
292 collect a waste disposal fee to be paid by each person who delivers low-level radioactive
293 waste to the compact waste disposal facility for disposal. The Texas Commission on
294 Environmental Quality shall adopt and periodically revise compact waste disposal fees
295 according to a schedule that is based in part on the projected annual volume of low-level
296 radioactive waste received. A decrease in the volume disposed in the compact facility
297 could increase the cost of disposal, potentially to the point where disposal at the compact

298 facility is no longer economically viable. Disposal fees have not yet been established in
299 rule and the impact on the fee amounts cannot be estimated at this time.

300 LIMITATIONS ON AMOUNT OF WASTE TO BE DISPOSED

301 Wastes exported from Texas and not disposed in the compact facility may impact the
302 total amount of waste projected to be disposed in the facility by Texas and by party states,
303 due to the limitation of disposal to 20% of the annual average of low-level radioactive
304 waste projected to be produced in this state from the years 1995 through 2045. *Texas*
305 *Health and Safety Code Sec. 401.248, LIMITATIONS ON LOW-LEVEL RADIOACTIVE*
306 *WASTE DISPOSAL*, limits the total volume of all low-level radioactive waste to be
307 disposed of in this state from the other state or states to 20 percent of the annual average
308 of low-level radioactive waste that the governor projects will be produced in this state
309 from the years 1995 through 2045; allows this state to charge a fee for the disposal of
310 low-level radioactive waste at the compact waste disposal facility; and requires the other
311 state or states to pay for community assistance projects selected by the host county in an
312 amount not less than \$1 million or 10 percent of the amount contributed by the other state
313 or states. A decrease in the amount of waste to be disposed in the facility can have a
314 negative impact on the gross receipts and contributions to the host county as described
315 above.

316 IMPORT

317 LOCAL PUBLIC IMPACT TO HOST COUNTY AND PUBLIC AT LARGE

318 Wastes imported into Texas and disposed in the compact facility will have a positive
319 fiscal effect on local government of the host county and the public at large. *Texas Health*

320 *and Safety Code Sec. 401.244. HOST COUNTY PUBLIC PROJECTS* requires the
321 compact waste disposal facility license holder to transfer each quarter to the
322 commissioners court of the host county five percent of the gross receipts from compact
323 waste received at the compact waste disposal facility. The commissioners court of the
324 host county may spend the money for public projects in the host county or disburse the
325 money to other local entities or to public nonprofit corporations to be spent for local
326 public projects. Money received from the compact waste disposal facility license holder
327 under this section may be spent only for public projects in the host county that are for the
328 use and benefit of the public at large. Gross receipts are defined in Texas Health and
329 Safety Code, Sec. 401.003. DEFINITIONS. (12-a). The dollar amount of gross receipts
330 cannot be estimated at this time because disposal fees have not yet been established in
331 rule. Additional indirect fiscal impacts may result with increase in public projects and
332 linkages to other industry sectors.

333 IMPACT TO STATE OF TEXAS GENERAL REVENUE

334 Wastes imported into Texas and disposed in the compact facility will have a positive
335 effect on the State of Texas General Revenue Fund. *Texas Health and Safety Code, Sec.*
336 *401.2445. STATE FEE* requires the compact waste disposal facility license holder to
337 transfer to the state general revenue fund each quarter five percent of the gross receipts
338 from compact waste received at the compact waste disposal facility. Gross receipts are
339 defined in Texas Health and Safety Code, Sec. 401.003. DEFINITIONS. (12-a). The
340 dollar amount of gross receipts cannot be estimated at this time because disposal fees
341 have not yet been established in rule.

342 IMPACT TO COMPACT WASTE GENERATORS

343 Wastes imported into Texas and disposed in the compact facility may have a positive
344 effect on compact generators of waste based on the amount of the disposal fees ultimately
345 charged for disposal in the compact facility when it opens. *Texas Health and Safety Code*
346 *Sec. 401.245. COMPACT WASTE DISPOSAL FEES* requires a compact waste disposal
347 facility license holder who receives low-level radioactive waste for disposal pursuant to
348 the Texas Low-Level Radioactive Waste Disposal Compact to collect a waste disposal
349 fee to be paid by each person who delivers low-level radioactive waste to the compact
350 waste disposal facility for disposal. The Texas Commission on Environmental Quality
351 shall adopt and periodically revise compact waste disposal fees according to a schedule
352 that is based in part on the projected annual volume of low-level radioactive waste
353 received. An increase in the volume disposed in the compact facility could decrease the
354 cost of disposal per unit disposed. Disposal fees have not yet been established in rule and
355 the impact on the fee amounts cannot be estimated at this time.

