



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

January 18, 2017

EA-14-166

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

SUBJECT: WASTE CONTROL SPECIALISTS LLC - EXERCISE OF ENFORCEMENT
DISCRETION RELATED TO THE 2014 MOVEMENT OF WASTE TO A
LOCATION NOT AUTHORIZED IN A PART 70 LICENSE OR EXEMPTION

Dear Mr. Baltzer:

I am writing to inform you of the actions being taken by the U.S. Nuclear Regulatory Commission (NRC) regarding the apparent violation involving the June 2014 movement of waste to a location not authorized by a Title 10 of the *Code of Federal Regulations* (10 CFR) *Part 70* license or covered by the exemption granted in the NRC 2009 Order, and described in the NRC's September 26, 2016, letter to Waste Control Specialist LLC (WCS) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16217A233).

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, and was in accordance with the exemption granted in the 2009 Order.

On May 2, 2014, U.S. Department of Energy (DOE) provided information to WCS, which indicated that some of the waste packages sent to WCS were similar to packages that had previously experienced excessive heating, and that, under certain conditions, could react and potentially cause an incident similar to what occurred at the DOE Waste Isolation Pilot Plant facility. WCS had received 73 of the 193 Standard Waste Boxes (SWB) that were 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 added 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 3, 2014, the NRC and WCS held a teleconference regarding the 73 potentially affected packages. WCS informed the NRC staff that the 73 affected packages may experience excessive heating and discussed the need for near-term disposal. NRC management expressed concerns, in that the LANL waste packages were not permitted to be permanently disposed of at the Federal Waste Disposal Facility (FWF).

On June 5, 2014, WCS measured internal temperatures greater than the temperature of concern specified by DOE on 8 waste packages. On June 6 and 7, 2014, WCS also measured the internal temperatures greater than the specified temperature on 3 additional waste packages. WCS implemented mitigating 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 as follows: backfill the large overpacks with pea gravel, move the overpacks into the FWF and cover the overpacks with sand. NRC management informed WCS that the proposed measures, as described, would not be covered under the exemption authorized by the 2009 Order, and informed WCS that the 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 took actions that were not consistent with the Order conditions and no license existed to authorize storage of the material outside of the location specified in the Order. The quantities of special nuclear material greater than the 10 CFR Part 150 values are regulated by NRC and did not fall within the WCS license issued by Texas.

On July 18, 2014, WCS submitted a request to amend the Order to temporarily store special nuclear material in the FWF. NRC review determined that the request contained sufficient information to address the areas of concern raised by NRC on June 12, 2016. On December 3, 2014, WCS was issued a revised Order to approve the temporary storage locations.

The NRC staff has determined that from, June 12, 2014 to December 3, 2014, WCS was in apparent violation of 10 CFR Part 70, by moving waste to a location not authorized in either a 10 CFR Part 70 license or covered by the exemption granted in the NRC 2009 Order. Specifically, on June 12, 2014, WCS moved SWB containers from the storage pad outside of the Treatment, Storage and Disposal Facility building into the FWF, and did not request a modification to the NRC Order or obtain a license under 10 CFR 70.3.

This apparent violation of 10 CFR Part 70 was evaluated in accordance with the NRC Enforcement Policy, the current version of which is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. Based on its review of the applicable information, the NRC determined that a violation has occurred. The failure to obtain NRC approval prior to engaging in actions not authorized by license or Order is normally considered a Severity Level III violation pursuant to the Enforcement Policy. However, in consideration of the circumstances of this case, the NRC has determined that it is appropriate to exercise enforcement discretion in accordance with Section 3.5 of the Enforcement Policy, and to refrain from issuing an enforcement action. The circumstances supporting enforcement discretion are summarized below.

The NRC's September 26, 2016, letter indicated that the NRC was particularly interested in WCS's perspectives on why earlier communications with the NRC regarding WCS's attempts to mitigate the rising temperatures of the waste and notification of WCS's intent to move the waste did not occur. By letter dated October 26, 2016, (ADAMS Accession Number ML16307A122),

WCS responded to NRC's letter and provided its perspectives on these communications issues. The letter indicated that WCS believes that it proactively communicated with the NRC. WCS's response also noted that given the short timeframe of events, the potentially significant consequence if the packages failed, the lack of success of the multiple heat-mitigating strategies, and using best available information at the time, WCS had a reasonable concern that an urgent safety issue outside of its control existed. The NRC has considered WCS's response and recognizes the complexities of the situation and the communications surrounding it. Having considered these circumstances, the NRC agrees that WCS took actions that were appropriate to protect public health and safety.

The WCS letter also stated that there was possibly an ambiguity with the regulatory framework with the NRC Order process. The corrective actions taken by WCS include clarification of their understanding of the regulatory authorities. NRC notes, however, that any future confusion related to the regulatory authorities could be reduced by WCS requesting a 10 CFR Part 70 license covering these activities, and requesting termination of the existing Order. At bottom, and as WCS articulated in its response, given the unique circumstances of multiple regulatory jurisdictions, effective communication with the NRC (and other regulators, when appropriate) will continue to be paramount.

The NRC concludes the background information on the apparent violation is adequately addressed on the docket. In addition, WCS came into full compliance with requirements when its request for an amendment to the 2009 Order was granted in an amended Order that approved storage of the moved material at the new location within the FWF and issued on December 3, 2014. You are not required to respond to this letter unless the description herein does not accurately reflect your actions or your position. If you contest this action or its significance, you must provide a response within 30 days of the date of this letter, with the basis for your denial and/or corrected information, to the NRC, ATTN.: Document Control Desk, Washington, D.C. 20555-0001, with a copy to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

R. Baltzer

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In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's ADAMS. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions, please contact Gregory Suber at (301) 415-8087 or by e-mail at Gregory.Suber@nrc.gov.

Sincerely,

/RA/

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

Docket No.: 70-7005
cc: State of Texas

R. Baltzer

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If you have any questions, please contact Gregory Suber at (301) 415-8087 or by e-mail at Gregory.Suber@nrc.gov.

Sincerely,

/RA/

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

Docket No.: 70-7005
cc: State of Texas

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