

Bryan W. Shaw, Ph.D., P.E., *Chairman*
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Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 27, 2014

Mr. Frank Marcinowski
Deputy Assistant Secretary for
Waste Management
Office of Environmental Management
U.S. Department of Energy
100 Independence Avenue, S.W.
Washington, D.C. 20585

Re: Proposal for an Authorized Federal Agreement Regarding Temporary Storage of certain Los Alamos National Labs and other limited waste to assist with recovery efforts at the Waste Isolation Pilot Project at the Waste Control Specialists LLC Storage and Processing Facility in Andrews County, Texas

Dear Mr. Marcinowski:

The Texas Commission on Environmental Quality (TCEQ) has considered the U.S. Department of Energy's (DOE) proposal to temporarily store certain waste at the Waste Control Specialists' Storage and Processing Facility (Texas Radioactive Material License RML 04100) and provides the below response.

First, the DOE recognizes the current license storage limit of one year (365 days from the initial date of receipt of waste on a per shipment basis) for storage and agrees to remove the Los Alamos National Lab (LANL) and other limited above ground waste from the Waste Isolation Pilot Project (WIPP), referred to in this letter as the DOE waste or waste, by the end of the applicable one-year limit.

Second, as discussed in our meeting, the DOE will provide to TCEQ: 1) regular updates regarding the status of the WIPP re-opening and, 2) a written plan for removal of the DOE waste that will be in storage no later than September 30, 2014.

Further, additional conditions for storage of the waste include:

- If the WIPP re-opens and can accept waste, the DOE must agree to promptly take the stored waste to the WIPP;
- If the WIPP is not re-opened or is subject to a significant delay in re-opening which requires storage beyond 365 days, the DOE must provide timely written notification, request additional time and address removal of the waste from the WCS site;

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- Prior to shipment any container integrity concerns must be resolved to the satisfaction of TCEQ;
- TCEQ must receive and approve of waste characterization prior to each individual waste shipment and under no circumstances will an exceedance of special nuclear material, as defined in 10 Code of Federal Regulations (CFR) Part 70, and as provided in License Condition (LC) 206, be received at the WCS site;
- In addition to TCEQ and WCS existing security requirements, the DOE will provide its security evaluation results to TCEQ for review and use by TCEQ inspectors prior to shipment; and,
- As discussed in our meeting, the DOE will only transport waste from LANL and waste above ground at the WIPP (to assist with recovery efforts).

Other key license provisions include the following:

- There must be available space for storage as set forth in the WCS license (LC 195);
- Curie, concentrations, and volume limits for storage may not be exceeded (LCs 5,6,7,8 at G.H.I., respectively, and LC 195.A.);
- Greater Than Class C waste disposal is not allowed under WCS license (LCs 5,6,7,8 at G.H.I., respectively, 9.A. and 11.P., 195 and 206);
- Transportation requirements must be met; however, compliance with federal transportation requirements does not qualify the DOE waste for interim storage within the meaning of WCS' license (LC 11.S.) because interim storage also requires that stored waste meet current or stated acceptance requirements for authorized disposal;
- WCS' license does not authorize the processing, treatment, storage or disposal of hazardous waste known as industrial hazardous waste in Texas – as opposed to mixed low-level and hazardous waste, which is authorized (LC 101, 187.E.); and,
- A copy of the authorized federal agency agreement must be mailed within seven days of execution and prior written approval of the agreement must be granted by the Executive Director prior to receipt of waste at the storage and processing facility (LCs 11.B., 186, 187, and 206).

TCEQ requests that the DOE consider the above terms and requirements and prepare an authorized federal agency letter agreement for my consideration after which, if approved, receipt of the DOE waste as described in this letter by WCS will be allowed. Importantly, if the DOE, after shipment of waste subsequently identifies that the waste is or will be non-compliant with any WCS license term or condition, the DOE shall provide prompt written notification to me for appropriate review and response.

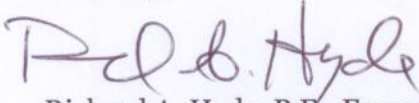
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TCEQ offers its assistance to the DOE and the State of New Mexico during this unexpected interruption of transuranic waste disposal operations between LANL and the WIPP. Should you have any further questions or comments regarding the above terms, please contact me at (512) 239-1317 or Mr. Charles Maguire, Director of the Radioactive Materials Division, at (512) 239-3508.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. A. Hyde". The signature is written in a cursive, somewhat stylized font.

Richard A. Hyde, P.E., Executive Director
Texas Commission on Environmental Quality

cc: Waste Control Specialists