



WASTE CONTROL SPECIALISTS

July 17, 2019

Mr. John Lubinski, Director
Office of Nuclear Materials and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C., 20555-0001

Also sent via e-mail: John.Lubinski@nrc.gov

SUBJECT: Waste Control Specialists' Concerns with Regulatory Issue Summary (RIS) 2016-11, "Requests to Dispose of Very Low-Level Radioactive Waste Pursuant to 10 CFR 20.2002"

Dear Mr. Lubinski,

I am writing to express Waste Control Specialists' (WCS) views on the Nuclear Regulatory Commission's (NRC) Regulatory Issue Summary (RIS) 2016-11 and resulting impacts on regulatory stability and efficiency in the area of disposal of very low-level radioactive waste (VLLW).

Please be aware that RIS 2016-11 and a subsequent 2018 NRC inspection of South Texas Project Nuclear Operating Company's (STPNOC) South Texas Project Units 1 and 2 and related NRC enforcement action (EA-18-137) have generated confusion among WCS utility customers. The RIS states that "any licensee's request for approval to dispose of licensed material under 20.2002, or the equivalent Agreement State regulations, must be submitted to the regulatory authority that issued the license for use of the radioactive material." Further, in an October 31, 2018 response to a STPNOC letter dated August 14, 2018, the NRC staff opined that "a licensee must receive approval of proposed procedures not otherwise authorized in the regulations to dispose of licensed material under 10 CFR 20.2002", and that "[t]his approval must come from the regulatory authority that issued the license for use of the radioactive material; in this case, that is the NRC."

The foregoing NRC statements are making some utility licensees reluctant to use WCS for VLLW disposal due to a misconception that those statements in RIS 2016-11 are applicable to the Texas Commission on Environmental Quality (TCEQ) regulatory process that governs the WCS VLLW disposal process. We remain confident that utility customers may continue to send Low-

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Level Radioactive Waste (LLRW) to WCS that, after being evaluated by WCS and ultimately determined to be exempt VLLW pursuant to TCEQ-approved criteria and procedures, can be disposed in WCS's RCRA cell in full compliance with federal and state laws and regulations.

Specifically,

- Federal law authorizes the State of Texas, as an NRC Agreement State, to license and regulate the disposal of Low-Level Radioactive Waste (LLRW) in Texas (AEA Section 274 Agreement – 1963, as amended in 1982).
- State law authorizes the TCEQ to license and regulate the receipt, processing, storage, and disposal of LLRW in Texas (THSC 401).
- The TCEQ has the legal authority to allow the disposal of exempt low activity radioactive waste at WCS' RCRA facility (30 TAC 336.5).
- The TCEQ has authorized WCS to dispose of exempted radioactive waste in its RCRA facility through WCS' Radioactive Material License (RML) R04100 (License Condition 192) and Hazardous Waste Permit HW-50358.
- The NRC regularly reviews Texas' Agreement State program under IMPEP and has determined that the Texas program is satisfactory.
- In the WCS VLLW process, transfer of LLRW from an NRC-licensed nuclear power reactor is shipped as licensed waste on NRC Forms 540/541, to an Agreement State radioactive materials licensee (RML) - WCS.
- Shipping and receipt of the licensed LLRW occurs before the waste is evaluated for exemption at WCS pursuant to TCEQ requirements. Therefore, the utility is not exempting waste itself or shipping exempt waste to WCS.
- The licensed LLRW is evaluated by WCS, and those wastes satisfying the TCEQ-approved exemption criteria under our RML (LC 192) are disposed as VLLW in the RCRA facility.

Additionally, states are not required under Agreement State Compatibility criteria to adopt a Section 20.2002 equivalent rule, and Texas has not done so. As a result, WCS must perform analytical measurements and/or radiation surveys to confirm that the waste meets the specific exemption criteria and standards in TCEQ RML 04100.

Therefore, it is our understanding and conclusion that RIS 2016-11 is not applicable to the exemption structure at the WCS facility, as any transfer of radioactive waste is accomplished before the waste is processed and evaluated for exemption. Thus, a utility need not obtain any NRC approval under 10 CFR 20.2002, because the exemption occurs separate from the transfer and acceptance of the waste for disposal. I respectfully request that the NRC confirm its agreement with this understanding of RIS 2016-11 in your response to this letter.

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We are always pleased to work with the NRC to enhance regulatory stability; promote efficiency for the licensees, Agreement States, and the NRC; and most importantly to ensure continued efficient disposal activities with a high degree of safety.

Sincerely,

A handwritten signature in black ink that reads "David S. Carlson". The signature is written in a cursive, flowing style.

David Carlson
President & COO
Waste Control Specialists

Cc: Electronic Copy Only

Steven West, Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital Programs

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