

WASTE CONTROL SPECIALISTS LLC

June 30, 2005

Dr. Eduardo J. Sanchez, Commissioner
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756

Petition for the Adoption of a Rule

Dear Commissioner Sanchez:

Waste Control Specialists LLC (WCS) respectfully submits the attached petition for a change in the Department's rules contained in Title 25, Chapter 289 of the Texas Administrative Code. The principal effect of the change is to enable the Department to recognize exemptions granted by the U.S., Nuclear Regulatory Commission (NRC) or the U.S. Department of Energy (DOE) for very low activity radioactive materials without the need for unnecessary related rulemaking. Additionally, the proposed change provides for record keeping and environmental monitoring, thus ensuring effective oversight roles for the Department and for the Texas Commission on Environmental Quality (TCEQ). The proposed change:

- Is fully protective of the health and safety of the public and workers, and of the environment.
- Is in the national interest in that it will promote disposal over storage of this very low activity material thereby (1) reducing costs to generators; (2) reducing the potential for mishandling, or illegal dumping or recycling of these materials; and (3) promoting research on and application of medical diagnostic techniques (thereby promoting improved medical health care).
- Eliminates unnecessary duplicative regulation by the state.
- Comports with a fundamental principle of the NRC's Agreement State Program in that it would prevent disruption in the orderly pattern of regulation among the NRC, Texas, and other Agreement States by eliminating duplication and the potential for conflicts, in regulation.
- Will both reduce costs and generate revenue for Texas.

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SISP Review Complete

*STP-006 Template
RIDS- SP08*

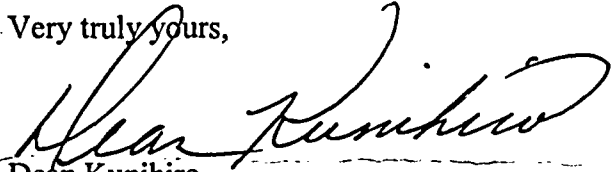
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This petition is submitted in accordance with Title 10, Section 2001.021 of the Texas Government Code and Title 1, Section 351.2 of the Texas Administrative Code.

I look forward to discussing this petition with you or your staff at your earliest convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dean Kunihiro", is written over a horizontal line.

Dean Kunihiro
Senior Vice President
Licensing & Regulatory Affairs

cc: Dan Eden
Ruth McBurney
Richard Ratliff
Paul Lohaus

PETITION FOR THE ADOPTION OF A RULE
Submitted to the Texas Department of State Health Services
By Waste Control Specialists LLC
June 30, 2005

1.0 Identification of Petitioner

Petitioner is Waste Control Specialists LLC (WCS). Petitioner's address is:

Waste Control Specialists LLC
Three Lincoln Centre
5430 LBJ Freeway, Suite 1700
Dallas, Texas 75240

Mr. George Dials is the President and Chief Operating Officer of WCS. Mr. Dean Kunihiro is the WCS Senior Vice President, Licensing and Regulatory Affairs.

2.0 Description Why Change Is Needed

WCS proposes to amend Title 25, Section 289.202(ff) ("General requirements for waste management") of the Texas Administrative Code (TAC), by adding a new subsection (4) that allows material that has been exempted from regulation by the United States Nuclear Regulatory Commission (NRC), the United States Department of Energy (DOE), the Texas Department of State Health Services (hereafter, the "Department"), or the Texas Commission on Environmental Quality (hereafter, the "Commission"), or cleared for disposal to alternate facilities by any of those entities, to be disposed of in a Resource Conservation and Recovery Act (RCRA) hazardous waste disposal facility.

This is consistent with the recent interest of both the United States Environmental Protection Agency (EPA) and the NRC in the development of a regulatory program to allow disposal of very low activity radioactive waste in hazardous waste landfills permitted under RCRA. See, for example, the discussion in the EPA's advance notice of proposed rulemaking, "Approaches to an Integrated Framework for Management and Disposal of Low-Activity Radioactive Waste: Request for Comment," which appeared in the Federal Register (FR) dated November 18, 2003.

WCS believes this rule will facilitate providing a safe and cost-effective disposal option for a limited category of very low activity radioactive waste that is currently being stored at NRC-licensed facilities or is being shipped across the United States at much greater expense. This proposed rule will allow such wastes to be disposed of in highly-regulated, RCRA-permitted hazardous waste landfills where potential risks related to transportation distances will be minimized.

Hazardous waste disposal facilities permitted by the Commission are robust landfills built and regulated under the EPA's RCRA regulations. The design criteria for these disposal facilities are equivalent to and exceed in some cases the design criteria for low-level radioactive waste disposal facilities. Hazardous waste disposal facilities licensed under Title 40 of the U.S. Code of Federal Regulations (CFR), Part 264 (40 CFR Part 264), provide at least as much protection of the public health and safety as a low-level radioactive waste landfill that is licensed under 10 CFR Part 61. Both the EPA and the NRC have acknowledged this comparability.

