



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

September 23, 2016

Mr. Rod Baltzer
President and CEO
Waste Control Specialists LLC
P.O. Box 1129
Andrews, TX 79714

SUBJECT: RESPONSE TO REQUEST FOR POSSESSION TIME EXTENSION IN THE U.S.
NUCLEAR REGULATORY COMMISSION EXEMPTION ORDER CONDITION
8.B.4 AT WASTE CONTROL SPECIALISTS LLC (CAC NO. L00904)

Dear Mr. Baltzer:

On March 28, 2016, Waste Control Specialists LLC (WCS) sent a letter to the U.S. Nuclear Regulatory Commission (NRC) requesting relaxation of Condition 8.B.4 of the currently effective NRC Order. WCS requested permission to possess U.S. Department of Energy (DOE) Los Alamos National Laboratory (LANL) Waste at the WCS Low-Level Waste Site (WCS Site) near Andrews, Texas, until December 23, 2018. The publicly available part of the WCS request is available in the NRC's Agencywide Documents Access and Management System (ADAMS) as Accession Number ML16095A361.

Beginning in 2001, the NRC has issued one initial Order (see ADAMS Accession No. ML030130085 (2001 Order) and three superseding Orders (see ADAMS Accession Nos. ML042650361 (2004 Order), ML092810374 (2009 Order), and ML14238A268 (2014 Order)) granting WCS exemptions from the NRC regulatory requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 70 "Domestic Licensing of Special Nuclear Material" to possess Special Nuclear Material (SNM). Each Order has allowed WCS to possess greater than a critical mass of SNM, as defined in 10 CFR 150.11, "Critical Mass," without first obtaining a Part 70 license from the NRC. The currently effective NRC Order (2014 Order) to WCS is dated December 3, 2014, and is available in ADAMS as Accession No. ML14238A268. The 2014 Order contains conditions that allow WCS to possess and store the LANL Waste at two locations at the WCS Site without first obtaining an NRC Part 70 license. The LANL Waste is transuranic waste with SNM that originated from LANL and which is destined for disposal at the DOE Waste Isolation Pilot Plant (WIPP) Facility in New Mexico. Currently, DOE transuranic waste may only be disposed at the WIPP Facility. The DOE closed the WIPP Facility after a radiation release event in February 2014. The DOE has not re-opened the WIPP Facility at this time.

Order Condition 8.B.4. of the 2014 NRC Order states, "WCS is allowed to possess the LANL Waste for a maximum of 2 years." The NRC did not base the 2-year possession time limit for the LANL Waste on any safety concerns with a longer possession time. Rather, the NRC basis for the 2-year possession time limit with respect to the LANL Waste was:

- The NRC staff did not believe that the WIPP Facility would reopen within 1 year;
- NRC staff wanted a definite possession time specified in the Order; and

- NRC staff's understanding at that time was the WIPP Facility would reopen within 2 years.

Condition 11 of the 2014 Order states that, "The Director of the Office of Nuclear Material Safety and Safeguards (or designee), may, in writing, relax or rescind any of the above conditions upon demonstration by WCS of good cause." WCS requested the relaxation of the possession time limit for the LANL Waste until December 23, 2018, because:

- The WIPP Facility is not scheduled to reopen before December 2016 and therefore, the relaxation of the LANL Waste possession date is necessary to allow compliant and safe storage of such waste until a final disposition plan is approved and can be implemented.
- If NRC agrees to change the LANL Waste possession date to December 23, 2018, then WCS will seek a similar extension of the LANL Waste possession date from the Texas Commission on Environmental Quality, who regulates the WCS Site via a State License.

The NRC sent a letter on June 6, 2016, to WCS (see ADAMS Accession No. ML16147A050) asking WCS to provide any available information that could impact the safety basis described in the NRC's Safety Evaluation Report (see ADAMS Accession No. ML14230A804) for the current Order related to storage of the LANL Waste at the WCS Site. On June 15, 2016, WCS sent a response to the NRC (see ADAMS Accession No. ML16173A125) indicating that WCS did not have any new information that could impact the safety basis.

The NRC staff reviewed the WCS submittals and determined that:

- The 2014 NRC Order to WCS contains conditions that allow the LANL Waste to be safely and securely possessed and stored at the WCS Site.
- Under the NRC Order, WCS is responsible for the safe and secure possession of radioactive material at the WCS Site. The Order also requires WCS to notify the NRC in the following situations:
 - Condition 8.B.6: "WCS shall keep NRC informed of the status of the DOE investigation of the WIPP incident. If DOE determines that some of LANL waste at WCS was similar to the waste that DOE determines to have contributed to the WIPP incident, then WCS will notify the NRC."
 - Condition 9: "WCS shall notify the NRC, Region IV office within 24 hours if any of the above Conditions are violated. A written notification of the event must be provided within 7 days."
 - Condition 10: "WCS shall obtain NRC's approval prior to changing any activities associated with the above Conditions."
- By letter dated June 15, 2016, WCS confirmed that there was no new information that changed the safety basis for the 2014 Order.
- Condition 8.B.4 of the NRC Order that allowed WCS to possess the LANL Waste for a maximum of 2 years, was not based on any safety aspects and there has been no change to the safety basis for storage of the waste since issuance of that Order.

- Condition 11 of the NRC Order allows the Office of Nuclear Material Safety and Safeguards (NMSS) Director, or designee, to relax or rescind any of the Order Conditions in writing upon demonstration by WCS of good cause.
- The LANL Waste will need to be possessed at WCS for more than 2 years because the WIPP Facility will not reopen before December 2016.

Based on the above, the NRC staff determined that WCS demonstrated good cause in satisfying Condition 11 requirements of the NRC's 2014 Order such that the NMSS Director can relax Order Condition 8.B.4 to allow WCS to possess the LANL Waste until December 23, 2018. This letter reflects the NMSS Director's relaxation of the 2-year possession time limit in Order Condition 8.B.4 and the new date of December 23, 2018, will be included in the next superseding NRC Order to WCS.

If you have any questions, then please contact Mr. Harry Felsher of my staff. Mr. Felsher can be reached at (301) 415-6559 or by e-mail at Harry.Felsher@nrc.gov.

Sincerely,

/RA/

Marc L. Dapas, Director
Office of Nuclear Material Safety
and Safeguards

Docket No. 070-7005

cc: Charles Maguire, Director
Texas Commission
on Environmental Quality

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Based on the above, the NRC staff determined that WCS demonstrated good cause in satisfying Condition 11 requirements of the NRC's 2014 Order such that the NMSS Director can relax Order Condition 8.B.4 to allow WCS to possess the LANL Waste until December 23, 2018. This letter reflects the NMSS Director's relaxation of the 2-year possession time limit in Order Condition 8.B.4 and the new date of December 23, 2018, will be included in the next superseding NRC Order to WCS.

If you have any questions, then please contact Mr. Harry Felsher of my staff. Mr. Felsher can be reached at (301) 415-6559 or by e-mail at Harry.Felsher@nrc.gov.

Sincerely,

/RA/

Marc L. Dapas, Director
Office of Nuclear Material Safety
and Safeguards

Docket No. 070-7005

cc: Charles Maguire, Director
Texas Commission
on Environmental Quality

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ADAMS Accession No.:

ML16097A260 (Pck.)

ML16097A265 (Ltr.)

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