



## Two Types of Radioactive Waste

- Low Level Radioactive Waste
- 11e.(2) By-Product

# LLRW

# LLRW

- generally paper, plastic, glass, metal, dirt that has been contaminated by or that contains radioactive material and that has been declared as waste.

Low Level Radioactive Waste (LLRW)

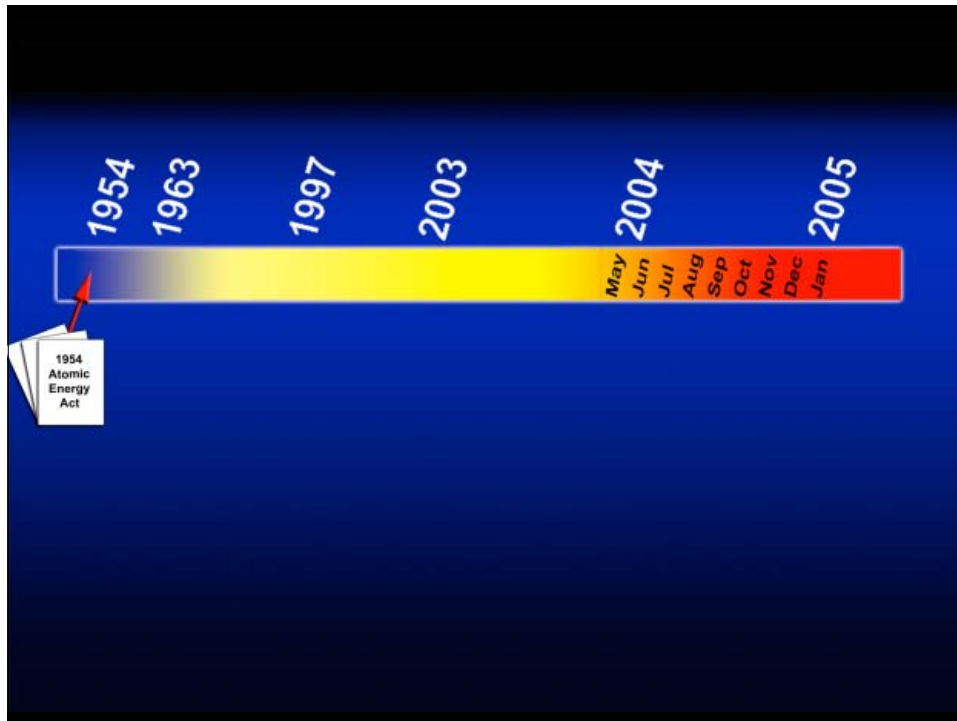
Class 'A' Lowest

Class 'B'

Class 'C' Highest



11e.(2)



## History of 11e.(2) Waste

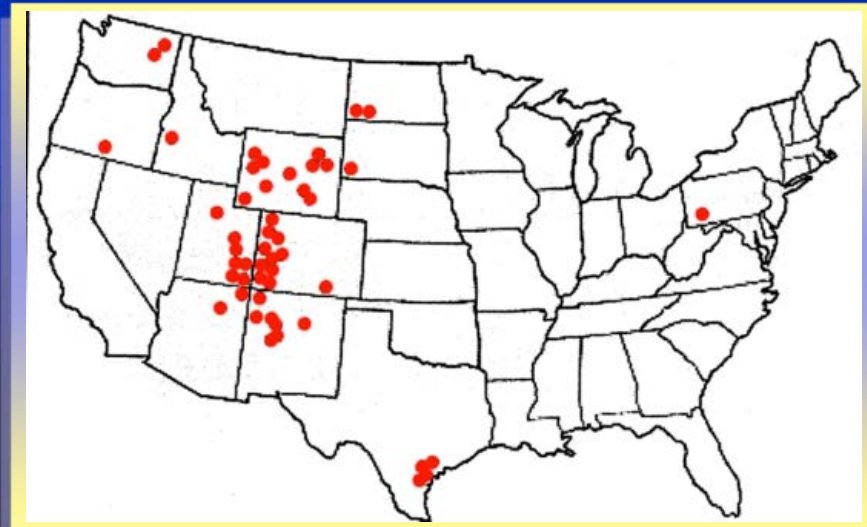
- Atomic Energy Act of 1954 (amended 1978) defined "by-product material" in Section 11e.(2):
  - "the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content."
- Uranium mill tailings:
  - radioactive sand-like materials that remain after uranium is extracted by milling ore mined from the earth.
  - Can adversely affect public health.

