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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

SENT ELECTRONIC MAIL

June 3, 2005

Marjorie McLaughlin
Health Physicist
U.S. Nuclear Regulatory Commission
Region 1 DNMS4
475 Allendale Road
King of Prussia, PA 19406-1415

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Dear Ms. McLaughlin:

The Texas Commission on Environmental Quality (TCEQ) received your electronic mail on May 2, 2005 containing the draft Environmental Assessment relating to the proposed disposal of waste from the Whittaker's facility near Greenville, PA at Waste Control Specialist's (WCS) facility in Texas, Docket No. 040-07455. Thank you for the opportunity to provide comments on the draft. Due to the potential major regulatory and policy implications related to the disposal of radioactive substances within Texas borders, it is important for the TCEQ to fully understand the impact of designating a TCEQ-permitted facility for new waste streams.

We also received a copy of your May 10, 2005 electronic mail exchange with Mr. Paul Lohaus, U.S. Nuclear Regulatory Commission (NRC), Office of State and Tribal Programs, concerning this draft Environmental Assessment (EA). We appreciate your clarification in that exchange of the following: "Concurrence on the EA from Texas is not approval of the licensee action to dispose of the material at WCS. Whittaker/WCS must seek this approval from the state separately."

The draft EA states that the WCS "disposal facility is licensed by the State of Texas to accept radioactive materials." WCS is not currently permitted or licensed for the disposal of radioactive materials, except those radioactive materials that are exempted from licensing requirements by the Texas Department of State Health Services (DSHS). The disposal facility in question is a Resource Conservation and Recovery Act (RCRA) disposal facility subject to a permit issued by the TCEQ. There seems to be confusion between requirements and conditions related to the RCRA permit issued by the TCEQ and the separate radioactive material storage and processing license issued by the DSHS. The license issued by the DSHS does not include disposal authorization nor does it provide conditions related to the RCRA permit. It should be noted that the Department license and the RCRA permit are issued under different regulations and jurisdictions with distinct requirements for management and disposal of waste.

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The Texas regulation, in Title 30 Texas Administrative Code (TAC) Section 336.203, provides that no person shall dispose of radioactive material unless that person has a license from the TCEQ, or an exemption from the DSHS under Texas Health and Safety Code Section 401.106(a). Although Waste Control Specialists is not currently licensed for the disposal of radioactive material, DSHS rule in 25 TAC §289.251(d)(1) does state a person is exempt from licensing that *receives, possesses, uses, or transfers* source material in which the source material is by weight less than 0.05% of the mixture, compound, solution, or alloy. This exemption language is a matter of compatibility category "B", which requires Agreement States to have essentially identical language to NRC regulations in state rules. Therefore, the 0.05% exemption language, or essentially identical language, exists in rule in all states, not just Texas.

The draft EA also states in several places that the purpose for requesting the downblending of radioactive materials on the Whittaker site is to meet Waste Acceptance Criteria of the WCS disposal facility. The Texas rule at 30 TAC § 336.229 prohibits the dilution of material to meet exemption levels. That Texas rule states the following: "No person shall reduce the concentration of radioactive constituents by dilution to meet exemption levels established under the Texas Health and Safety Code, Chapter 401, §401.106, or change the waste's classification or disposal requirements. Radioactive material that has been diluted as a result of stabilization, mixing, or treatment, including, but not limited to, Resource Conservation and Recovery Act (RCRA) Land Disposal Restrictions (LDR) treatment, or for any other reason, shall be subject to the disposal regulations it would have been subject to prior to dilution." If the action of downblending, or dilution, is being proposed for meeting an exemption level established in Texas regulations, then the waste would be subject to the disposal regulations of the pre-diluted waste stream and require a license from the TCEQ for its disposal.

Based on the review of the draft EA and NRC regulations regarding radioactive material defined as source material, it is unclear why a specific site in Texas, some 2,000 miles from the point of generation, is named for the proposed disposal of this material if the NRC is considering allowing the downblending, or dilution, of source material. The exemption of source material under 0.05% by weight is a matter of compatibility in Agreement States so that this criteria is not unique to Texas rule. It could be assumed that a decision to allow downblending to meet a required NRC regulation would not be conditionally based on a specific site named for ultimate disposition. If the downblending action is appropriate for a given waste stream, it would seem logical that any disposal facility that could accommodate the non-radiological characteristics of that waste stream would also be appropriate.

Texas has taken care to work together, amongst its state agencies with regulatory authority over radioactive material, to provide for the protection of public health and safety and the environment, while allowing for viable disposal options for waste generators. In order for regulatory agencies in Texas to implement state policies on radioactive substance disposal, it is imperative that waste

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streams generated in, and potentially entering our state, are understood and evaluated under those policies.

Thank you for consideration of TCEQ comments. If you would like to discuss this matter in more detail or need clarification regarding comments, please contact me at (512) 239-6731.

Sincerely,



Susan Jablonski
Technical Advisor
Agreement State Director
Texas Commission on Environmental Quality

CC Paul Lohaus, U.S. Nuclear Regulatory Commission
Bill Dornsife, Waste Control Specialists LLC
Ruth E. McBurney, Texas Department of State Health Services