

**NUCLEAR REGULATORY COMMISSION**

**[EA-23-058; Docket No. 70-7005; NRC-2022-0093]**

**Waste Control Specialists LLC**

**Superseding Exemption Order**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Order; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing a new Order superseding a previously issued Order to Waste Control Specialists LLC (WCS) on December 3, 2014 (2014 Order), as supplemented by NRC letters to WCS from 2016 to 2022. The current and past NRC Orders are associated with an exemption from NRC regulations, which requires persons who own, acquire, deliver, receive, possess, use, or transfer Special Nuclear Material (SNM) to obtain an NRC license pursuant to the NRC requirements. The current action is in response to a request by WCS dated June 30, 2022. In the letter, WCS requested permission to: (1) move the U.S. Department of Energy (DOE) Los Alamos National Laboratory (LANL) Waste from the WCS Federal Waste Facility (FWF) disposal cell to the WCS Treatment, Storage, and Disposal Facility (TSDF) Bin Storage Area (BSA)-1 Enclosure; (2) prepare the LANL Waste for shipment in the TSDF BSA-1 Enclosure; and (3) temporarily store the LANL Waste in the TSDF BSA-1 Enclosure.

**DATES:** The Order is effective as of May 22, 2023.

**ADDRESSES:** Please refer to Docket ID **NRC-2022-0093** when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2022-0093**. Address questions about Docket IDs in Regulations.gov to Stacy Schumann; telephone: 301-287-3422; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the “For Further Information Contact” section of this document.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **NRC’s PDR:** You may examine and purchase copies of public documents, by appointment, at the NRC’s PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Harry Felsher, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6559; email: Harry.Felsher@nrc.gov.

**SUPPLEMENTARY INFORMATION:** The text of the Order is attached.

Dated: May 24, 2023.

For the Nuclear Regulatory Commission.

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John W. Lubinski, Director,  
Office of Nuclear Material Safety  
and Safeguards.

**Attachment 1 – Order**

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
Waste Control Specialists LLC	)	
P.O. Box 1129	)	Docket No. 70-7005; NRC-2022-
0093	)	
Andrews, Texas 79714	)	EA-23-058
	)	
	)	

ORDER EXEMPTING WASTE CONTROL SPECIALISTS LLC FROM THE  
REQUIREMENT TO OBTAIN A 10 CFR PART 70 LICENSE TO POSSESS CERTAIN  
TYPES OF SPECIAL NUCLEAR MATERIAL

Waste Control Specialists LLC (WCS) operates a site in Andrews County, Texas, that is licensed by the state of Texas to process and store certain types of radioactive material contained in low-level radioactive waste (LLRW) and mixed waste (MW) (waste that has both a hazardous component and a radioactive component) that is regulated under both the Resource Conservation and Recovery Act (RCRA) and the Atomic Energy Act (AEA), as amended. The WCS Site also disposes of RCRA hazardous waste, toxic waste under the Toxic Substances Control Act (TSCA), and naturally occurring radioactive materials. WCS requested by letter dated June 30, 2022, that the NRC modify the conditions of an existing exemption (granted by order in 2014) to allow greater operational authority with respect to material regulated by the NRC. This Order is being issued to grant WCS an exemption from the requirements of 10 CFR Part 70 to obtain a license to possess certain types of Special Nuclear Material (SNM) and to

perform the activities described below subject to the conditions in Section III of this Order.

## II

Under the AEA, as amended, the NRC can relinquish and a State can assume regulatory authority over radioactive material specified in an Agreement with NRC. In 1963, Texas entered into an Agreement and assumed regulatory authority over source, byproduct, and SNM less than critical mass.

On November 30, 1997, the State of Texas Department of Health (TDH) issued WCS a radioactive materials license (RML) to possess, treat, and store LLRW (RML R04971). In 1997, WCS began accepting RCRA and TSCA wastes for treatment, storage, and disposal. Later that year, WCS received a license from the TDH for treatment and storage of MW and LLRW. The MW and LLRW streams may contain quantities of SNM. In 2007, regulatory responsibility for RML R04971 was transferred to the Texas Commission on Environmental Quality (TCEQ). In September 2009, TCEQ issued RML R04100 to WCS for disposal of LLRW.

