



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

September 26, 2016

EA-14-166

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

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION RECORDS INSPECTION,
WASTE CONTROL SPECIALISTS LLC

Dear Mr. Baltzer:

This letter refers to the records inspection regarding Waste Control Specialists LLC (WCS) conducted by U.S. Nuclear Regulatory Commission (NRC) staff from June 2014 to October 2014. The purpose of the records inspection was to determine whether WCS was in compliance with the regulation and NRC Order NRC-2009-0283 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML092810374) requirements related to movement of containers containing waste.

Based on the results of this records inspection, one apparent violation was identified and is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The apparent violation involves WCS movement of waste to a location not authorized in a Part 70 license or covered by the exemption granted in the NRC 2009 Order. The failure to comply with the regulatory or Order requirements is significant because it resulted in the NRC not being able to conduct its regulatory responsibilities to ensure that the activities did not pose a significant risk to the public or environment. The apparent violation is listed in Enclosure 1. Enclosure 2 summarizes the basis for the apparent violation.

The circumstances surrounding these apparent violations, the significance of the issues, and the need for lasting and effective corrective action were discussed with WCS during a telephonic exit meeting on September 26, 2016. Based on the information obtained during the investigation, records inspection, and telephonic exit meeting, it may not be necessary to conduct a pre-decisional enforcement conference in order to enable the NRC to make an enforcement decision.

In addition, since your facility has not been the subject of escalated enforcement actions and based on our understanding of your corrective action, a civil penalty may not be warranted in accordance with Section 2.3.4 of the Enforcement Policy. The final decision will be based on you confirming on the license docket that the corrective actions previously described to the NRC staff have been or are being taken.

As discussed with you, the NRC has not made a final determination that the violations occurred, or that enforcement action will be taken against WCS. Since the NRC has not made a final determination in this matter, a Notice of Violation is not being issued at this time. In addition, please be advised that the characterization of the apparent violations may change as a result of further NRC review.

Based on the results of our investigation and records inspection, the NRC staff understands that WCS moved the waste to an unauthorized location in an effort to ensure the internal temperature of the waste did not exceed a 130 °F threshold and attempted to mitigate any potential risk to public health and safety. In making its final enforcement decision, the NRC will consider this information.

Before the NRC makes its enforcement decision, we are providing you an opportunity to: (1) within 30 calendar days of the date of this letter, respond to the apparent violation(s) addressed in this letter, or (2) within 10 calendar days of the date of this letter, request a Pre-decisional Enforcement Conference (PEC). The NRC is particularly interested in WCS' perspectives on why earlier communications regarding WCS' attempt to mitigate the rising temperature of the waste did not occur and why notification of WCS' intention to move the waste to a configuration not covered by the NRC 2009 Order did not occur prior to the waste movement. If you decide to request a PEC, contact Mr. Richard Chang at 301-415-5888 within 10 calendar days of the date of this letter. A PEC should be held within 30 calendar days of the date of this letter.

If you choose to provide a written response, it should be clearly marked as a "Response to Apparent Violations in NRC Office of Investigation Report 4-2016-006; EA-14-166" and should include: (1) the reason for the apparent violation or, if contested, the basis for disputing the apparent violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) the date when full compliance will be achieved. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. Additionally, your response should be sent to the NRC's Document Control Center, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; with a copy mailed to Andrea Kock, Deputy Director, Division of Decommissioning, and Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards, 11555 Rockville Pike, Rockville, MD 20852, within 30 days of the date of this letter. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision.

If you choose to request a PEC, the conference will afford you the opportunity to provide your perspective on these matters and any other information that you believe the NRC should take into consideration before making an enforcement decision. The decision to hold a PEC does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This may include information to determine whether a violation occurred and whether willfulness is involved, information to determine the significance of any violation, and information related to any corrective actions taken or planned. For each apparent violation, you should be prepared to address: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent violation; (2) the corrective steps that have been taken and the results achieved; and (3) the corrective steps that will be taken to avoid further violations. You may reference previously docketed correspondence, if the correspondence adequately addresses the required response. If a PEC is held, it will be open for public observation and the NRC will issue a press release to announce the time and date of the conference.

R. Baltzer

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In presenting any corrective actions, you should be aware that the promptness and comprehensiveness of the actions will be considered in assessing any civil penalty for the apparent violation. The guidance in the enclosed excerpt from NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," may be helpful (Enclosure 3).

In accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure(s), and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's ADAMS, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. Any information forwarded to NRC should be clearly labeled on the first page with the case reference number: EA-14-166.

Should you have any questions, please contact Mr. Richard Chang of my staff at (301) 415-5888.

