

American Ecology

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ATM

August 24, 2005

Albert Hawkins, Executive Commissioner
Texas Health and Human Services Commission
4900 North Lamar Blvd.
Austin, TX 78751

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STP

Dear Commissioner Hawkins,

RE: American Ecology Comments on Title 25, Chapter 289 Rulemaking
Petition Submitted June 30, 2005 by Waste Control Specialists (WCS)

The WCS rulemaking petition seeks to allow radioactive wastes generated by nuclear power plants and other activities subject to the federal Atomic Energy Act (AEA) that have been exempted from disposal regulation by the U.S. Nuclear Regulatory Commission (NRC) or the U.S. Department of Energy (DOE) to be disposed in Texas hazardous waste facilities with no prior review by the State of Texas. We believe prior state review is necessary, and do not support adoption of the proposed rule as drafted.

Our subsidiary US Ecology and its predecessors have managed radioactive materials since 1952. We operate a low-level radioactive waste disposal facility in Richland, Washington and also dispose of low-activity radioactive materials at hazardous waste facilities near Grand View, Idaho and (on a much more limited basis) Robstown, Texas.

Hazardous waste disposal facilities regulated under the Resource Conservation and Recovery Act (RCRA) clearly offer an environmentally sound means of disposal for certain radioactive materials. We also support the NRC case-by-case review process for exempting its licensees from requirements to dispose of specified wastes at sites licensed under the AEA. Our concern is the process under which this practice may take place.

Petitioner WCS argues that state agency reviews of NRC exempt waste are "unnecessary duplicative regulation by the state." We respectfully disagree. The NRC regulates the waste generator, but not the disposal facility. NRC lacks detailed knowledge of the permit requirements under which the disposal facility operates, the site's physical characteristics, the types and amounts of waste disposed in the past and environmental monitoring data on facility performance. Blanket pre-approval for disposal of any exempted AEA licensee waste, regardless of the amounts and types of waste involved,

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SISP Review Complete

would provide no basis for cumulative impact assessment. Blanket pre-approval would also be inconsistent with the case-by-case nature of NRC's determinations in our view.

In a December 16, 2004 letter to the Idaho Department of Environmental Quality, (Exhibit A, attached), the NRC explains that "The State of Idaho, since it has delegated authority under RCRA, is the responsible regulatory entity to determine if exempt AEA materials may be disposed of at a RCRA Subtitle C facility within its borders." Exhibit B (also attached) depicts the review and concurrence process for NRC exempt waste acceptance included as a RCRA permit condition for our Idaho hazardous waste facility.

Based on the above NRC policy statement, we believe the State of Texas should implement a suitable case-by-case review and concurrence process for disposal of NRC exempt waste within its borders. This State review would logically follow submittal by the facility operator of the following minimum information:

- Waste description (i.e. volume, physical form, radiological characteristics); and
- NRC exemption documentation and related NRC safety findings; and
- Impact assessment and related safety findings for the specific waste proposed.

While we have no plans to dispose NRC-exempted waste at our Texas hazardous waste facility, we do accept certain naturally occurring and other Texas-exempt radioactive material subject to Texas Commission on Environmental Quality (TCEQ) waste permit conditions. This requires a case-by-case review by the Texas Department of State Health Services. As set forth in the permit's Waste Analysis Plan, we provide data to the Radiation Safety Licensing Branch on the nature of the waste and await a State exempt status certification before accepting the waste. This case-by-case process, which has now been in place for more than five years, has not been burdensome for our company or our customers. We believe this is an appropriate process for Texas hazardous waste disposal facilities.

Please feel free to contact us if any questions arise or if we can otherwise be of service.

Sincerely,



Richard O'Hara
Environmental Health and Safety Director

cc: Commissioner Eduardo J. Sanchez, Department of State Health Services
Chairman Kathleen Hartnett White, TCEQ
✓ Paul Lohaus, Director, NRC Office of State and Tribal Programs
Stephen Romano, President and CEO, American Ecology
C. Russ Meyer, Corporate Health Physicist, American Ecology