Section 70.3 of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 70, "Domestic Licensing of Special Nuclear Material," requires persons who own, acquire, deliver, receive, possess, use, or transfer SNM to obtain a license pursuant to the requirements of 10 CFR Part 70. The licensing requirements in 10 CFR Part 70 apply to persons in Agreement States possessing greater than critical mass quantities, as defined in 10 CFR 150.11, "Critical mass." However, pursuant to 10 CFR 70.17(a), "Specific exemptions," "the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the

regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.”

In September 2000, WCS requested an exemption from the licensing requirements in 10 CFR Part 70. On November 21, 2001, the NRC issued an Order to WCS (2001 Order) granting an exemption to WCS from certain NRC regulations and permitted WCS, under specified conditions, to possess waste containing 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 the WCS storage and treatment facility in Andrews County, Texas, without obtaining an NRC license pursuant to 10 CFR Part 70. The 2001 Order was published in the *Federal Register* (FR) on November 15, 2001 (66 FR 57489). The conditions specified in the 2001 Order were further described in the October 2001 Environmental Assessment (EA) and November 2001 Safety Evaluation Report (SER) that supported the 2001 Order.

By letters dated August 6, 2003, and March 14, 2004, WCS requested modifications to the 2001 Order which would allow it to use additional reagents for chemical stabilization of MW containing SNM. The NRC issued a superseding Order to WCS on November 4, 2004 (2004 Order). The 2004 Order changed the 2001 Order Conditions to allow WCS to use such chemical reagents as it deems necessary for treatment and stabilization of MW containing SNM, provided that the SNM mass does not exceed specified concentration limits. The 2004 Order was published on November 12, 2004 (69 FR 65468). The conditions specified in the 2004 Order were described in the October 2004 EA and October 2004 SER that supported the 2004 Order.

By letter dated December 10, 2007, WCS requested modifications to the 2004 Order to discontinue confirmation sampling upon receipt of waste that WCS verifies is adequately characterized by a waste generator to be uniform and which contains less than one-thousandth of the SNM concentration limits presented in Condition 1; and to meet the confirmatory sampling requirements of Condition 7 for sealed sources using surface smear surveys. The NRC issued a superseding Order to WCS on October 20, 2009 (2009 Order). The 2009 Order allowed WCS to discontinue waste generator and WCS confirmation sampling for waste that WCS verifies is adequately characterized by a waste generator to be uniform and which contains less than one tenth of the SNM concentration limits presented in Condition 1; allowed WCS to discontinue confirmatory sampling requirements for sealed sources; clarified Condition 2 with respect to “pure forms” of certain chemicals; and clarified the spatial uniformity requirement for waste received by WCS. The 2009 Order was published on October 26, 2009 (74 FR 55072). The conditions specified in the 2009 Order were described in the October 2009 EA and SER that supported the 2009 Order.

In July 2013, by Amendment No. 22 of RML R04100, the TCEQ began to merge the license requirements in RML R04971 (for the radioactive waste treatment, storage, and processing facility) with the requirements in RML R04100 (for the LLRW land disposal facility). In Amendment No. 22 of RML R04100, the TCEQ license requirements related to the NRC 2009 Order in RML R04971 for the WCS treatment, storage, and processing facility were transferred to RML R04100. Previous NRC Orders referred to a specific location on the WCS Site as the treatment, storage, and processing facility. Subsequently, WCS began referring to that specific location on the WCS Site as the

“Treatment, Storage and Disposal Facility.” In this Order, the NRC will use the name “Treatment, Storage, and Disposal Facility” and the abbreviation TSDF to reference that specific location on the WCS Site.