## Uranium Mill Tailings Piles

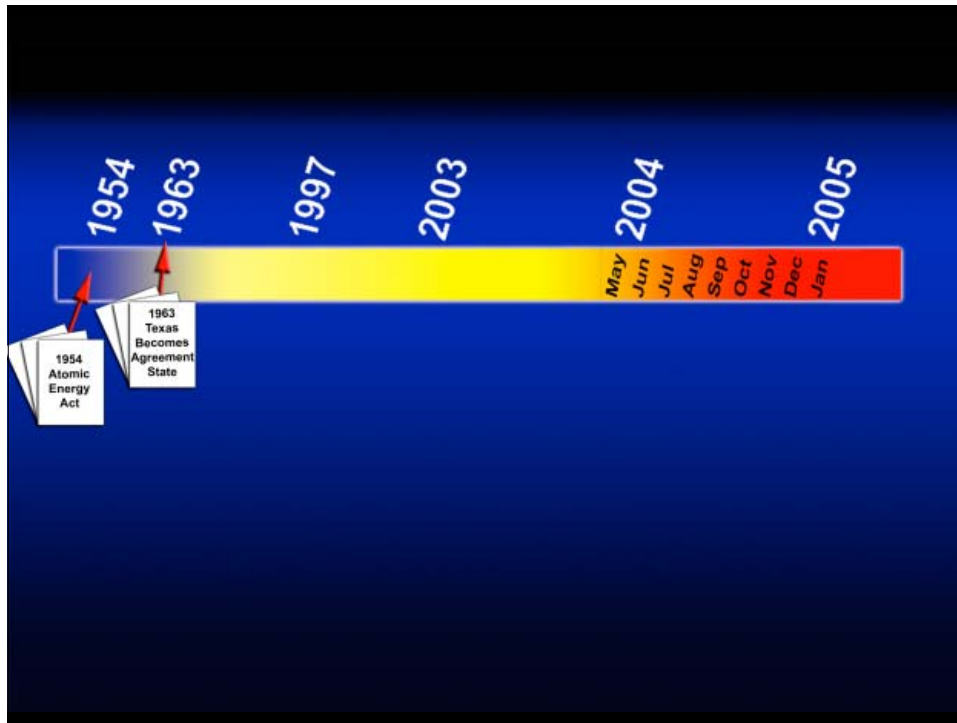


1A

## Uranium Mill Tailings Piles



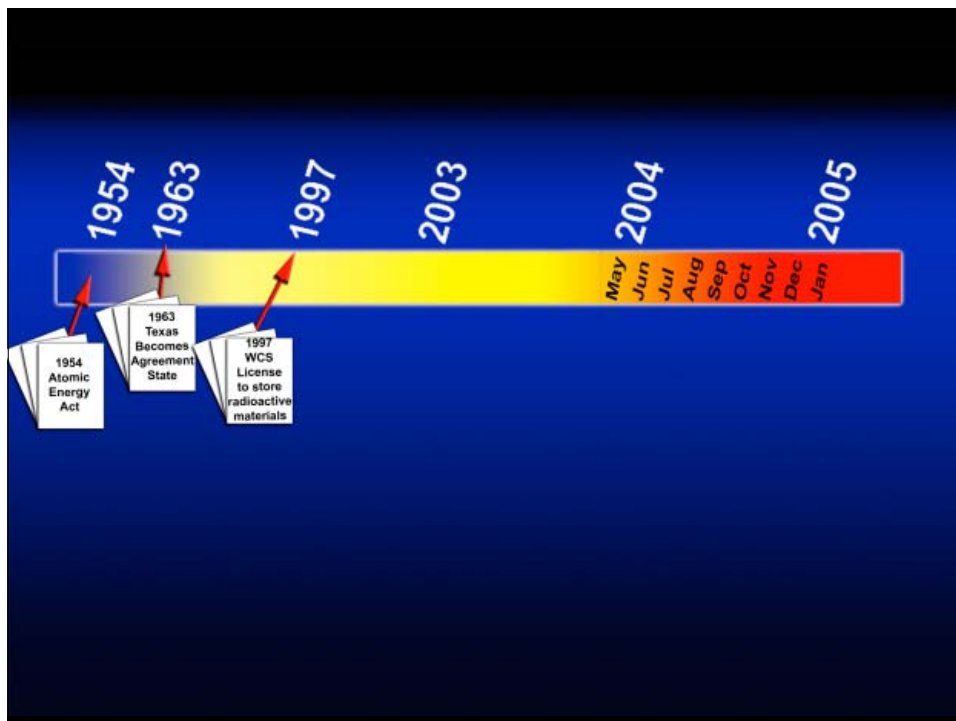
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## Texas Becoming an NRC Agreement State