Sincerely,

/RA/

Andrea Kock, Deputy Director
Division of Decommissioning, Uranium
Recovery, and Waste Programs
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. Apparent Violation
2. Basis of Apparent Violation
3. NRC Information Notice 96-28

NRC Docket No. 70-7005

cc: State of Texas

In presenting any corrective actions, you should be aware that the promptness and comprehensiveness of the actions will be considered in assessing any civil penalty for the apparent violation. The guidance in the enclosed excerpt from NRC Information Notice 96-28, "SUGGESTED GUIDANCE RELATING TO DEVELOPMENT AND IMPLEMENTATION OF CORRECTIVE ACTION," may be helpful (Enclosure 3).

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/RA/

Andrea Kock, Deputy Director
 Division of Decommissioning, Uranium
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DISTRIBUTION:

See next page

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Letter to R. Baltzer from A. Kock dated September 26, 2016

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION INVESTIGATION REPORT NO.
4-2016-006 AND RECORDS INSPECTION, WASTE CONTROL SPECIALISTS

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Apparent Violation

Title 10, *Code of Federal Regulations* (10 CFR), Part 70.3 requires, “No person subject to the regulations in this part shall receive title to, own, acquire, deliver, receive, possess, use, or transfer special nuclear material except as authorized in a license issued by the Commission pursuant to these regulations.”

NRC-2009-0283 “Order Modifying Exemption from 10 CFR Part 70” issued to Waste Control Specialists (WCS) on October 20, 2009, grants an exemption to the requirements of 10 CFR 70.3, under certain conditions. These conditions state, in part, that WCS store material only in the Treatment, Storage and Disposal Facility, including the storage pad outside the building.

Contrary to the above, WCS moved the waste to a location not authorized in a Part 70 license or covered by the exemption granted in the U.S. Nuclear Regulatory Commission (NRC) 2009 Order. Specifically, on June 12, 2014, WCS began moving 73 Standard Waste Box containers of waste from the storage pad outside of the Treatment, Storage and Disposal Facility building (an approved location under the 2009 Order) into the Federal Waste Disposal Facility (a location not approved in the 2009 Order), and did not obtain a license under 10 CFR 70.3 nor obtain NRC approval (either in writing or via emergency verbal approval) prior to moving the waste outside of an approved location in the 2009 Order.

Basis of Apparent Violation

The U.S. Nuclear Regulatory Commission (NRC) issued an Order to Waste Control Specialists (WCS) (most recent: 2009 NRC, ML092810374) that grants an exemption from certain NRC regulations in Title 10, *Code of Federal Regulations* (10 CFR), Part 70, "Domestic Licensing of Special Nuclear Material." The Order exempts WCS from certain NRC regulations and permitted WCS, under specified conditions, to possess waste containing special nuclear material (SNM) in greater quantities than specified in 10 CFR Part 150, "Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274," at WCS's storage and treatment facility in Andrews County, Texas, without obtaining an NRC license pursuant to 10 CFR Part 70.

Staff conducted a records review from June 2014 to October 2014 to determine whether WCS was in non-compliance with regulatory and NRC Order NRC-2009-0283 requirements related to a June 2014 movement of containers containing waste. An investigation was initiated on December 14, 2015 by the NRC to determine whether apparent violations identified in the records inspection may have been willful.

In April of 2014 WCS began receiving waste packages containing transuranics from the Los Alamos National Laboratory (LANL). The waste was sent to WCS for temporary storage. The waste was stored at the WCS Treatment, Storage and Disposal Facility. WCS was informed by U.S. Department of Energy (DOE) that some of the waste sent from LANL could, under certain conditions, react and potentially cause an incident similar to what occurred at DOE Waste Isolation Pilot Plant facility. On May 2, 2014, DOE provided information to WCS that identified that some of the waste packages sent to WCS were similar to packages that DOE was aware of that had previously experienced excessive heating. WCS had 73 out of 193 Standard Waste Boxes (SWB) potentially affected. On May 21, 2014, to isolate the potentially affected waste packages from other waste that did not pose a hazard, WCS started to move the 73 SWB's to an outside storage pad, single stacked the SWB's and add thermal monitoring to the packages. The storage pad was located in an area within the scope of the 2009 Order issued by NRC to WCS. On May 30, 2014, DOE provided additional information to WCS that the waste packages should not be allowed to reach specified internal temperatures. On June 5, 2014, WCS measured internal temperatures greater than the specified temperature on 8 waste packages. On June 6 and June 7, 2014, WCS also measured the internal temperatures greater than the specified temperature on 3 additional waste packages. WCS implemented mitigated measures to cool the waste packages.