By letter dated July 18, 2014, WCS requested an exemption from NRC regulations to possess SNM in excess of the critical mass limits specified in 10 CFR 150.11, move the LANL Waste from the TSDF to the FWF disposal cell, and temporarily store the LANL Waste in the WCS FWF disposal cell. The WCS request referenced the actions that WCS had taken in response to the DOE investigation of an unplanned February 2014 radiation release event at the DOE Waste Isolation Pilot Plant (WIPP) Facility in New Mexico (i.e., WIPP Incident). Due to the WIPP Incident, the DOE suspended operations at the WIPP Facility. As a result, WCS began receiving the LANL Waste from the DOE in April 2014. The LANL Waste is transuranic waste with SNM that originated from the DOE LANL and is destined for disposal at the DOE WIPP Facility. WCS intended to temporarily store the LANL Waste at the WCS TSDF until the DOE shipped the LANL Waste off the WCS Site.

Based on the DOE investigation of the WIPP Incident, the DOE subsequently informed WCS that some of the LANL Waste being temporarily stored at the WCS TSDF could, under certain conditions, react and potentially result in a release of transuranic radionuclides to the environment. On June 12, 2014, WCS responded to the DOE information by starting to voluntarily move the identified LANL Waste to the WCS FWF disposal cell on the WCS Site for temporary storage. However, the WCS FWF disposal cell was not a location addressed under the 2009 Order, so WCS needed NRC



permission to move the LANL Waste from the TSDF to the FWF disposal cell and temporarily store the LANL Waste in the WCS FWF disposal cell.

The NRC issued a Superseding Order to WCS on December 3, 2014 (2014 Order). The 2014 Order was published on December 11, 2014 (79 FR 73647). The 2014 Order allowed WCS to move the LANL Waste from the TSDF to the FWF disposal cell and temporarily store the LANL Waste in the WCS FWF disposal cell. The conditions specified in the 2014 Order were further described in the October 2014 EA (ML14238A208), and November 2014 SER (ML14230A804) that supported the 2014 Order.

The current and previous NRC Orders to WCS (2001, 2004, 2009, and 2014) addressed the issue that 10 CFR 70.3, "License requirements," requires persons who own, acquire, deliver, receive, possess, use, or transfer SNM to obtain an NRC license pursuant to the requirements in 10 CFR Part 70. However, 10 CFR 150.10, "Persons exempt," exempts a person in an Agreement State who possesses SNM in quantities not sufficient to form a critical mass from the NRC's imposed licensing requirements and regulations. The method for calculating the quantity of SNM not sufficient to form a critical mass is set out in 10 CFR 150.11. Therefore, prior to the NRC 2001 Order, WCS was required to comply with NRC regulatory requirements and obtain an NRC specific license to possess SNM in quantities greater than amounts established in 10 CFR 150.11. The 2001 WCS exemption request to NRC proposed to use concentration-based limits rather than mass-based limits at the WCS Site. The NRC 2001 Order granted, and the subsequent NRC Orders (2004, 2009, and 2014) continued, the use of concentration-based limits with conditions at the WCS Site.

The 2014 NRC Order to WCS contains conditions that allow WCS to possess and temporarily store DOE LANL Waste at two locations at the WCS Site (i.e., FWF disposal cell, TSDF) without obtaining an NRC part 70 license. The conditions in the 2014 Order were modified by five NRC letters to WCS dated September 23, 2016 (ML16097A265), September 26, 2017 (ML17234A415), December 19, 2018 (ML18269A318), December 7, 2020 (ML20252A182), and June 8, 2022 (ML22094A131).