- Under Section 274 of the Atomic Energy Act:
  - The NRC may enter into an agreement with a State for discontinuance of the NRC's regulatory authority over some materials licensees within the State.
- 1. Texas became an NRC Agreement State in 1963 (amended 1982) to "permit the State to continue to regulate byproduct material as defined in section 11e.(2) of the Act (uranium mill tailings) in conformance with the requirements of section 274o. of the Act."
- 2. Only four other states have adopted similar agreements: Utah, Colorado, Washington, and Illinois.

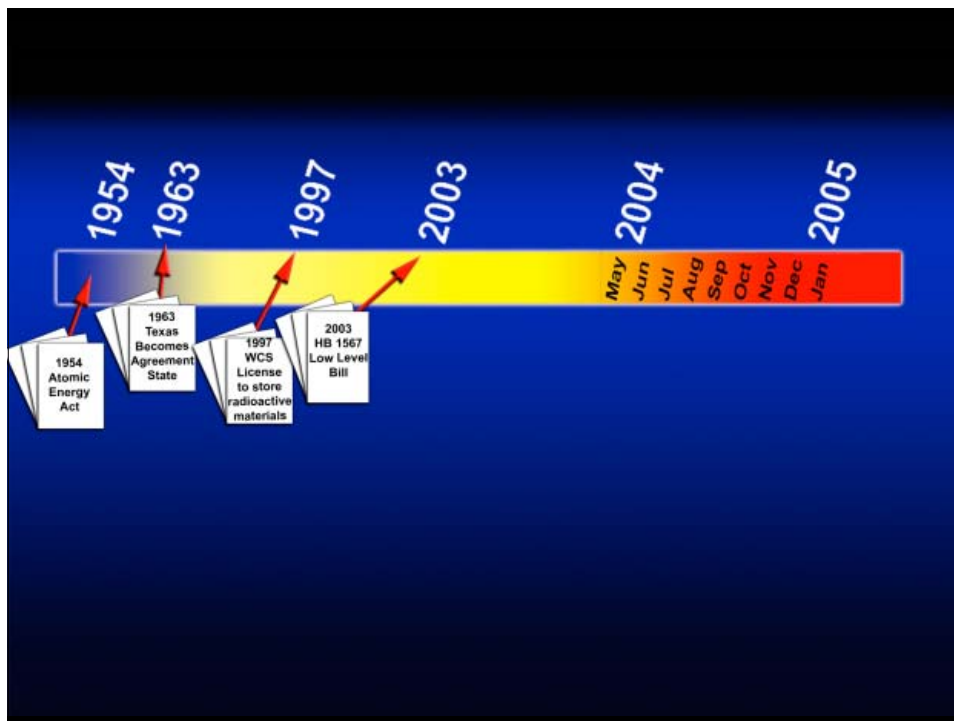
# Agreement States



# 11e.(2) in Texas

Facility Name and County	Operator and Beginning Date of Mining Operations	Volume of Byproduct Waste (millions of ft <sup>3</sup> )	Level of Radioactivity in Byproduct Waste (pCi/g Ra-226)	Project Status
Conquista Karnes	ConocoPhillips, Inc. 1971	306	90 - 688	Reclamation.
Panna Maria Karnes	Rio Grande Resources 1977	160	300 - 500	Reclamation.
Ray Point Live Oak	ExxonMobil Refining and Supply Company 1970	12	406	Reclamation.
Falls City Site Karnes	Susquehanna Western/US Department of Energy 1961	165	198	Closed and Licensed by US Nuclear Regulatory Commission

- No commercial importation of 11e.(2) waste to store and/or dispose





## Low Level Radioactive Waste

- HB 1567 Low Level Bill
- Provides disposal of:
  - 1. Compact waste
  - 2. Federal waste

