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EGAN & ASSOCIATES, P.C.

Counselors at Law

2300 N Street, N.W.
Washington, D.C. 20037
Telephone (202) 663-9200
Fax (202) 663-9066

January 5, 1998

William C. Reamer, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Mr. Reamer:

We appreciate your efforts in responding to our October 27, 1997 letter regarding Cs-137 contaminated emission control dust and other incident-related material. NRC has been helpful in pointing the way to a solution to this mixed waste disposal problem. While I don't think anything further from NRC is required at this point, I thought that I would take this opportunity to inform you of Waste Control Specialists' ("WCS") plans in this regard.

We have previously provided you with a copy of WCS proposed Texas rule on this subject. The Texas Department of Health ("TDH") has suggested the need for some revision, and WCS has withdrawn its proposed rule in the expectation that the TDH will prepare its own proposed rule and proceed to complete the necessary rulemaking expeditiously. I appreciate your comment that the Final Staff Technical Position ("STP") was not based on legal considerations, and does not address how Texas law may be used to implement the STP concept, should Texas choose to do so. We have discussed this matter with the TDH and we both agree that rulemaking is the best option.

We understood that the generator and possessor of the Cs-137 or other incident-related waste would need the approval of the NRC or agreement state (whichever has jurisdiction over the generator and possessor) to send the waste to the RCRA Subtitle facility, but perhaps we were not as explicit on the point as we might have been. This is required under 10 C.F.R. 20.2001, and counterpart agreement state regulations, and so additional rulemaking did not seem needed. Nevertheless, we will work with Texas in an effort to assure that no TDH rule will undercut the authority and responsibility of the NRC or state to protect public health and safety in the treatment, storage, and transfer of the waste prior to disposal.

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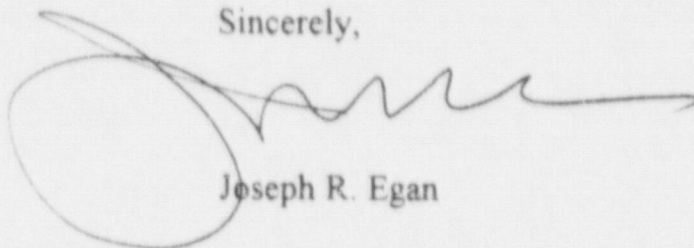
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Further, insofar as the unlicensed RCRA facility operator is concerned, we will make sure that it has the enforceable responsibility to comply with any needed radiological safety requirements applicable the receipt and disposal of the wastes. One purpose of our October 27, 1997, letter was to point out the advantage of state rulemaking (as opposed to a simple staff position) in achieving this purpose and fulfilling the disposal safety conditions of the STP. In essence, we hope to work with the TDH on a rule which (as your letter points out) does not implement the STP exactly as envisioned, since the STP was constrained by NRC's discretionary choice not to proceed to rulemaking on the subject. We hope instead to work with the TDH on a new state rule which, by focusing on the precise problem being addressed and taking advantage of the additional flexibility which rulemaking affords, will improve on the ability of the regulatory authority to assure that the underlying disposal safety premises for the STP are fully articulated and enforceable.

Finally, we understand that NRC staff takes no position (either supporting or rejecting) on the application of the one curie limit on a disposal cell basis. If we proceed in the direction of a rule which applies the one curie limit on a per cell basis, we understand the need to support this with the appropriate technical evaluation which demonstrates that the STP limits are not exceeded, taking into consideration the additional enforceable constraints which the rule may apply to the facility operator.

Thanks again for your help. If you have any questions, please call me or Don Ferraro of my staff at (202) 663-9056.

Sincerely,

A handwritten signature in dark ink, appearing to be 'Joseph R. Egan', with a large, stylized initial 'J'.

Joseph R. Egan

JRE/ec