On June 12, 2014, WCS informed NRC management that certain waste packages in WCS possession were experiencing elevated temperatures, that temperature controlling measures had not been successful, and that the safest and most immediate option to control the temperature was to backfill the large overpacks with pea gravel, move the overpacks into the Federal Waste Disposal Facility and cover the overpacks with sand. NRC management informed WCS that the proposed measures described would not be covered under the exemption authorized by the 2009 Order, and informed WCS that NRC needed additional time to

evaluate the situation before a decision could be reached regarding NRC approval of the proposed measures.

On June, 12, 2014, WCS began implementing the proposed measures and initiated movement of the waste packages into the FWF. At the point that the waste was moved out of the location approved in the Order, WCS would have required an NRC license pursuant to 10 CFR Part 70, since it no longer met the exemption issued by the Order, and it exceeded Special Nuclear Material quantities specified in 10 CFR Part 150, so it did not fall within the WCS license issued by Texas.

NRC INFORMATION NOTICE 96-28

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
WASHINGTON, D.C. 20555

May 1, 1996

NRC INFORMATION NOTICE 96-28: SUGGESTED GUIDANCE RELATING TO
DEVELOPMENT AND IMPLEMENTATION OF
CORRECTIVE ACTION

Addressees

All material and fuel cycle licensees.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this information notice to provide addressees with guidance relating to development and implementation of corrective actions that should be considered after identification of violation(s) of NRC requirements. It is expected that recipients will review this information for applicability to their facilities and consider actions, as appropriate, to avoid similar problems. However, suggestions contained in this information notice are not new NRC requirements; therefore, no specific action or written response is required.

Background

On June 30, 1995, NRC revised its Enforcement Policy, to clarify the enforcement program's focus by, in part, emphasizing the importance of identifying problems before events occur, and of taking prompt, comprehensive corrective action when problems are identified. Consistent with the revised Enforcement Policy, NRC encourages and expects identification and prompt, comprehensive correction of violations.

In many cases, licensees who identify and promptly correct non-recurring Severity Level IV violations, without NRC involvement, will not be subject to formal enforcement action. Such violations will be characterized as "non-cited" violations as provided in Section VI.A of the Enforcement Policy. Minor violations are not subject to formal enforcement action. Nevertheless, the root cause(s) of minor violations must be identified and appropriate corrective action must be taken to prevent recurrence.

If violations of more than a minor concern are identified by the NRC during an inspection, licensees will be subject to a Notice of Violation and may need to provide a written response, as required by Title 10 of the *Code of Federal Regulations* Part 2.201, addressing the causes of the violations and corrective actions taken to prevent recurrence.

Enclosure 3

In some cases, such violations are documented on Form 591 (for materials licensees) which constitutes a notice of violation that requires corrective action but does not require a written response. If a significant violation is involved, a pre-decisional enforcement conference may be held to discuss those actions.

The quality of a licensee's root cause analysis and plans for corrective actions may affect the NRC's decision regarding both the need to hold a pre-decisional enforcement conference with the licensee and the level of sanction proposed or imposed.

Discussion

Comprehensive corrective action is required for all violations. In most cases, NRC does not propose imposition of a civil penalty where the licensee promptly identifies and comprehensively corrects violations. However, a Severity Level III violation will almost always result in a civil penalty if a licensee does not take prompt and comprehensive corrective actions to address the violation.

It is important for licensees, upon identification of a violation, to take the necessary corrective action to address the noncompliant condition and to prevent recurrence of the violation and the occurrence of similar violations. Prompt comprehensive action to improve safety is not only in the public interest, but is also in the interest of licensees and their employees. In addition, it will lessen the likelihood of receiving a civil penalty. Comprehensive corrective action cannot be developed without a full understanding of the root causes of the violation.

Therefore, to assist licensees, the NRC staff has prepared the following guidance, that may be used for developing and implementing corrective action. Corrective action should be appropriately comprehensive to not only prevent recurrence of the violation at issue, but also to prevent occurrence of similar violations. The guidance should help in focusing corrective actions broadly to the general area of concern rather than narrowly to the specific violations. The actions that need to be taken are dependent on the facts and circumstances of the particular case.

The corrective action process should involve the following three steps:

1. Conduct a complete and thorough review of the circumstances that led to the violation.
Typically, such reviews include:

Interviews with individuals who are either directly or indirectly involved in the violation, including management personnel and those responsible for training or procedure development/guidance. Particular attention should be paid to lines of communication between supervisors and workers.

Tours and observations of the area where the violation occurred, particularly when those reviewing the incident do not have day-to-day contact with the operation under review. During the tour, individuals should look for items that

may have contributed to the violation as well as those items that may result in future violations. Reenactments (without use of radiation sources, if they were involved in the original incident) may be warranted to better understand what actually occurred.