## Compact States

- Maine
- Vermont
- Texas - Host



## HB 1567 - 78th Legislative Session

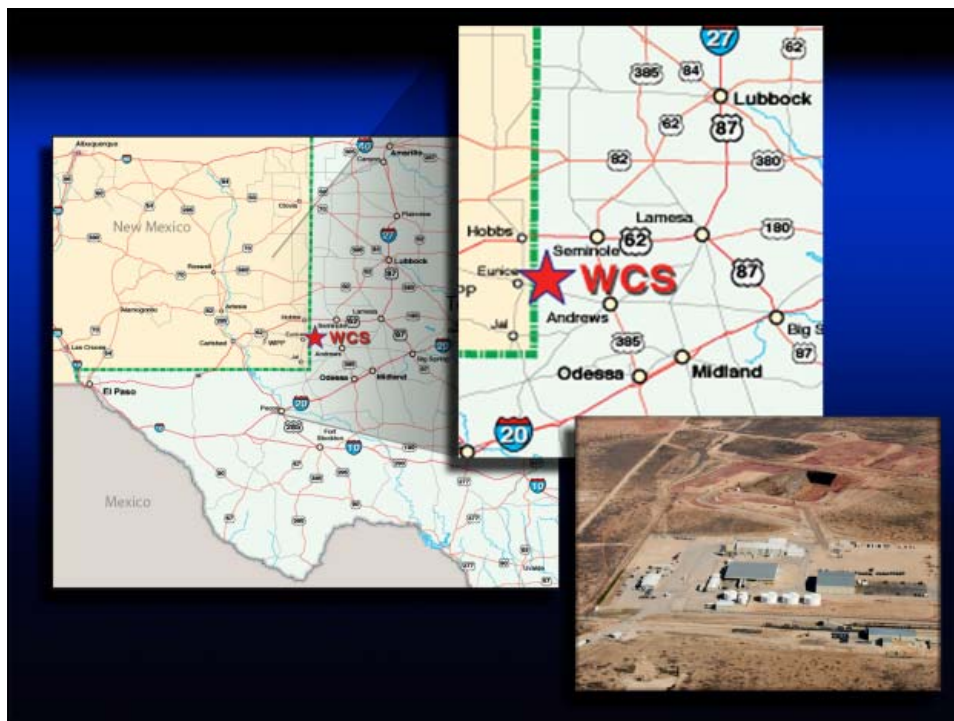
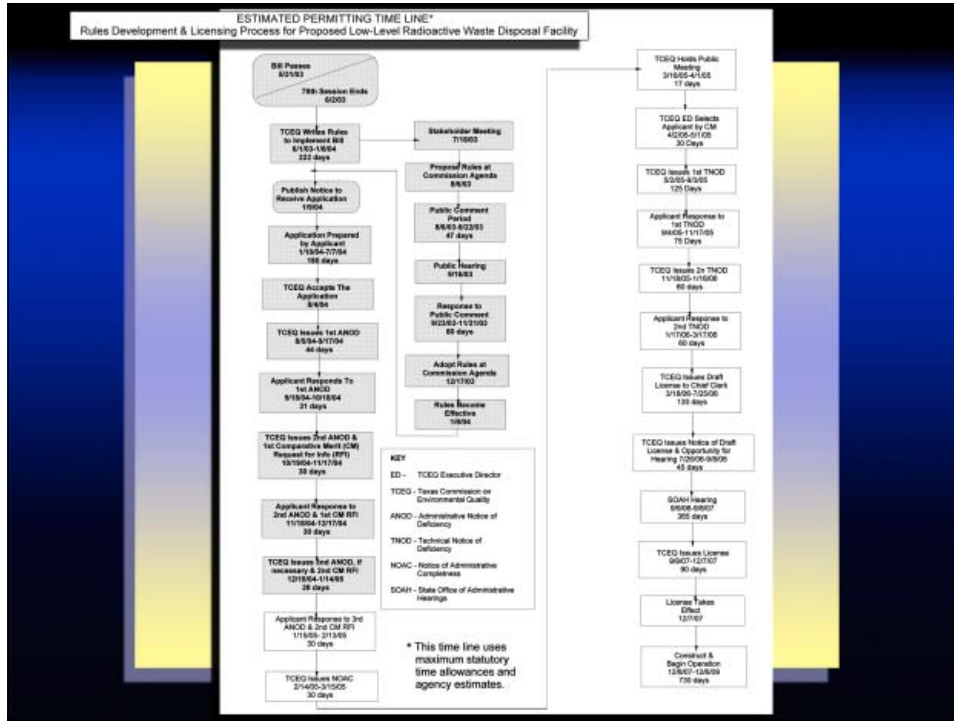
### Key changes for low-level waste disposal concept include:

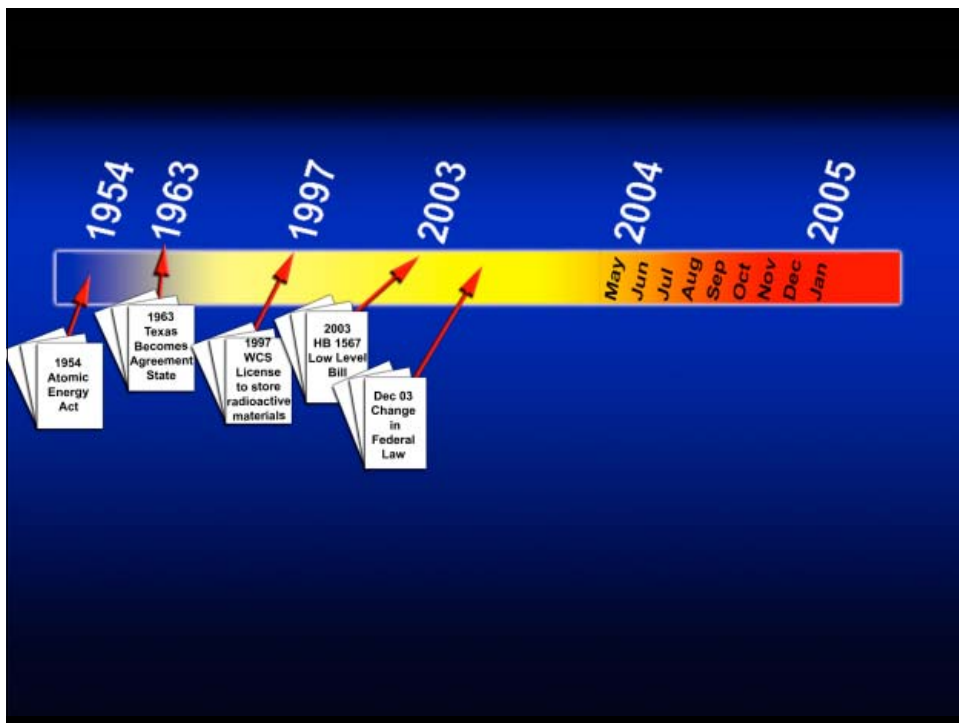
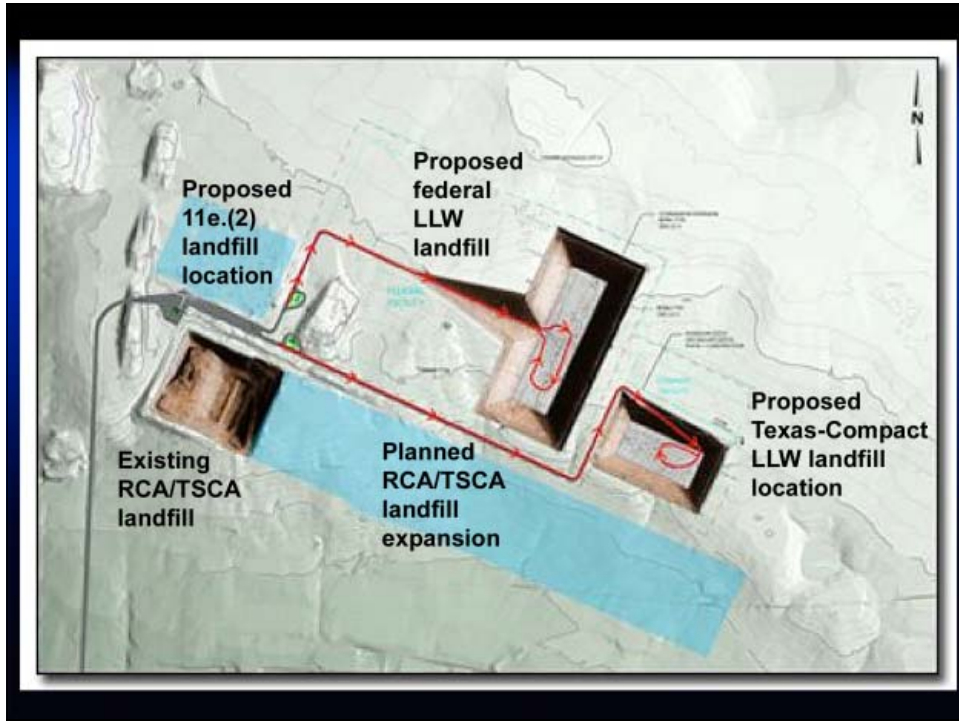
- Privatizing one disposal facility (formerly limited to a public entity);
- Allowing the disposal of 6,000,000 cubic yards (162,000,000 cubic feet) of federal facility waste, in addition to Texas Low-Level Radioactive Waste Disposal Compact (Texas Compact) waste, under one license; and
- Providing separate, but adjacent facilities. The license holder cannot accept federal waste until it is ready to receive compact waste.
- Depositing a special fee on waste into the state's general revenue fund (5%) gross receipts and Andrews County commissioner's court (5%) gross receipts
- Licensing and regulation by TCEQ

