

December 5, 2013

MEMORANDUM TO: Project File

FROM: Nishka Devaser, Project Manager **/RA/**  
Low-Level Waste Branch  
Environmental Protection and Performance  
Assessment Directorate  
Division of Waste Management  
and Environmental Protection  
Office of Federal and State Materials  
and Environmental Management Programs

SUBJECT: SUMMARY OF U.S. NUCLEAR REGULATORY COMMISSION  
TELECONFERENCE WITH THE STATE OF TEXAS  
COMMISSION ON ENVIRONMENTAL QUALITY REGARDING  
AGREEMENT STATE AUTHORITY AND WASTE CONTROL  
SPECIALISTS LLC

On November 12, 2013, representatives from the U.S. Nuclear Regulatory Commission (NRC) and the State of Texas Commission on Environmental Quality (TCEQ) participated in a phone call to discuss a question TCEQ posed to the NRC regarding a proposal from Waste Control Specialists LLC (WCS) to amend the WCS radioactive materials license No. R04100 (RML R04100). The proposal was to have TCEQ further expand the definition of "In transport" of Special Nuclear Material (SNM) in License Condition 11.Q of RML R04100.

In an August 15, 2013 email from TCEQ to NRC, TCEQ asked whether the State of Texas, as an Agreement State, has the authority to approve the WCS proposal or does such authority reside with the NRC.

In the subject meeting, staff responded to TCEQ's question. The NRC response was that TCEQ would not have the authority to regulate the materials at the WCS facility if the new definition were to be put in place. Details of the staff's conclusion are in the enclosure. No follow-up actions resulted from the call. NRC and TCEQ resolved the questions fully. The enclosure summarizes the discussion.

Docket No.: 70-7005

Enclosure: Meeting One-pager

CONTACT: Nishka Devaser, FSME/DWMEP  
(301) 415-5196

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In the subject meeting, staff responded to TCEQ's question. The NRC response was that TCEQ would not have the authority to regulate the materials at the WCS facility if the new definition were to be put in place. Details of the staff's conclusion are in the enclosure. No follow-up actions resulted from the call. NRC and TCEQ resolved the questions fully. The enclosure summarizes the discussion.

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# Meeting One-Pager

## Definition of "In Transit" Discussion

### Pertaining to the Waste Control Specialists, LLC Disposal Facility in Andrews, TX

Used during November 12, 2013 Phone Call

#### WCS Proposal

Due to limitations on possession of Special Nuclear Material (SNM) at one of the sites at Waste Control Specialists, LLC (WCS), when receiving a group of packages, WCS can only bring one package off the railcar at a time. They must put the package in the trench before taking another one off the railcar.

WCS is proposing that TCEQ (the State of Texas) make the following revision to the definition of "in transport" to authorize the transfer to SNM-bearing waste into the disposal unit provided that the transfer is in compliance with all DOT regulations:

*"LC-11.Q. In transport - Radioactive and mixed wastes containing special nuclear material (SNM) received by the Licensee within the controlled area or any rail spurs controlled by the Licensee and conveyed to the facility by truck or rail is "in transport" and not possessed as long as the waste containers remain on the delivery conveyance or is transported to the disposal unit in compliance with all U.S. Department of Transportation (DOT) regulations for transport of that waste. Furthermore, waste that is transported to the disposal unit must be placed in a safe disposal configuration as specified in written procedures that have been approved by the TCEQ and disposed of within 24 hours from receipt. Waste received by the Licensee may be in transport for up to 14 days. If weather or another unexpected event prevents the disposal of such waste on the day it is removed from the conveyance, that waste shipment may be placed again "in transport" for up to two days if placed onto the delivery conveyance in a manner that satisfies all DOT regulations for transport."*

This alteration would allow a package to be in transit as long as it is on "a conveyance." Under the proposed language, WCS could move multiple packages from the railcar to a truck or rail to be moved over to the landfill and then move the packages in one at a time. In order to stay within their limits, they just refer to the packages that have been moved onto a conveyance on their site as "in transit" until they dispose of them.

#### Question from TCEQ:

Does Texas have the authority to allow what's being proposed or would it reside in the NRC's purview?

#### NRC Response

Based on review of the details associated with WCS' request, NRC staff finds that TCEQ does have the authority to make the proposed change to the definition of "in transit" in the WCS license. However, based on NRC's understanding of the WCS proposal, since WCS would be in possession of more than a critical mass of SNM, jurisdiction would shift back to NRC from the point that the packages are removed from the initial conveyance (i.e., the rail spur) until disposed of<sup>1</sup>. As such, WCS will need an NRC license to possess greater than critical mass amounts of SNM or an exemption.

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<sup>1</sup> Per 10 CFR 150.11, an NRC Agreement State is authorized to regulate facilities that possess SNM in quantities up to a critical mass.