By letter dated June 30, 2022, and supplemented by the NRC clarification calls with WCS (ML22257A219), WCS requested that the NRC modify the conditions in the 2014 Order (as supplemented by the five NRC letters from 2016 to 2022) to allow WCS to: (1) move the DOE LANL Waste from one location at the WCS Site (the WCS FWF disposal cell) to another location at the WCS Site (the WCS TSDF BSA-1 Enclosure), (2) prepare the LANL Waste for shipment in the WCS TSDF BSA-1 Enclosure, and (3) temporarily store the LANL Waste in the WCS TSDF BSA-1 Enclosure until the DOE ships the LANL Waste off the WCS Site. After evaluating WCS's exemption request, the NRC staff decided that the appropriate action is to grant the request with Conditions. The reasons for that decision are further described in the SER (ML22221A080) for the June 30, 2022 request.

The NRC reviewed the information in the WCS request and, along with clarifying teleconference calls and other public and non-public information provided by WCS, the NRC decided that the appropriate action is to grant the WCS request but has modified the WCS request to include additional conditions as described in this 2023 Order (2023 Order). As further described in the SER for this WCS request, the NRC has determined

that the conditions in this 2023 Order are authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest to allow WCS to undertake the activities described in the request.

In this 2023 Order, Conditions 1 through 7 remain the same as in the 2014 Order. A new Condition 8 is added to reflect the September 26, 2017 NRC supplemental letter to WCS (ML17234A415). The 2014 Order Conditions 8 through 11 are renumbered as Conditions 9 through 12 to address the new Condition 8. The 2014 Order Conditions 8.A. through 8.A.3. are renumbered as Conditions 9.A. through 9.A.3. and updated to reflect the September 26, 2017, NRC supplemental letter to WCS (ML17234A415). The 2014 Order Conditions 8.B. through 8.B.6 are renumbered as 9.B. through 9.B.6. and updated to reflect the five NRC supplemental letters to WCS from 2016 to 2022 (September 23, 2016 (ML16097A265), September 26, 2017 (ML17234A415), December 19, 2018 (ML18269A318), December 7, 2020 (ML20252A182), and June 8, 2022 (ML22094A131)).

The 2023 Order adds Conditions 9.C. through 9.C.2 to reflect NRC approval of WCS moving the LANL Waste from the FWF disposal cell to the TSDF BSA-1 Enclosure. The 2023 Order adds Conditions 9.D. through 9.D.2. to reflect NRC approval of WCS preparing the LANL Waste for shipment in the TSDF BSA-1 Enclosure. No additional conditions are needed to reflect NRC approval of WCS temporarily storing the LANL Waste in the TSDF BSA-1 Enclosure because that was previously approved in the 2014 Order. As such, Conditions 1 through 12 of this 2023 Order are updated and listed in Section III below.

III

I have concluded, based on the staff's evaluation and pursuant to 10 CFR 70.17(a), that the exemption as described below at the WCS Site is authorized by law, will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, pursuant to Sections 51, 161b, 161c, 161i, 182, 186, and 274 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 70 as applicable, IT IS HEREBY ORDERED THAT:

WCS is exempted from the requirements of 10 CFR Part 70, including the requirements for an NRC license in 10 CFR 70.3 subject to the conditions listed below. This Order supersedes the 2014 Order, as modified by five NRC letters to WCS dated September 23, 2016 (ML16097A265), September 26, 2017 (ML17234A415), December 19, 2018 (ML18269A318), December 7, 2020 (ML20252A182), and June 8, 2022 (ML22094A131).

1. Concentrations of SNM in individual waste containers and/or during processing shall not

exceed the following values:

SNM Isotope	Operational Limit (gram SNM/gram waste)	Measurement Uncertainty (gram SNM/gram waste)
U-233	4.7E-04	7.1E-05
U-233	4.7E-04	7.1E-05
U-235 (10 percent enriched)	9.9E-04	1.5E-04
U-235 (100 percent enriched)	6.2E-04	9.3E-05

Pu-239	2.8E-04	4.2E-05
Pu-241	2.2E-04	3.2E-05

When mixtures of these SNM isotopes are present in the waste, the sum-of-the-fractions rule, as illustrated below, shall be used.

$$\frac{\text{U-233 conc}}{\text{U-233 limit}} + \frac{100\text{wt}\%\text{U-235 conc}}{100\text{wt}\%\text{U-235 limit}} + \frac{10\text{wt}\%\text{U-235 conc}}{10\text{wt}\%\text{U-235 limit}} + \frac{\text{Pu-239 conc}}{\text{Pu-239 limit}} + \frac{\text{Pu-241 conc}}{\text{Pu-241 limit}} \leq 1$$

The measurement uncertainty values in column 3 above represent the maximum one-sigma uncertainty associated with the measurement of the concentration of the particular radionuclide.