## HB 1567 - 78th Legislative Session

### Status

- Only one application was received during the 30-day acceptance period:
  - Waste Control Specialists, LLC for a proposed site in Andrews County, Texas.
- TCEQ staff has begun the administrative review process.
- TCEQ will conduct a public meeting in the proposed host county following any declaration of administrative completeness of an application.
- The technical review phase of the low-level radioactive disposal application review is expect to begin in May 2005 and be completed in July 2006.
- A final decision of license issuance is projected to come before the TCEQ commissioners in late 2007.





SEC. 310. None of the funds in this Act may be used to dispose of transuranic waste in the Waste Isolation Pilot Plant which contains concentrations of plutonium in excess of 20 percent by weight for the aggregate of any material category on the date of enactment of this Act, or is generated after such date. For the purposes of this section, the material categories of transuranic waste at the Rocky Flats Environmental Technology Site include: (1) ash residues; (2) salt residues; (3) wet residues; (4) direct repackaging residues; and (5) scrub alloy as referenced in the "Final Environmental Impact Statement on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site".

SEC. 311. (a) The Secretary of Energy is directed to file a permit modification to the Waste Analysis Plan (WAP) and associated provisions contained in the Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (WIPP). For purposes of determining compliance of the modifications to the WAP with the hazardous waste analysis requirements of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), or other applicable laws waste confirmation for all waste received for storage and disposal shall be limited to: (1) confirmation that the waste contains no ignitable, corrosive, or reactive waste through the use of either radiography or visual examination of a statistically representative subsample of the waste; and (2) review of the Waste Stream Profile Form to verify that the waste contains no ignitable, corrosive, or reactive waste and that assigned Environmental Protection Agency hazardous waste numbers are allowed for storage and disposal by the WIPP Hazardous Waste Facility Permit.

(b) Compliance with the disposal room performance standards of the WAP shall be demonstrated exclusively by monitoring airborne volatile organic compounds in underground disposal rooms in which waste has been emplaced until panel closure.

SEC. 312. Notwithstanding any other provision of law, the material in the concrete silos at the Fernald uranium processing facility currently managed by the Department of Energy and the ore processing residual materials in the Niagara Falls Storage Site subsurface waste containment structure managed by the United States Army Corps of Engineers under the Formerly Utilized Sites Remedial Action Program shall be considered "byproduct material" as defined by section 11e(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014e(2)). The Nuclear Regulatory Commission or an Agreement State, as appropriate, shall regulate the material as "11e(2) by-product material" for the purpose of disposition of the material in an NRC-regulated or Agreement State-regulated facility.

DEFINITIONS.

Reports.

SEC. 313. No funds appropriated or otherwise made available under this title under the heading "ATOMIC ENERGY DEFENSE ACTIVITIES" may be obligated or expended for additional and exploratory studies under the Advanced Concepts Initiative until 90 days after the date on which the Administrator for Nuclear Security submits to Congress a detailed report on the planned activities for additional and exploratory studies under the initiative for fiscal year 2004. The report shall be submitted in unclassified form, but may include a classified annex.

