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American Ecology

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STP

January 5, 2006

Texas Department of State Health Services
Division of Regulatory Services
Radiation Group, PSQA
Attn: Mrs. Cindy Cardwell
1100 West 49th Street
Austin, Texas 78756-3189

Dear Mrs. Cardwell,

RE: Comments Opposing Proposed Amendments to *Texas Regulations for Control of Radiation* 25 Texas Administrative Code §289.202

We previously commented in opposition to two petitions submitted to the Texas Department of State Health Services (TDSHS) by Waste Control Specialists, LLC (WCS) addressing the same subject as the Proposed Amendments. Our earlier comments are attached to this correspondence. Commissioner Albert Hawkins denied the initial WCS petition on August 30, 2005, but asked TDSHS staff to contact interested stakeholders and seek a consensus on a possible rulemaking involving the waste exemption issues raised by WCS. We are disappointed that although we are an interested stakeholder, we were never contacted for such discussions.

WCS resubmitted its rulemaking petition in October, removing references to acceptance of DOE-exempt and TCEQ-exempt wastes and limiting non-reviewable exemptions to NRC-licensed wastes. In December, your department issued proposed revisions to 25 Texas Administrative Code §289.202 and requested comments within 30 days.

We do not believe that radioactive material specifically exempted by the Nuclear Regulatory Commission in accordance with 10 CFR Part 20.2002 should be generally exempted from State of Texas review. Rather, we believe subsequent State review and concurrence in disposal of specifically exempted material is sound public policy considering:

- The limited scope of the NRC exemption process,
- The State's detailed knowledge, as the responsible permitting agency, of disposal site conditions and historical practices; and
- The relatively small amount of time needed for State-level review.

STP-006 Template
RIDS: SP08

SISP Review Complete

The NRC has a well-defined process for specifically exempting waste streams produced by its licensees. These case-by-case decisions follow the licensee's submittal of data and a review by NRC staff. While NRC regulates the generator of the waste, it does not regulate the receiving disposal facility and therefore lacks detailed knowledge of facility permit requirements. Cumulative information on the types and amounts of material previously disposed is also lacking. Decommissioning wastes, for example, typically consist of soil, debris, concrete and other materials with low levels of radioactivity. However, the volumes are sufficiently large to contain significant quantities of radioactive material, particularly when multiple projects are involved.

We continue to recommend that the State require the following minimum information as part of a mandated State review and concurrence process:

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

State oversight of specific NRC exemptions is consistent with NRC's case-by-case decisions and need not be time consuming. In our experience, such reviews do not result in delays in customer service. At our state-regulated hazardous waste facility in Idaho, we obtain state concurrence on each specifically exempted NRC waste stream prior to disposal. At our State-regulated hazardous waste facility near Robstown, Texas, we provide data to the DSHS Radiation Safety Licensing Branch describing the nature of the waste, and await State exempt status concurrence before accepting the waste. These case-by-case processes have been in effect for more than five years at both facilities and have not been burdensome for our company or for our customers.

For these reasons, we respectfully oppose the proposed amendments to *Texas Regulations for Control of Radiation* 25 Texas Administrative Code §289.202 and recommend that TDSHS revise the proposed rulemaking to incorporate a State review and concurrence process.

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

Sincerely,

Richard E. O'Hara

Richard E. O'Hara
Director, Environmental Health and Safety

C: Commissioner Eduardo J. Sanchez, Department of State Health Services
Chairman Kathleen Hartnett White, TCEQ
Stephen Romano, President and CEO, American Ecology
Janet R. Schlueter, Director, NRC Office of State and Tribal Programs
C. Russ Meyer, Corporate Health Physicist, American Ecology
Albert Hawkins, Texas Health & Human Services Commission

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American Ecology

August 24, 2005

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

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 <u>not</u> 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,