356 LIMITATIONS ON AMOUNT OF WASTE TO BE DISPOSED

357 Wastes imported from Texas and disposed in the compact facility may impact the total
358 amount of waste projected to be disposed in the facility by Texas and by party states, due
359 to the limitation of disposal to 20% of the annual average of low-level radioactive waste
360 projected to be produced in this state from the years 1995 through 2045. *Texas Health*
361 *and Safety Code Sec. 401.248. LIMITATIONS ON LOW-LEVEL RADIOACTIVE WASTE*
362 *DISPOSAL* limits the total volume of all low-level radioactive waste to be disposed of in
363 this state from the other state or states to 20 percent of the annual average of low-level
364 radioactive waste that the governor projects will be produced in this state from the years
365 1995 through 2045; allows this state to charge a fee for the disposal of low-level

366 radioactive waste at the compact waste disposal facility; and requires the other state or
367 states to pay for community assistance projects selected by the host county in an amount
368 not less than \$1 million or 10 percent of the amount contributed by the other state or
369 states. An increase in the amount of waste to be disposed in the facility can have a
370 positive impact on the gross receipts and contributions to the host county as describe in
371 above.

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

373 The Commission has determined that for each of the first five years the proposed rules
374 are in effect, the public benefit anticipated from the adoption of the proposed rules will be
375 compliance with state and federal law, clear and concise guidance for affected entities,
376 and protection of the public health and environment by ensuring proper disposal of low
377 level radioactive waste at properly licensed facilities. There will be no effect on small or
378 micro-businesses. There are no anticipated costs to individuals for compliance with these
379 rules.

380 **TAKINGS IMPACT ASSESSMENT**

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

385 **REGULATORY ANALYSIS**

386 The Commission has determined that this proposal is not a "major environmental rule" as
387 defined by § 2001.0225, Texas Government Code. "Major environmental rule" is defined

388 to mean a rule the specific intent of which is to protect the environment or reduce risk to
389 human health from environmental exposure and that may adversely affect, in a material
390 way, the economy, a sector of the economy, productivity, competition, jobs, the
391 environment or the public health and safety of the state or a sector of the state.

392 **LOCAL EMPLOYMENT IMPACT STATEMENT**

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

399 **PUBLIC COMMENT**

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

404 **31 TAC §675.2**

405 **STATUTORY AUTHORITY**

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

409 §675.2 Exportation and Importation of Waste

410 § 675.21 Exportation of Waste to a Non-Party State for Disposal

411 §675.21(a) Permit Required - No person shall export any low-level radioactive waste
412 generated within a party state for disposal in a non-party state unless the Commission has
413 issued an export permit allowing the exportation of that waste pursuant to this rule.

414 §675.21(b) Petition Required - A generator or group of generators proposing to export
415 low-level radioactive waste to a low level radioactive waste disposal facility outside the
416 party states shall submit to the Commission a petition for an export permit.

417 §675.21(c) Form of Petition - The petition shall be in writing and on a form promulgated
418 by the Commission and posted on the Commission's web page, or otherwise made
419 readily accessible to generators and to the public.

420 §675.21(d) Petition Fees –

421 §675.21(d)(1) Export Petition Application Fee - A non-refundable, application fee of
422 \$500 shall accompany the petition. Payments shall be made by check or money order,
423 made payable to the Texas Low Level Radioactive Waste Disposal Compact
424 Commission. No action shall be taken on any petition until fees are paid in full.

425 §675.21(d)(2). Export Petition Evaluation Fee. An export petition evaluation fee may be
426 assessed based on the actual time and expenses incurred in evaluating and acting on the
427 petition, if the expense exceeds the export petition application fee.

428 §675.21(d)(2)(A). The fee will be based on the actual cost of evaluating the petition and
429 may include, but not be limited to, these factors:

430 (i) staff expenses

431 (ii) supplies

432 (iii) direct and indirect expenses

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

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

435 §675.21(d)(2)(B). This fee will be due and payable within 30 days of issuance of fee bill.

436 §675.21(d)(2)(C). A petitioner may appeal the assessment of the fee by requesting a

437 public hearing before the Commission within 30 days of the assessment. Such hearing

438 shall be held as soon as practicable after the request, but no longer than 45 days after the

439 request is received by the Commission. The Commission's order shall be issued within

440 30 days after the hearing. If required by Commission order, payments are due within 30

441 days of the final order.

