

November 8, 2002

Ms. Ruth E. McBurney, CHP
Bureau of Radiation Control
Texas Department of Health
1100 West 49th Street
Austin, TX 78756-3189

Dear Ms. McBurney:

This is in response to your August 6, 2002 letter in which you requested input on the potential impacts of the petition for rulemaking from Waste Control Specialists, L.L.C. (WCS), particularly the impact on the national program (ongoing efforts on the clearance of solid materials) and possible issues with compatibility. By e-mail of September 5, 2002, you informed us that WCS had withdrawn their petition and that the Bureau of Radiation Control will continue to gather information and research the feasibility of such a rulemaking in the future. You stated that you would appreciate the Nuclear Regulatory Commission's (NRC) input on the issues in the original petition.

The petition appears to request that the rule be changed to exempt the disposal of certain materials from the current requirements in 10 CFR Part 61, or the States equivalent, if they are disposed of in a Resource, Conservation and Recovery Act (RCRA) Subtitle C disposal facility, and the risk from transportation and disposal from any specific licensee does not exceed 1 mrem per year to the average member of the critical group. The petition appears to request alternative disposal for a class of materials that are currently required to go to a Part 61 disposal site. Although NRC has not addressed this issue in a generic manner, NRC has approved, on a case-by-case basis, a limited number of transfers of exempt concentrations of materials for disposal at RCRA Subtitle C disposal cells. The States also have flexibility to approve case-by-case reviews for individual disposal requests. Addressing this issue through the promulgation of a rule presenting a different regulatory scheme for management of such a class of wastes may not be compatible with the current national regulatory framework provided in 10 CFR Part 20, Subpart K.

The Commission recently provided direction to the staff to initiate activities possibly leading to issuance of a rule addressing the release of solid materials, including conditional release. A copy of the Staff Requirements Memorandum (SRM) is enclosed. In addition, the NRC has been working with the Environmental Protection Agency (EPA) to address the issue of what radioactive materials can safely be disposed of at RCRA Subtitle C facilities. EPA is considering issuance of an Advanced Notice of Rulemaking.

Since this issue is being addressed at the national level both through the planned NRC activities and the interaction between NRC and EPA specific to this area, it may be prudent for

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Texas to delay any rulemaking at this time to allow for coordination with NRC and EPA on management and disposal of mixed waste.

If you have any questions, please contact me at 301-415-3340 or Dennis Sollenberger at 301-415-2819.

Sincerely,

/RA/

Paul H. Lohaus, Director
Office of State and Tribal Programs

Enclosure:
As stated

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October 25, 2002

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - SECY-02-0133 - CONTROL OF
SOLID MATERIALS: OPTIONS AND RECOMMENDATIONS
FOR PROCEEDING

The Commission has approved the staff's recommendation to proceed with an enhanced participatory rulemaking (Option 3b), subject to the comments provided below.

Considerable information collection efforts and numerous public workshops have been conducted on the control of solid materials issues and the staff should not duplicate these efforts but should utilize this information as a starting point to focus on potential solutions. Information and data from related national (e.g., ANSI and DOE) and international (e.g., IAEA and EC) efforts also should be used in this effort. Additional workshops should be limited to areas where substantial new input is needed. For issues which may not warrant a workshop, the staff should explore increased use of web-based methods for interacting with stakeholders.

The staff should give fair consideration to all alternatives in developing a proposed rule so that a broad range of alternatives is identified and can be weighed by the Commission. The staff should encourage stakeholder participation and involvement in consideration of alternative approaches (including the current case-by-case approach, clearance, a conditional clearance approach, and a policy of no-release). But, in approaching stakeholders on this issue, the staff should reiterate the Commission's continuing support for the release of solid material when there are no significant health consequences.

The staff should specifically explore and document the feasibility of conditional or restricted clearance. The staff should assume sufficient latitude to address multiple scenarios in discussions with stakeholders in order to determine the feasibility of options for conditional or restricted clearance that (1) are effective, (2) are reasonably possible to implement, and (3) would increase public confidence in the process.

As required by Public Law 104-113, the staff should weigh the pros and cons of either implementing or endorsing the ANSI N13.12 standard (10 μ Sv/yr (1 mrem/yr)) as the primary dose standard for clearance.

The staff should bypass the proposed Advance Notice of Proposed Rulemaking (ANPR) and move directly to development of a rulemaking plan and proposed rule. The staff should submit for Commissioner approval a proposed schedule for the rulemaking effort within 90 days of this SRM. This schedule should reflect the Commission's desire to complete this rulemaking within 3 years.

(EDO)

(SECY Suspense:

1/21/03)

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
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