The SNM must be uniformly distributed throughout the waste, such that the limiting concentrations must not be exceeded on average in any contiguous mass of 600 kilograms.

2. The mass concentration of carbon, fluorine, and bismuth in the waste must be limited as follows:

SNM Isotope	Carbon	Fluorine	Bismuth
U-233	28 wt%	34 wt%	34 wt%
U-235(10)	25 wt%	35 wt%	31 wt%
U-235(100)	41 wt%	42 wt%	33 wt%
Pu-239	43 wt%	43 wt%	34 wt%
Pu-241	37 wt%	39 wt%	32 wt%

For waste containing mixtures of C, F, and Bi, the sum of the weight fractions of C, F, and Bi shall be compared to the most restrictive maximum allowable weight fractions for any one of those elements. Similarly, where mixtures of

radionuclides are present in the waste, the limiting maximum allowable weight fraction of C, F, and Bi shall be applied. The presence of the above materials will be determined and documented by the generator, based on process knowledge or testing.

3. Waste accepted shall not contain total quantities of beryllium, hydrogenous material enriched in deuterium, or graphite above one tenth of one percent of the total weight of the waste. The presence of the above materials will be determined and documented by the generator, based on process knowledge, or testing.
  
4. Possession of highly water soluble forms of SNM shall not exceed the amount of SNM of low strategic significance defined in 10 CFR 73.2, "Definitions." Highly soluble forms of SNM include, but are not limited to: uranium sulfate, uranyl acetate, uranyl chloride, uranyl formate, uranyl fluoride, uranyl nitrate, uranyl potassium carbonate, uranyl sulfate, plutonium chloride, plutonium fluoride, and plutonium nitrate. The presence of the above materials will be determined and documented by the generator, based on process knowledge or testing.
  
5. Processing of mixed waste containing SNM will be limited to chemical stabilization (i.e., mixing waste with reagents). For batches with more than 600 kilograms of waste, the total mass of SNM shall not exceed the concentration limits in Condition 1 times 600 kilograms of waste.

6. Prior to shipment of waste, WCS shall require generators to provide a written certification containing the following information for each waste stream:

a. Waste Description. The description must detail how the waste was generated, list the physical forms in the waste, and identify uranium chemical composition.

Waste Characterization Summary. The data must include a general description of how the waste was characterized (including the volumetric extent of the waste, and the number, location, type, and results of any analytical testing), the range of SNM concentrations, and the analytical results with error values used to develop the concentration ranges.

b. Uniformity Description. A description of the process by which the waste was generated showing that the spatial distribution of SNM is homogeneous or other information supporting spatial homogeneity.

c. Manifest Concentration. The generator must describe the methods to be used to determine the concentrations on the manifests. These methods could include direct measurement and the use of scaling factors. The generator must describe the uncertainty associated with sampling and testing used to obtain the manifest concentrations.

WCS shall review the above information and, if adequate, approve in writing this pre-shipment waste characterization and assurance plan before permitting the

shipment of a waste stream. This will include statements that WCS has a written copy of all the information required above, that the characterization information is adequate and consistent with the waste description, and that the information is sufficient to demonstrate compliance with Conditions 1 through 4. Where generator process knowledge is used to demonstrate compliance with Conditions 1, 2, 3, or 4, WCS shall review this information and determine when testing is required to provide additional information in assuring compliance with the Conditions. WCS shall retain this information to permit independent review.