442 §675.21(e) Notice and Timing of Petition - A petitioner shall file an export petition with

443 the Commission and receive approval by the Commission prior to export. By certified

444 mail, the petitioner shall deliver to the Compact Facility operator a copy of the export

445 petition (and any supplements or amendments thereto) at the time of filing with the

446 Commission. Any comments by the Compact Facility operator on the export petition

447 shall be filed in writing with the Commission no later than 20 days after the date the

448 petition was received by the Commission. By certified mail, the Compact Facility

449 operator shall deliver to the petitioner a copy of all comments (and any supplements or

450 amendments thereto) submitted to the Commission at the time of filing with the

451 Commission. The Commission may distribute the export petition and Compact Facility

452 operator's comments to other interested parties for information and comment. The

453 Commission shall distribute the export petition and any comments received from the
454 Compact Facility operator, or others, to the members of the Commission, and distribute
455 comments from others to the Compact Facility operator and the petitioner.

456 §675.21(f) Review of Petition - After receiving the export petition and any comments that
457 have been made thereon, the Commission at a meeting held no sooner than 90 days or
458 later than 120 days after the date the export petition was filed with the Commission, shall
459 consider the export petition utilizing the following factors:

460 §675.21(f)(1). The volume of waste proposed for exportation, the type of waste proposed
461 for exportation, and the time period of the proposed exportation;

462 §675.21(f)(2) The policy and purpose of the Compact;

463 §675.21(f)(3). The availability of the Compact Facility for the disposal of the waste
464 involved;

465 §675.21(f)(4) The economic impact on the Host County, the Host State, and the Compact
466 Facility operator of granting the export permit;

467 §675.21(f)(5). The economic impact on the petitioner;

468 §675.21(f)(6). Whether the proposed disposal facility has authorization to import the
469 waste into the region in which the disposal is to take place;

470 §675.21(f)(7). The existence of unresolved violations pending against the petitioner, the
471 records of the regulatory agency that imposed the notice of violations, and any comments
472 by the regulatory agency;

473 §675.21(f)(8). Any relevant comments received from the Compact Facility, the petitioner,
474 the Host County, the Host State, or the public; and

475 §675.21(f)(9). Any other factor the Commission deems relevant to carry out the policy
476 and purpose of the Compact.

477 §675.21(g) Decision by the Commission - The Commission may take one of the
478 following actions on the export petition, in whole or in part: approve the export petition;
479 deny the export petition; or approve the export petition subject to terms and conditions as
480 determined by the Commission and as ultimately documented in the export permit.

481 §675.21(h) Terms and Conditions - The Commission may impose any terms or
482 conditions on the export permit reasonably related to furthering the policy and purpose of
483 the Compact and the Commission's Rules.

484 §675.21(i) Permit Duration, Amendment, Revocation, Renewal, Reporting, Assignment
485 and Fees-

486 §675.21(i)(1) An export permit shall be issued for the term specified in the permit and
487 shall remain in effect for that term unless amended, revoked, or canceled by the
488 Commission, or renewed or extended as authorized by the Commission for an additional
489 period of time.

490 §675.21(i)(2) The Commission may, through renewal or amendment of an export permit
491 for which prior written notice has been given to the permit holder and the Compact
492 Facility operator, add or delete requirements or limitations to the permit. The
493 Commission may provide a reasonable time to allow the existing permit holder to make
494 any changes necessary to comply with the additional requirements or limitations imposed
495 by the Commission.

496 §675.21(i)(3) Not later than October 31 of each calendar year, a person who holds an
 497 export permit shall file with the Commission a report describing the amount and type of
 498 waste exported in the period from September 1 to August 31. The form of the report shall
 499 be prescribed by the Commission and shall be available on the Commission's web site, or
 500 may be obtained at a location that will be posted on the Commission's website.

501 §675.21(i)(4) An Export Permit is not assignable or transferable to any other person.

