



WASTE CONTROL SPECIALISTS

May 19, 2022

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William "Ike" White
Senior Advisor for the Office of Environmental Management
United States Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Re: Department of Energy (DOE) Los Alamos National Laboratory (LANL) transuranic (TRU) waste stored at Waste Control Specialists (WCS)

Dear Mr. White:

I am writing today to follow up on the May 10 letter from the Executive Director of the Texas Commission on Environmental Quality (TCEQ) to Deputy Secretary Turk relative to the continuing matter of the LANL TRU waste containers stored at WCS. Before these containers were shipped to WCS, your predecessor signed off on an Authorized Federal Agency letter (dated March 28, 2014) that committed to their removal from the WCS site and the State of Texas within one year. This action was initiated due to DOE and New Mexico concerns about the upcoming fire season and the fact that the February 2014 radiological event at the Waste Isolation Pilot Project (WIPP) had resulted in the temporary suspension of operations at that facility - the intended disposal site for these containers.

Eight years later, the WIPP facility has been the subject of intensive corrective action by DOE and reopened for shipments from various facilities in the DOE complex, yet 74 standard waste boxes (SWBs) of TRU material generated at LANL remain stored at the WCS facility. We appreciate the fact that a longer period of storage than was initially intended became necessary once the hazardous waste code for ignitability was attached to these containers and we continue providing their safe storage. That safe storage has been evidenced through a series of time limited license conditions and regulatory exemptions granted by TCEQ and the Nuclear Regulatory Commission (NRC).

Nonetheless, in December 2015, DOE and TCEQ entered an Agreed Order stipulating that:

18. Respondent, WCS and the TCEQ have agreed that, on the resumption of normal disposal operations at the WIPP, DOE will promptly initiate shipment of the TRU waste from the WCS facility to the WIPP in accordance with a plan submitted by Respondent to and approved by TCEQ.

Despite the fact that normal disposal operations have resumed at WIPP, the complete plan has not been submitted and shipment of the remaining 74 SWBs has not occurred.

The Agreed Order also stipulated that "within 60 days of the effective date of this Order" the Department would submit to TCEQ a written plan for the removal and handling of the LANL TRU waste that must include:

- i. Procedures for the handling, processing as needed, management, removal and transportation of the TRU waste from the WCS Facility, and procedures for management of the contents to ensure*

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that exposure to radiological components of the material are maintained as low as reasonably achievable;

- ii. Procedures for processing the 74 standard waste boxes of TRU waste bearing waste code D001, as necessary, to meet waste acceptance criteria or for transportation to an authorized recipient consistent with the requirement to ensure that exposure to radiological components of the material are maintained as low as reasonably achievable;"*
- iii. Procedures for updating the TCEQ no less than quarterly on the status of the WIPP resuming normal operations and the viability of other authorized disposal sites for the TRU waste;*
- iv. Procedures for removal and transportation of all TRU waste received at the WCS Facility from the DOE Facility from April 2, 2014 through November 20, 2014, to an authorized recipient once the WIPP is re-opened for resumption of TRU waste disposal operations; and*
- v. A schedule for implementing the Plan after it is approved by the Executive Director.*

As of the date of this letter, a complete response to the requirements of this Agreed Order has not been provided by DOE.

We recognize that recent progress has been made with DOE's tasking of WCS efforts to initiate preparations for the removal of the LANL TRU waste from its current location in the WCS Federal Waste Facility (FWF). As anticipated in the latest DOE plan, WCS is on track for submittal of a modification request to our Special Nuclear Material Exemption from the NRC that will allow movement of the SWBs to a special purpose surface facility that will allow for further examination, testing and preparation for shipment. This is necessary precedent to seeking a further license amendment from TCEQ. Notwithstanding this progress, a definitive pathway post removal and relocation, with a date certain for shipment out of Texas must be established.

As suggested in my August 21, 2019 letter to then Secretary Perry, the disparity between the federal government's aggressive and timely efforts to treat similarly implicated waste that was in storage at LANL and the material at WCS is notable and remains "a significant concern for WCS and our regulator and is an impediment to restoration of normal commercial operations." WCS is concerned that the patience of TCEQ will be exhausted absent a greater commitment by DOE to establish date certain milestones as repeatedly requested by the agency, and as most recently committed to by DOE in a March 31, 2020 letter.

I am also concerned that continued storage without a written plan for removal and in violation of the 2015 Agreed Order might well undermine the crucial fact that the material is being safely stored by WCS and may open the door to penalties against DOE.

I renew my urgent request that DOE devote the same level of attention to recovery in Texas as was applied at WIPP and fully resolve this situation. We stand ready to work with the Department and our Texas regulators to accomplish the mission.

Sincerely,



David S. Carlson
President and COO

CC: Toby Baker, Executive Director, Texas Commission on Environmental Quality
John Lubinski, Director, Office of Nuclear Material Safety and Safeguards, NRC