At the time waste is received, WCS shall require generators of SNM waste to provide a written certification with each waste manifest that states that the SNM concentrations reported on the manifest do not exceed the limits in Condition 1, and that the waste meets Conditions 2 through 4.

WCS shall require generators to sample and determine the SNM concentration for each waste stream, not to include sealed sources, at a frequency of once per 600 kg if the concentrations are above one tenth the SNM limits of Condition 1. The measurement uncertainty shall not exceed the uncertainty value in Condition 1 and shall be provided on the written certification.

7. WCS shall sample and determine the SNM concentration for each waste stream, not to include sealed sources, at a frequency of once per 600 kg if the concentrations are above one tenth the SNM limits of Condition 1. This confirmatory testing is not required for waste to be disposed of at DOE's WIPP Facility.



8. Upon possession, all waste applies towards the aboveground SNM possession limit except the waste: (1) disposed at the WCS Site; or (2) transported off the WCS Site – unless the waste is transported from the WCS Site to the WCS-owned rail spur.
  
9. The “WIPP Incident” is the February 14, 2014, unplanned radiation release event at the DOE WIPP Facility in New Mexico. The following relate to WCS storing DOE transuranic waste that originated at the LANL, which are destined to be disposed of at the DOE WIPP Facility (i.e., “LANL Waste”), at either the WCS TSDF or the WCS FWF disposal cell:

*A. The following conditions are applicable to LANL Waste stored at the FWF disposal cell and other SNM-bearing waste stored or disposed of at the FWF:*

1. The following waste is allowed to be stored at the WCS FWF disposal cell:  
LANL Waste in accordance with the concentration-based limits specified in Conditions 1 through 7, provided that it is in Standard Waste Boxes (SWBs) analyzed to be safe in the DOE “Nuclear Critical Safety Evaluation,” WIPP-016, Rev. 4. The lids of the SWBs shall be bolted or similarly secured to the body and the SWBs shall be placed inside Modular Concrete Canisters (MCCs) consistent with the configurations analyzed in WIPP-016.
  
2. The LANL Waste shall be isolated from other SNM-bearing waste by a minimum of 6.096 meters (20 feet).

3. The LANL Waste in MCCs shall be stacked no more than one MCC high.

*B. The following conditions are applicable to all the LANL Waste stored at either the TSDF or the FWF disposal cell:*

1. WCS shall follow the general reporting and recordkeeping requirements of 10 CFR Part 74, "Material Control and Accounting of Special Nuclear Material," that are applicable to those who possess SNM of 1 gram or more. Those requirements are: (1) notification to the NRC within 1 hour of discovery of any unauthorized removal of SNM which WCS is authorized to possess; and (2) maintenance of a recordkeeping program showing the receipt, inventory, acquisition, transfer, and disposal of all SNM in WCS' possession.
2. The contents and matrices of the LANL Waste in the inner containers shall conform to the description in the WCS non-public information.
3. The physical security plan for the LANL Waste shall be maintained to specifically include detection, assessment, and response methods and procedures for the LANL Waste for as long as the LANL Waste is at the WCS Site.
4. WCS is allowed to possess the LANL Waste until December 31, 2024.

5. The LANL Waste shall remain unopened in the inner container in which it was shipped, unless WCS needs to take an action on one of the inner containers based on knowledge from DOE's investigation of the WIPP Incident. Only one inner container may be open at a time.
  
6. WCS shall keep NRC informed of the status of the DOE investigation of the WIPP Incident. If DOE determines that some of LANL Waste at the WCS Site was similar to the waste that DOE determines to have contributed to the WIPP Incident, then WCS shall notify the NRC.

*C. The following conditions are applicable while moving the LANL Waste from the FWF disposal cell to the TSDF BSA-1 Enclosure:*

1. The Final WCS Documented Safety Analysis shall be followed while moving the LANL Waste from the FWF disposal cell to the TSDF BSA-1 Enclosure, including performing the following sub-activities for each MCC:
  - remove the protective sand layer within the FWF disposal cell,
  - remove the MCC from its FWF disposal cell storage location,
  - place the MCC on the moving equipment,
  - move the MCC into the TSDF BSA-1 Enclosure, and
  - place the MCC in the TSDF BSA-1 Enclosure.
  