502 §675.21(i)(5) Export Permit Fees – After the Compact Facility has been declared
 503 operational by the Commission, the following schedule of fees will apply to all exported
 504 waste:

505 §675.21(i)(5)(A) Schedule of Fees

506

| <u>VOLUME EXPORTED</u> | <u>FEE</u> |
|-----------------------------------|---|
| <u>0-999 cubic feet</u> | <u>[reserved]</u> |
| <u>1,000 – 9,999 cubic feet</u> | <u>[reserved]</u> |
| <u>10,000 – 99,999 cubic feet</u> | <u>[reserved]</u> |
| <u>>100,000 cubic feet</u> | <u>[reserved]</u> |
| | <u>MAXIMUM FEE NOT TO EXCEED [reserved]</u> |

507

508 §675.21(i)(5)(B) In addition to the export fees based on volume, an additional surcharge
 509 of [reserved] per milliCurie shall be assessed on :

510 §675.21(i)(5)(B)(i). Any low-level radioactive waste that exceeds 0.1 times the value in
511 Table 1 or that exceeds any value in Column 1, Table 2 in 10 CFR 61.55; or
512 §675.21(i)(5)(B)(ii). Any low-level radioactive waste shipment that is defined as a
513 highway route controlled quantity as set out in 49 CFR 173.403.

514 §675.21(i)(5)(C) Any amendment to an export permit approved by the Commission that
515 does not result in an increase in the volume of waste or contained radioactivity, and that
516 does not increase the surcharge amounts in § 5(B) above, shall be accompanied by a fee
517 of [reserved]. Amendments that result in an increase in volume or contained
518 radioactivity, or that result in an increase in the surcharge amounts in § 5(B) above, shall,
519 if approved by the Commission, be charged the same fee as a new export application for
520 the increase.

521 §675.21(i)(5)(D) The export permit fee shall be paid prior to the issuance of an export
522 permit by the Commission and shall be made by check or money order payable to the
523 Texas Low Level Radioactive Waste Disposal Compact Commission.

524 §675.21(j) Agreements to Export - Nothing in this Rule shall limit the authority of the
525 Commission to enter into agreements with the United States, other regional compact
526 commissions, or individual states for the exportation or management of low-level
527 radioactive waste. Nothing in this Rule shall be construed to prohibit the storage or
528 management of low-level radioactive waste by a generator, or its disposal pursuant to 10
529 C.F.R. § 20.302 (now 10 CFR §20.2002).

530 §675.21(k) Form of Export Permit - The Export Permit shall be on a form promulgated
531 by the Commission and posted on the Commission's website. The form may be amended
532 by the Commission from time to time.

533 §675.21(l) Definitions -Terms used in this Rule shall have the meaning ascribed to them
534 in the Compact.

535 **§675.22 Exportation of Waste to a Non-Party State for Management or Processing**
536 **and Return to the Party States for Management or for Disposal in the Compact**
537 **Facility.**

538 §675.22(a) Where the sole purpose of the exportation is to manage or process the material
539 for recycling or waste reduction and return it to the party states for disposal in the
540 compact facility, party state generators are not required to obtain an export petition;
541 however,

542 §675.22(b) The generator shall be required to notify the Commission of the export and
543 shall provide a final status of the waste upon its return. The report shall include the
544 following information:

545 §675.22(b)(1) The volume, physical form and activity of the waste exported;

546 §675.22(b)(2) The type of waste management employed at the waste management
547 facility;

548 §675.22(b)(3) The volume, physical form and activity of the waste returned to the party
549 state generator;

550 §675.22(b)(4) A certification by the generator that the waste has not been mixed or
551 comingled with low-level radioactive waste that was not generated in the party states; and

552 §675.22(b)(5) A certification by the generator that the waste has not experience a net
553 increase in radioactivity. Measurements shall be provided by the Generator to document
554 compliance with this requirement.

555 **§675.23 Importation of Waste from a Non-Compact Generator for Management or**
556 **Disposal**

557 §675.23(a) No petition for an agreement to import low-level radioactive waste for
558 disposal shall be accepted by the Commission:

559 §675.23(a)(1) At any time prior to the initial date of operation or at any time that the
560 Compact Facility is not operational or not able to receive waste.

561 §675.23(a)(2) Until the Compact Facility operator has provided to the Commission a
562 recommended total annual volume to be imported for disposal to the Compact Facility,
563 and the Commission, after notice and hearing, has approved that recommendation.

564 §675.23(b) Permit Required - No person shall enter into an agreement with any person,
565 state, regional body, or group of states for the importation of low-level radioactive waste
566 into the compact for management or disposal, unless the Commission has issued a permit
567 allowing the importation of that waste pursuant to this Rule.

568 §675.23(c) Agreement Required - No person shall import any low-level radioactive waste
569 for management or disposal that was generated in a non-party state unless the
570 Commission has entered into an agreement for the importation of that waste pursuant to
571 this rule.

572 §675.23(d) Form of Agreement - The form of the Agreement shall be promulgated by the
573 Commission and posted on the Commission's web site, or otherwise made readily
574 accessible to generators and to the public.