SEC. 314. MARTIN'S COVE LEASE. (a) DEFINITIONS.—In this section:

SEC. 310. None of the funds in this Act may be used to dispose of transuranic waste in the Waste Isolation Pilot Plant which contains concentrations of plutonium in excess of 20 percent by weight for the aggregate of any material category on the date of enactment of this Act, or is generated after such date. For the purposes of this section, the material categories of transuranic waste at the Rocky Flats Environmental Technology Site include: (1) ash residues; (2) salt residues; (3) wet residues; (4) direct repackaging residues; and (5) scrub alloy as referenced in the "Final Environmental Impact Statement on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site".

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SEC. 313. No funds appropriated or otherwise made available under this title under the heading "ATOMIC ENERGY DEFENSE

UNITED STATES CODE  
CONGRESSIONAL AND  
ADMINISTRATIVE NEWS

108th Congress—First Session  
2003

Convened January 7, 2003  
Adjourned, sine die, December 8, 2003

Volume 4

LEGISLATIVE HISTORY:

PUBLIC LAWS 108–136 to 108–198  
PROCLAMATIONS  
EXECUTIVE ORDERS  
TABLES and INDEX

THOMSON  
WEST

ENERGY AND WATER DEVELOPMENT  
PUBLIC LAW 108-137

*Defense Nuclear Nonproliferation.*—The conference agreement provides \$58,000,000 for the Federal employees in the Office of Defense Nuclear Nonproliferation. None of these funds may be taxed by the NNSA for any purpose without prior notification and approval by the House and Senate Committees on Appropriations.

ENVIRONMENTAL AND OTHER DEFENSE ACTIVITIES  
DEFENSE ENVIRONMENTAL MANAGEMENT

The conference agreement provides a total of \$6,626,877,000 for Defense Environmental Management instead of \$6,748,457,000 as proposed by the House and \$6,733,045,000 as proposed by the Senate. This funding is provided in two separate appropriations: \$5,651,082,000 for Defense Site Acceleration Completion and \$991,144,000 for Defense Environmental Services, and also includes a rescission of \$15,329,000 from the Defense Environmental Management Privatization account.

*Lack of Agreement for Accelerated Performance Management Plans.*—The conferees share the concerns articulated in the House report regarding the linkage between additional funding for accelerated cleanup and the agreement of State regulators in the accelerated performance management plans. The House withheld funds for specific accelerated cleanup projects where State agreement was lacking. Where the necessary State agreement has been reached by

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the time of this conference, those funds have been restored. Although a final agreement has not yet been reached with the State of New Mexico on the accelerated cleanup plan for the Los Alamos National Laboratory, the Department believes such agreement will be reached shortly. The conferees provide funds for accelerated cleanup of this site in fiscal year 2004, but remind the Department and the State of New Mexico that these funds for accelerated cleanup activities at Los Alamos are contingent on the Department and the State reaching final agreement in the near future.

*Statutory Changes Required for Accelerated Cleanup.*—The conferees strongly object to the Department sending forth its contractors to advocate for legislative changes that are necessary to execute accelerated cleanup plans, as was apparently the case with the proposal to consider the material in the Fernald silos as suitable for disposal as UFGM material. If such statutory changes are responsible and for the benefit of the Government and the taxpayer, then the Department should submit such changes as part of a formal legislative proposal from the Administration to the Congress. The conferees direct the Department to review its current Performance Management Plans and cleanup contracts to identify any other instances where statutory changes are required to execute accelerated cleanup. The conferees direct the Department to report to the House and Senate Committees on Appropriations and to the relevant House and Senate authorizing committees within 60 days after enactment of this Act with the results of this review, and to submit a comprehensive legislative proposal with the fiscal year 2005 budget request including all such proposed changes to existing law.