2. While moving the LANL Waste from the FWF disposal cell to the TSDF BSA-1 Enclosure, WCS shall ensure the following:

- there is no fuel storage or flammable material areas in either the FWF or near the route from the FWF disposal cell to the TSDF BSA-1 Enclosure,
- fuel leaks are quickly dispersed and isolated, and
- there is no vehicle traffic along the route from the FWF disposal cell to the TSDF BSA-1 Enclosure.

*D. The following conditions are applicable while preparing the LANL Waste for shipment in the TSDF BSA-1 Enclosure:*

1. The Final WCS Documented Safety Analysis shall be followed while preparing the LANL Waste for shipment in the TSDF BSA-1 Enclosure (i.e., under negative pressure with high efficiency particulate air (HEPA) filtration system and temperature control using heating, ventilation, and air conditioning (HVAC) system), including performing the following sub-activities for each MCC:

- remove the pea gravel from the MCC, and
- for each SWB in that MCC:
  - replace the lifting straps of the SWB in the MCC,
  - remove the SWB from the MCC,
  - replace filters in the SWB (as needed),
  - add additional filters in the SWB (as needed),
  - perform borescope work in the SWB (as needed),
  - take air samples from the head space within the SWB (as needed), and

- place the SWB in temporary storage within the BSA-1 Enclosure

2. While preparing the LANL Waste for shipment in the TSDf BSA-1 Enclosure, WCS shall ensure the following:

- there are no explosive material storage areas in the TSDf BSA-1 Enclosure, and
- there is no vehicle traffic in the TSDf BSA-1 Enclosure.

10. WCS shall notify the NRC, Region IV office within 24 hours if any of the above Conditions are violated. A written notification of the event must be provided within 7 days.

11. WCS shall obtain NRC's approval prior to changing any activities associated with the above Conditions.

12. The Director of the Office of Nuclear Material Safety and Safeguards (or designee), may, in writing, relax or rescind any of the above conditions upon demonstration by WCS of good cause.

#### IV

In accordance with 10 CFR 2.202, WCS must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the Federal Register. In addition, WCS and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its

publication in the Federal Register. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at <https://www.nrc.gov/site-help/e-submittals.html>. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant

will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals.html>, by e-mail to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.



Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than WCS requests a hearing, that person shall set forth with particularity the manner in which their interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by WCS or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final 20 days from the date this Order is published

in the Federal Register without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

Dated: May 22, 2023.

FOR THE NUCLEAR REGULATORY COMMISSION

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John W. Lubinski, Director  
Office of Nuclear Material Safety  
and Safeguards

**Attachment 2 – Availability of Documents**

**Availability of Documents**

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

<b>DOCUMENT</b>	<b>ADAMS ACCESSION NO./ FEDERAL REGISTER CITATION</b>
2023 NRC EA for 2023 Order, dated May 15, 2023	ML22228A134
Summary of NRC Clarification Calls with WCS	ML22257A219
2022 WCS Request for Superseding Order, dated June 30, 2022	ML22200A046
NRC Letter Supplementing 2014 Order, dated June 8, 2022	ML22094A131
NRC Letter Supplementing 2014 Order, dated December 7, 2020	ML20252A182
NRC Letter Supplementing 2014 Order, dated December 19, 2018	ML18269A318
NRC Letter Supplementing 2014 Order, dated September 26, 2017	ML17234A415
NRC Letter Supplementing 2014 Order, dated September 23, 2016	ML16097A265
2014 Order, dated December 3, 2014	79 FR 73647
2009 Order, dated October 20, 2009	74 FR 55071
2004 Order, dated November 5, 2004	69 FR 65468
2001 Order, dated October 30, 2001	66 FR 57489