575 §675.23(e) Importation Agreement Fees –

576 §675.23(e)(1) Import Agreement Application Fee - An non-refundable, application fee of
577 \$500 shall accompany the proposed agreement. Payments shall be made by check or
578 money order made payable to the Texas Low Level Radioactive Waste Disposal Compact
579 Commission.

580 §675.23(e)(2) No action shall be taken on any proposed agreement until the requisite
581 fees are paid.

582 §675.23(e)(3) Import Agreement Evaluation Fee - When the proposed agreement is
583 reviewed and acted upon by the Commission, an additional, nonrefundable fee may be
584 assessed based on the actual time and expenses incurred in evaluating and acting on the
585 proposed agreement, if the expense exceeds the application fee. This fee shall be by
586 check or money order and made payable to the Texas Low Level Radioactive Waste
587 Disposal Compact Commission.

588 §675.23(e)(4) The fee will be assessed to recover the actual cost of evaluating the
589 proposed agreement and may consider, but not be limited to these factors:

590 (A) staff expenses

591 (B) supplies

592 (C) direct and indirect expenses

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

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

595 §675.23(e)(5) A petitioner may appeal the importation agreement application fee by
596 requesting a public hearing before the Commission within 30 days of the assessment of
597 the fee. Such hearing shall be held as soon as practicable, but no longer than 45 days
598 after the request. The Commission shall issue an order accepting or rejecting the
599 petitioner's claims within 30 days after the hearing. If a rejection is so ordered, payments
600 are due within 30 days thereafter.

601 §675.23(f) Notice and Timing of Agreement - A person shall file a proposed import
602 agreement with the Commission and receive approval by the Commission prior to the
603 proposed importation date. By certified mail, the petitioner shall deliver to the Compact
604 Facility operator a copy of the import agreement (and any supplements or amendments
605 thereto) at the time of filing with the Commission. Any comments by the Compact
606 Facility operator on the import agreement shall be filed in writing with the Commission
607 not later than 20 days after the date the proposed import agreement was received by the
608 Commission. By certified mail, the Compact Facility operator shall deliver to the
609 petitioner a copy of all comments (and any supplements or amendments thereto)
610 submitted to the Commission at the time of filing with the Commission. The Commission
611 may distribute the import agreement and Compact Facility operator's comments to other
612 interested parties for information and comment. The Commission shall distribute the
613 import agreement and any comments received from the Compact Facility or others to the
614 members of the Commission, and distribute comments from others to the Compact
615 Facility operator and the petitioner.

616 §675.23(g) Review of Proposed Agreement - After receiving the proposed import
617 agreement and any comments that have been made thereon, the Commission at a meeting
618 held promptly, but no sooner than 90 days or later than 120 days after the date the
619 proposed import agreement was filed with the Commission, shall consider the import
620 agreement utilizing the following factors:

621 §675.23(g)(1) The volume, type, physical form and activity of waste proposed for
622 importation;

623 §675.23(g)(2) The policy and purpose of the Compact;

624 §675.23(g)(3) The availability of the Compact Facility for the disposal of the waste
625 proposed to be imported;

626 §675.23(g)(4) The economic impact on the Host County, the Host State, and the Compact
627 Facility operator of entering into the import agreement;

628 §675.23(g)(5) The economic impact on the party proposing the import agreement;

629 §675.23(g)(6) Whether the Compact Facility operator has authorization to dispose of the
630 proposed waste;

631 §675.23(g)(7) The effect on the Compact Facility's total annual volume recommended
632 for importation;

633 §675.23(g)(8) The existence of unresolved violations pending against the non person
634 proposing to export the waste;

635 §675.23(g)(9) Any relevant comments received from the Compact Facility operator, the
636 person proposing to export the waste, the Host County, the Host State, the public; and

637 §675.23(g)(10) Any other factor the Commission deems relevant to carry out the policy
638 and purpose of the Compact.

639 §675.23(h) Decision by the Commission - The Commission may take one of the
640 following actions on the proposed importation agreement, in whole or in part: approve
641 the proposed agreement; deny the proposed agreement; or approve the proposed
642 agreement subject to terms and conditions as determined by the Commission.

643 §675.23(i) Terms and Conditions - The Commission may impose any terms or conditions
644 on the import agreement reasonably related to furthering the policy and purpose of the
645 Compact.