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

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

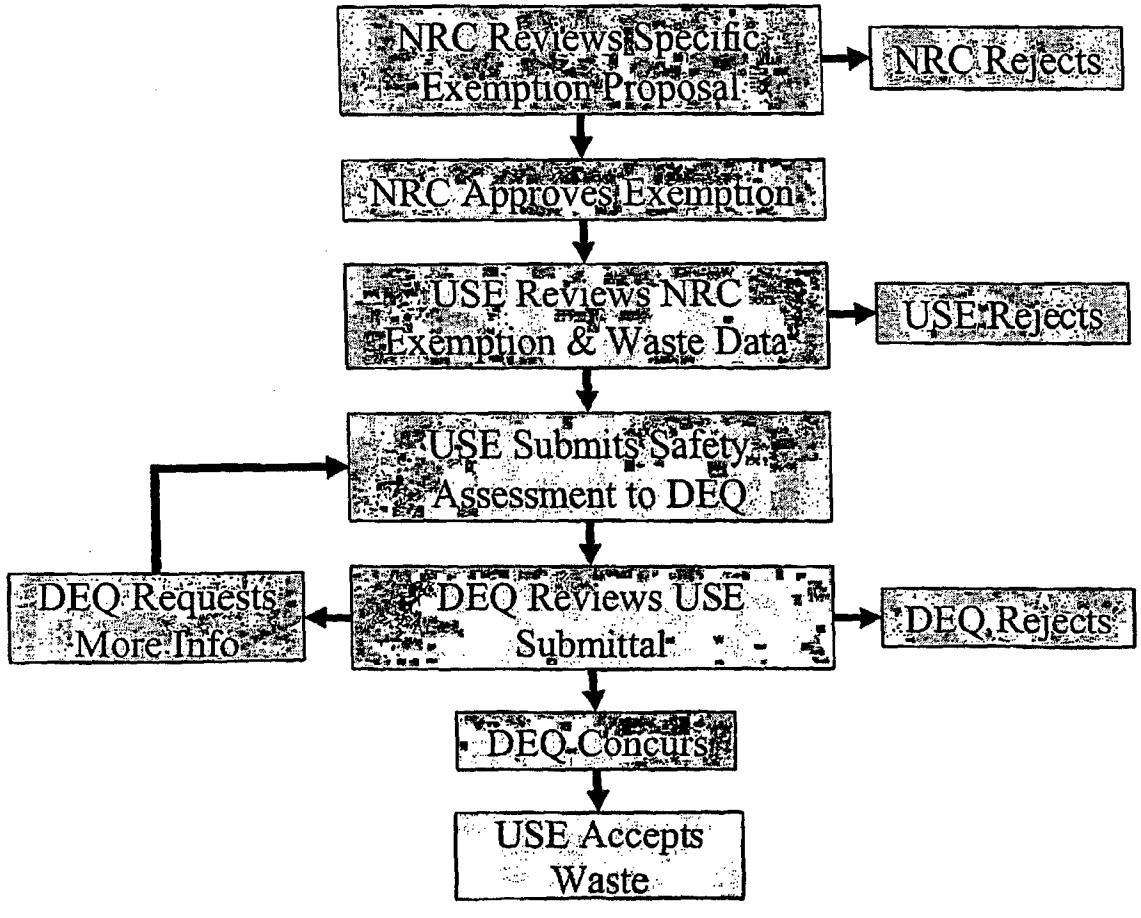

EXHIBIT B

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,

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

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

RECEIVED
SEP 19 2005

ALBERT HAWKINS
EXECUTIVE COMMISSIONER

September 12, 2005

Mr. Richard O'Hara
Environmental Health & Safety Director
American Ecology Corporation
Lakepoint Centre 1
300 East Mallard Dr., Suite 300
Boise, ID 83706

Dear Mr. O'Hara:

I have received your letter of August 24, 2005, concerning the petition for the adoption of a new rule submitted by Waste Control Specialists. On August 30, 2005, a letter was sent to Waste Control Specialists denying the petition as it was submitted and outlining the reasons for the denial.

I have asked Department of State Health Services staff to begin discussions regarding possible rulemaking involving the issues of waste exemptions raised by the petitioner. These discussions will include stakeholders interested in the issue. Should a consensus evolve regarding these issues, rulemaking will be started through the usual public rulemaking process.

I appreciate your comments on the petition. Please let me know if you have any questions or need additional information. Mr. Tom Valentine, Senior Policy Advisor, Office of Health & Human Services, is serving as the lead staff on this matter and can be reached at (512) 424-6529 or by e-mail at tom.valentine@hhsc.state.tx.us.