Review of programs, procedures, audits, and records that relate directly or indirectly to the violation. The program should be reviewed to ensure that its overall objectives and requirements are clearly stated and implemented. Procedures should be reviewed to determine whether they are complete, logical, understandable, and meet their objectives (i.e., they should ensure compliance with the **current** requirements). Records should be reviewed to determine whether there is sufficient documentation of necessary tasks to provide a record that can be audited and to determine whether similar violations have occurred previously. Particular attention should be paid to training and qualification records of individuals involved with the violation.

2. Identify the root cause of the violation.

Corrective action is not comprehensive unless it addresses the root cause(s) of the violation. It is essential, therefore, that the root cause(s) of a violation be identified so that appropriate action can be taken to prevent further noncompliance in this area, as well as other potentially affected areas. Violations typically have direct and indirect cause(s). As each cause is identified, ask what other factors could have contributed to the cause. When it is no longer possible to identify other contributing factors, the root causes probably have been identified. For example, the direct cause of a violation may be a failure to follow procedures; the indirect causes may be inadequate training, lack of attention to detail, and inadequate time to carry out an activity. These factors may have been caused by a lack of staff resources that, in turn, are indicative of lack of management support. Each of these factors must be addressed before corrective action is considered to be comprehensive.

3. Take prompt and comprehensive corrective action that will address the immediate concerns **and** prevent recurrence of the violation.

It is important to take immediate corrective action to address the specific findings of the violation. For example, if the violation was issued because radioactive material was found in an unrestricted area, **immediate** corrective action must be taken to place the material under licensee control in authorized locations. After the immediate safety concerns have been addressed, timely action must be taken to prevent future recurrence of the violation. Corrective action is sufficiently comprehensive when corrective action is broad enough to reasonably prevent recurrence of the specific violation as well as prevent similar violations.

In evaluating the root causes of a violation and developing effective corrective action, consider the following:

1. Has management been informed of the violation(s)?

2. Have the programmatic implications of the cited violation(s) and the potential presence of similar weaknesses in other program areas been considered in formulating corrective actions so that both areas are adequately addressed?
3. Have precursor events been considered and factored into the corrective actions?
4. In the event of loss of radioactive material, should security of radioactive material be enhanced?
5. Has your staff been adequately trained on the applicable requirements?
6. Should personnel be re-tested to determine whether re-training should be emphasized for a given area? Is testing adequate to ensure understanding of requirements and procedures?
7. Has your staff been notified of the violation and of the applicable corrective action?
8. Are audits sufficiently detailed and frequently performed? Should the frequency of periodic audits be increased?
9. Is there a need for retaining an independent technical consultant to audit the area of concern or revise your procedures?
10. Are the procedures consistent with current NRC requirements, should they be clarified, or should new procedures be developed?
11. Is a system in place for keeping abreast of new or modified NRC requirements?
12. Does your staff appreciate the need to consider safety in approaching daily assignments?
13. Are resources adequate to perform, and maintain control over, the licensed activities? Has the radiation safety officer been provided sufficient time and resources to perform his or her oversight duties?
14. Have work hours affected the employees' ability to safely perform the job?
15. Should organizational changes be made (e.g., changing the reporting relationship of the radiation safety officer to provide increased independence)?
16. Are management and the radiation safety officer adequately involved in oversight and implementation of the licensed activities? Do supervisors adequately observe new employees and difficult, unique, or new operations?
17. Has management established a work environment that encourages employees to raise safety and compliance concerns?

18. Has management placed a premium on production over compliance and safety? Does management demonstrate a commitment to compliance and safety? Has management communicated its expectations for safety and compliance?
19. Is there a published discipline policy for safety violations, and are employees aware of it? Is it being followed?

This information notice requires no specific action or written response. If you have any questions about the information in this notice, please contact one of the technical contacts listed below.

Robert C. Pierson, Director
Division of Fuel Cycle Safety and Safeguards
Office of Nuclear Material Safety and Safeguards

Donald A. Cool, Director
Division of Industrial and Medical Nuclear
Office of Nuclear Material Safety and Safeguards

Technical contacts: (Updated as of November 22, 2005)

Maria E. Schwartz, Office of Enforcement
(301) 415-1888
[Internet:mes@nrc.gov](mailto:mes@nrc.gov)

Daniel J. Holody, RI
(610) 337-5312
[Internet:djh@nrc.gov](mailto:djh@nrc.gov)

Carolyn Evans, RII
(404) 562-4414
[Internet:cfe@nrc.gov](mailto:cfe@nrc.gov)

Steve Orth, RIII
(630) 810-4373
[Internet:sko@nrc.gov](mailto:sko@nrc.gov)

William Jones, RIV
(817) 860-8182
[Internet:wbj@nrc.gov](mailto:wbj@nrc.gov)