646 §675.23(j) Importation Agreement Duration, Amendment, Revocation, Renewal,
647 Reporting, Assignment and Fees

648 §675.23(j)(1) An importation agreement shall be issued for the term specified in the
649 agreement and shall remain in effect for that term unless amended, revoked, or canceled
650 by the Commission, or renewed or extended as authorized by the Commission for an
651 additional period of time.

652 §675.23(j)(2) The Commission may, through renewal or amendment of an importation
653 agreement for which prior written notice has been given to the permit holder and the
654 Compact Facility operator, add or delete requirements or limitations to the agreement.
655 The Commission may provide a reasonable time to allow the existing exporter and the
656 Compact Facility operator to make the changes necessary to comply with any additional
657 requirements imposed by the Commission.

658 §675.23(j)(3) An Import Agreement is not assignable or transferable to any other person.

659 §675.23(j)(4) Import Agreement Fees – After the Compact Facility has been declared
 660 operational, the following schedule of fees will apply to all imported waste:

661 §675.23(j)(4)(A) Schedule of Fees

662

| <u>VOLUME IMPORTED</u> | <u>FEE</u> |
|-----------------------------------|---|
| <u>0-999 cubic feet</u> | <u>[reserved]</u> |
| <u>1,000 – 9,999 cubic feet</u> | <u>[reserved]</u> |
| <u>10,000 – 99,999 cubic feet</u> | <u>[reserved]</u> |
| <u>>100,000 cubic feet</u> | <u>[reserved]</u> |
| | <u>MAXIMUM FEE NOT TO EXCEED [reserved]</u> |

663

664 §675.23(j)(4)(A)(i) In addition to the fees based on volume, an additional surcharge of
 665 [reserved] per milliCurie shall be assessed on any proposal to import:

666 §675.23(j)(4)(A)(i)(a) the following radioisotopes in any quantity: Tc-99, Np-237, Ra-
 667 226, C-14, H-3, I-129, Am-241, Cm-244,

668 §675.23(j)(4)(A)(i)(b) low-level radioactive waste whose radioactivity exceeds 0.1 times
 669 the value in Table 1 or that exceeds any value in Column 1, Table 2 in 10 CFR 61.55; or

670 §675.23(j)(4)(A)(i)(c) any low-level radioactive waste whose shipment must be defined
 671 as a highway route controlled quantity as set out in 49 CFR 173.403.

672 §675.23(j)(4)(A)(ii) Any amendment to an import agreement approved by the
673 Commission that does not result in an increase in the volume of waste or contained
674 radioactivity, or that does not increase the surcharges in §675.23(j)(4)(A) above, shall be
675 accompanied by a fee of [reserved]. Amendments that result in an increase in volume or
676 contained radioactivity, or that increase the surcharges in §675.23(j)(4)(A) above shall, if
677 approved by the Commission, be charged the same fee as a new import agreement for the
678 increase.

679 §675.23(j)(4)(A)(iii) The import agreement fee shall be paid prior to the issuance of an
680 import agreement by the Commission and shall be made by check or money order
681 payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

682 §675.23(k) The Compact Facility operator shall file with the Commission a Quarterly
683 Import Report describing the imported waste that was disposed under the Agreement
684 during the quarter by the Compact Facility, including the physical, radiological and
685 chemical properties of the waste. Each Quarterly Import Report will provide the
686 manifested volume and activity of each imported class of waste (A, B, and C, or in the
687 case of waste imported for management, Greater Than Class C), the state or other place
688 of origin, and the date(s) of waste disposal, if applicable. The Quarterly Report shall
689 provide this information for the imported waste disposed of during the most recent
690 quarter, as well as the cumulative information for imported waste managed or disposed of
691 in prior quarters under this Agreement. The Compact Facility also shall certify in each
692 Quarterly Import Report that each generator of imported waste was authorized to export
693 that type of waste from the region in which the waste was generated. The forms of the
694 Quarterly Import Report shall be prescribed by the Commission and shall be posted on

695 the Commission's website, or may be obtained at a location that will be posted on the
696 Commission's website.

697 §675.23(l) Agreements to Import - Nothing in this Rule shall be construed to prohibit the
698 storage or management of low-level radioactive waste by a generator, nor its disposal
699 pursuant to 10 C.F.R. § 20.2002.

700 §675.23(m) Form of Import Agreement - The import agreement shall be on a form
701 promulgated by the Commission and posted on the Commission's website. The form may
702 be amended by the Commission from time to time.

703 §675.23(n) Definitions -Terms used in this Rule shall have the meaning ascribed to them
704 in the Compact.