Both the NRC and the DOE exemption processes are based on an "as low as is reasonably achievable" ("ALARA") assessment that ensures that individual doses to the public from both transportation and disposal are maintained well below allowable levels, with a typical goal of less than 1 millirem per year (mrem/yr). Various national and international radiation standard setting bodies have recommended that 1 mrem/yr be accepted as a negligible individual dose. This dose translates to an annual mortality risk of about 5 times 10^{-07} (5E-07) deaths per year, which is considered by competent experts to constitute a trivial or negligible risk. Regulatory agencies do not normally regulate risks that are less than an annual risk of death of 1E-06. This standard is also used as the basis for ANSI/HPS N13.12-1999 ("Surface and Volume Radioactivity Standards for Clearance"), and a more detailed discussion of its appropriateness can be found in that standard.

The risk-based methodology proposed for use in this rulemaking is similar to the methodology in the short-lived disposal rule, 25 TAC 289.202(fff); the decommissioning rule, 25 TAC 289.202(ddd); and the Commission rules for alternate disposal, 30 TAC 336.513(c).

The proposed rule change will benefit generators of very low activity radioactive waste resulting in a significant cost savings since excessive security and monitoring requirements associated with the on-site storage of this very low activity material will be avoided. The availability of cost effective disposal will also facilitate the cleanup and decommissioning of sites where cleanup is currently problematic. Adoption of proposed changes to 25 TAC 289.202(ff) will provide benefits to the public of a health-protective, environmentally sound, and cost-effective alternative for the disposal of this very low activity radioactive waste.

3.0 Fiscal Impact

No additional State costs would be incurred by the proposed rule-making; instead, the proposed rule would result in cost savings to State government. Current Department rules do not provide for recognition of NRC granted exemptions nor do present rules or practices of the Department allow the granting of exemptions other than by rulemaking. The proposed rule would permit the Department to recognize applicable NRC granted exemptions. Such recognition would thereby preclude unnecessarily redundant actions by the Department. It would relieve the Department of the need to duplicate analyses undertaken by the NRC prior to granting exemptions. It would also avoid the need to undertake related rulemakings.

Avoiding these unnecessary actions would result in overall State government cost reductions. Exact savings are largely dependent on the number of requests for rulemakings related to NRC granted exemptions. Estimating the number of such requests would be highly speculative; therefore, no attempt has been made to estimate potential cost savings.

The proposed change has the potential to increase waste disposal volumes thereby increasing revenues to the State.

4.0 Statement of Authority to Make Proposed Change

Statutory authority for the promulgation of this rule is found at Title 5 of the Texas Health and Safety Code, Section 401.051, which provides for the Department to adopt rules and guidelines relating to the control of sources of radiation, and Section 401.106, which allows the Department by rule to exempt a source of radiation or a kind of use or user from licensing or registration requirements.

5.0 Text of Proposed Change

Insert the following after 25 TAC 289.202(ff)(3):

(4) Material contaminated with radioactive substances may be transferred for disposal to a hazardous waste disposal facility permitted by the Commission or its predecessor agency, if the conditions specified in (A)(i) to (A)(iv) below are met.

(A) The radioactive substances have been:

(i) Lawfully exempted from regulation or cleared for such disposal by:

(I) The U.S. Nuclear Regulatory Commission; or

(II) The U.S. Department of Energy; or

(III) The Department or the Commission; or

(ii) Authorized for disposal by transfer of the material to a hazardous waste disposal facility pursuant to 25 TAC 289.202(ff)(4); and

(iii) The receipt of the radioactive substances is accompanied by a waste profile form that identifies the radioactive substances, describes the physical and chemical form of the material, identifies the nature of the exemption or clearance, and is accompanied by a written certification from the waste generator that the radioactive substances have been exempted from regulation or cleared for disposal by one or more of the agencies listed in section (A)(i) above; and

(iv) The hazardous waste disposal facility operator inspects the shipments and confirms the accuracy of the waste profile form identified in section (A)(iii) above.

(B) The hazardous waste disposal facility operator must provide environmental monitoring for radioactive substances.

(C) The hazardous waste disposal facility operator shall maintain the records identified in Section (A)(iii) above.

(D) The radioactive substances must be treated and stabilized if required to meet the requirements of the Commission for disposal in the hazardous waste disposal facility.

(E) Nothing in this subsection shall be or is intended to be construed as a waiver of any RCRA permit condition or term, of any state or local statute or regulation, or of any federal RCRA regulation.