Exhibit A: Idaho Permit Process for Acceptance of NRC Exempted Waste

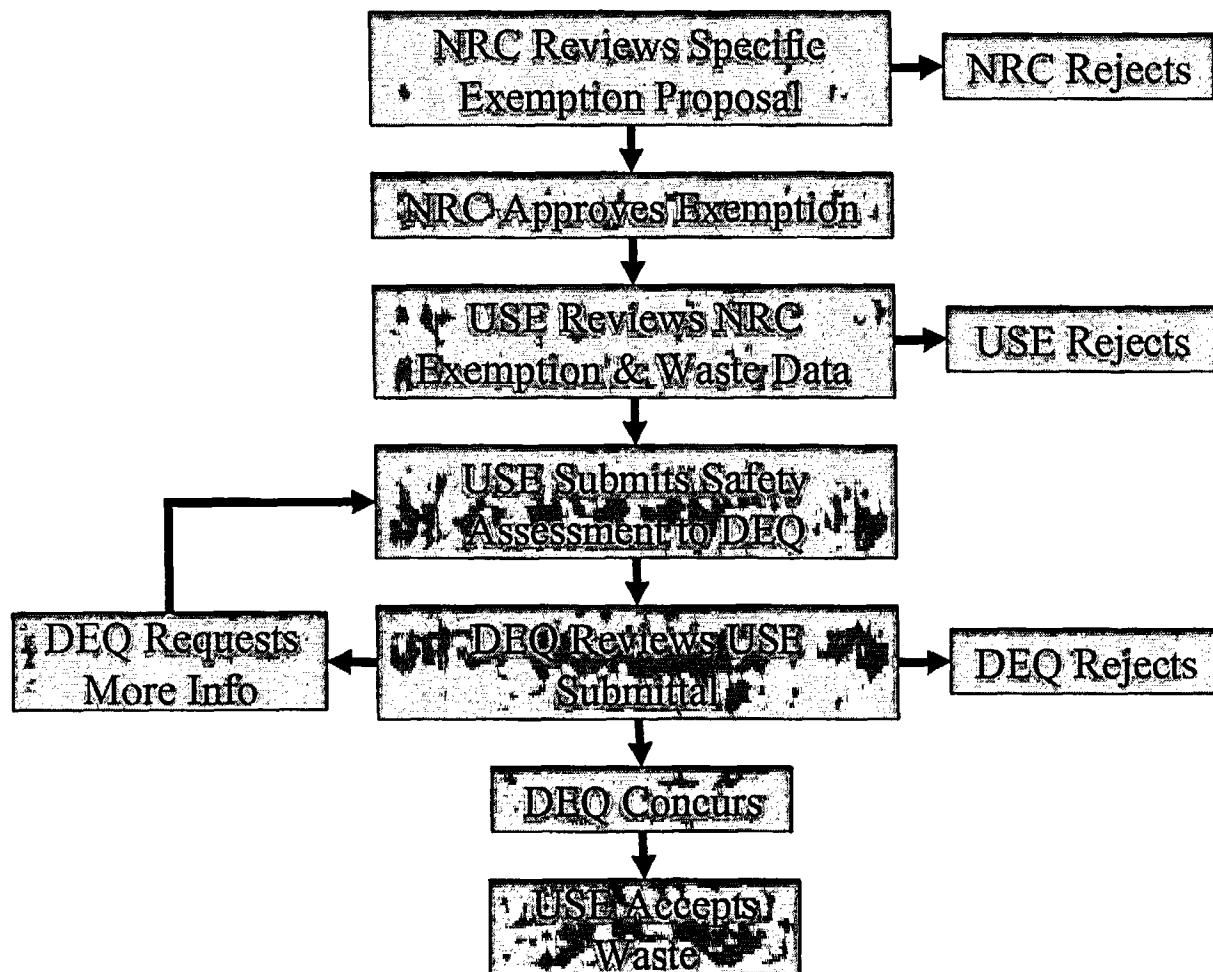


EXHIBIT B

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001



December 16, 2004

Ms. Toni Hardesty, Director
Idaho Department of Environmental Quality
1410 North Hilton
Boise, ID 83706

Dear Ms. Hardesty:

Idaho State staff requested clarification on the U.S. Nuclear Regulatory Commission's (NRC) position on Atomic Energy Act (AEA) materials that may be disposed of at Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste disposal facilities. The specific request for clarification was asked in light of US Ecology Idaho's (USEI) request for a modification to their RCRA permit.

Our response addresses only AEA materials that are subject to NRC jurisdiction (i.e., it does not apply to AEA materials under the U.S. Department of Energy (DOE) jurisdiction). All NRC, or Agreement State, licensed AEA materials must be disposed of in accordance with the requirements in 10 CFR Part 20, Subpart K - Waste Disposal (or equivalent Agreement State regulations) unless exempted from regulation by either the general exemptions in 10 CFR Parts 30 or 40 or through specific exemptions granted under 10 CFR 30.11, 40.14, or 70.17. Since the USEI Subtitle C facility does not have an NRC license, only AEA materials that have been exempted from further regulation may be eligible for disposal at a RCRA Subtitle C facility. The State of Idaho, since it has delegated authority under RCRA, is the responsible regulatory entity to determine if exempt AEA materials may be disposed of at a RCRA Subtitle C facility within its borders.

The Idaho staff request for clarification also asked whether an authorization for disposal of material issued under 10 CFR 20.2002 could also be listed on the RCRA permit as an exemption. For off-site disposal authorized under 10 CFR 20.2002, the NRC plans to include an explicit exemption for the materials to be disposed of off-site (such as at a Subtitle C facility). Therefore, the authorization for disposal under 10 CFR 20.2002 should not be listed in the RCRA subtitle C permit as an exemption. As noted above, the exemption issued could be under either the general or specific exemption provisions in 10 CFR. Agreement States may conduct similar reviews and approvals following their compatible regulations.

If you have any questions, please contact me at 301-415-3340 or Dennis Sollenberger at 301-415-2819 or dms4@nrc.gov.

Sincerely,

A handwritten signature in black ink that reads "Paul H. Lohaus".

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

cc: Doug Walker, INEEL Oversight and Radiation Control
Brian Monson, Hazardous Waste Program Manager, IDEQ