Sincerely,

Albert Hawkins

POST OFFICE BOX 13247 AUSTIN, TEXAS 78711 • (512) 424-6603 • 4900 NORTH LAMAR AUSTIN, TEXAS 78751

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American Ecology

November 22, 2005

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

Dear Executive Commissioner Hawkins:

RE: American Ecology Comments on Title 25, Chapter 289 Rulemaking Petition Submitted October 19, 2005 by Waste Control Specialists (WCS)

The referenced, revised rulemaking petition seeks to exclude the State from reviewing the disposal of radioactive material exempted from Atomic Energy Act regulation in Texas hazardous waste disposal facilities. Outside of a technical change limiting the non-reviewable exemptions to Nuclear Regulatory Commission (NRC) licensed waste, the revised petition has not changed its original policy intent to bypass State scrutiny.

American Ecology continues to take the position that State review and concurrence with NRC-exempt waste disposal at RCRA facilities is advisable. While NRC regulates the generator of the waste, it does not regulate the receiving disposal facility. The NRC, therefore, lacks both detailed knowledge of facility permit requirements and cumulative information on the types and amounts of material previously disposed at the site. Decommissioning wastes, for example, typically consist of soil, debris, concrete and other materials with low levels of radioactivity. The volumes are sufficiently large to contain significant quantities of radioactive material, particularly if multiple projects accumulate at one disposal site.

We continue to recommend that the State require the following minimum information as part of a review and concurrence process:

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

We further note that the Texas Commission on Environmental Quality (TCEQ) recently modified the WCS permit to require Department of State Health Services (DSHS)

concurrence with disposal of materials exempted by rule under 25 TAC 289.251 and 10 CFR Parts 30 and 40. It would be inconsistent to allow materials exempted by the NRC on a case-by-case basis to be disposed of without DSHS concurrence when the State RCRA permit requires DSHS concurrence for disposal of generally exempted materials.

Finally, we draw your attention to the following excerpt from the Atomic Energy Act of 1954 as amended, which references state authority to regulate NRC exempt waste:

> **Sec. 276. State Authority to Regulate Radiation Below Level of Regulatory Concern of Nuclear Regulatory Commission.**
> 42 USC 2023. (a)293 IN GENERAL.–No provision of this Act, or of the Low-Level Radioactive Waste Policy Act, may be construed to prohibit or otherwise restrict the authority of any State to regulate, on the basis of radiological hazard, the disposal or off-site incineration of low-level radioactive waste, if the Nuclear Regulatory Commission, after the date of the enactment of the Energy Policy Act of 1992 exempts such waste from regulation.

In conclusion, a review and concurrence process offers Texas the opportunity to make its own determination, based on its own evaluation of the radiological hazards present and the in-state facility where NRC-exempt waste disposal is proposed to take place. As the operator of a permitted hazardous waste disposal facility in Texas, we recommend that the State proceed accordingly.

Sincerely,

Richard E. O'Hara

Richard E. O'Hara
Director, Environmental Health and Safety

C. 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

DEC 0 8 2005

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

ALBERT HAWKINS
EXECUTIVE COMMISSIONER

December 5, 2005

Mr. Richard E. O'Hara
Director, Environmental Health and Safety
American Ecology Corporation
Lakepoint Centre 1
300 East Mallard Drive, Suite 300
Boise, ID 83706

Dear Mr. O'Hara:

I am in receipt of your letter dated November 22, 2005, commenting on the petition that was filed by Waste Control Specialists on October 19, 2005, requesting a change in the rules contained in Title 25, Chapter 289.202 of the Texas Administrative Code to recognize exemptions for radioactive waste materials granted by the U.S. Nuclear Regulatory Commission. Your comments will be considered in the decision on this petition.

Please let me know if you have any questions or need additional information. Tom Valentine, Senior Policy Advisor, is serving as the lead staff on this matter and can be reached at 512-424-6529 or by e-mail at tom.valentine@hhsc.state.tx.us .

Sincerely,

Albert Hawkins

P. O. Box 13247 • Austin, Texas 78711 • 4900 North Lamar, Austin, Texas 78751