*Review of Cost and Schedule Resilience.*—The conferees share the concerns expressed in the House and Senate reports regarding the recent 33 percent cost increase for the Hanford Waste Treatment and Immobilization Plant. This increase reflects a troubling

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6B.2

ENERGY AND WATER DEVELOPMENT  
PUBLIC LAW 108-137

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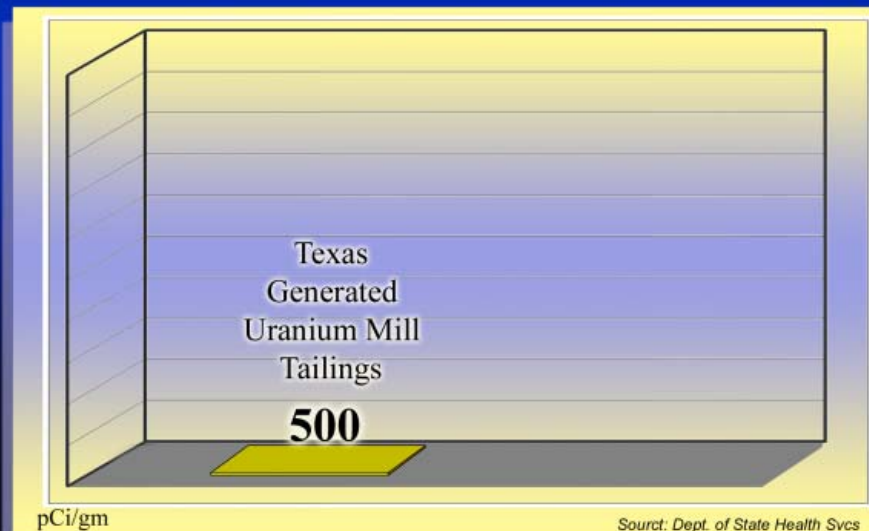
## Fernald History

- Former uranium processing facility
- 18 miles northwest of Cincinnati, Ohio
- From 1952 – 1989,
  - Produced 500 million pounds of pure uranium metal products for the United States Cold War Defense program (former Manhattan Project site).
- Lies over a sole-source drinking water aquifer
  - (Great Miami Aquifer).
- Shut down in 1989 after 37 years of operations to concentrate on:
  - environmental compliance
  - waste management and
  - remediation.
- In December 2003, Congress classified Fernald waste as 11e.(2)

## Fernald Material

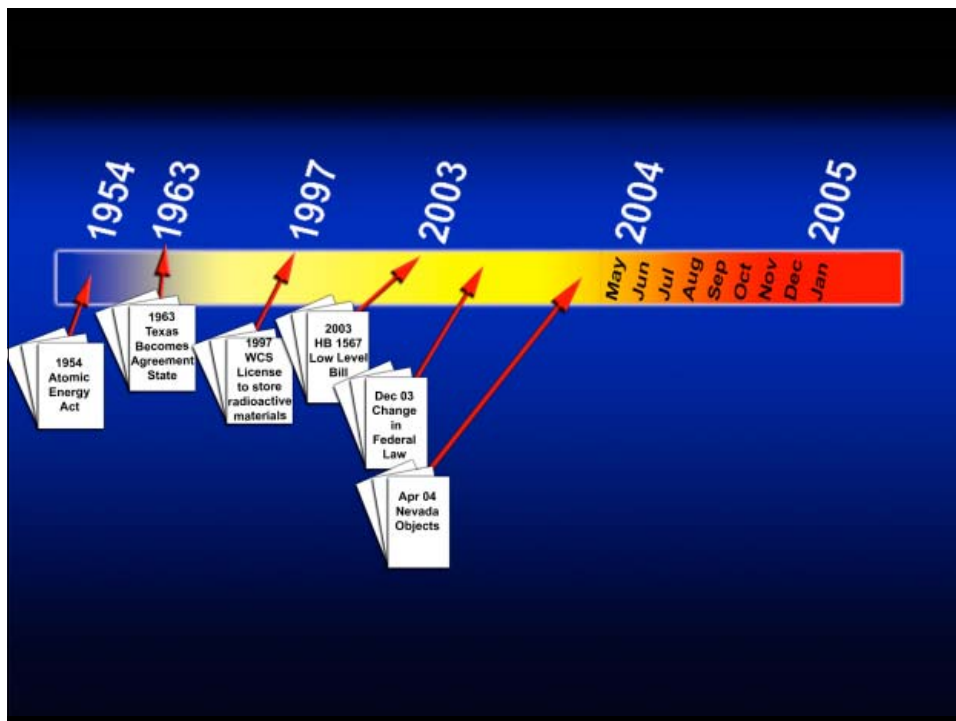
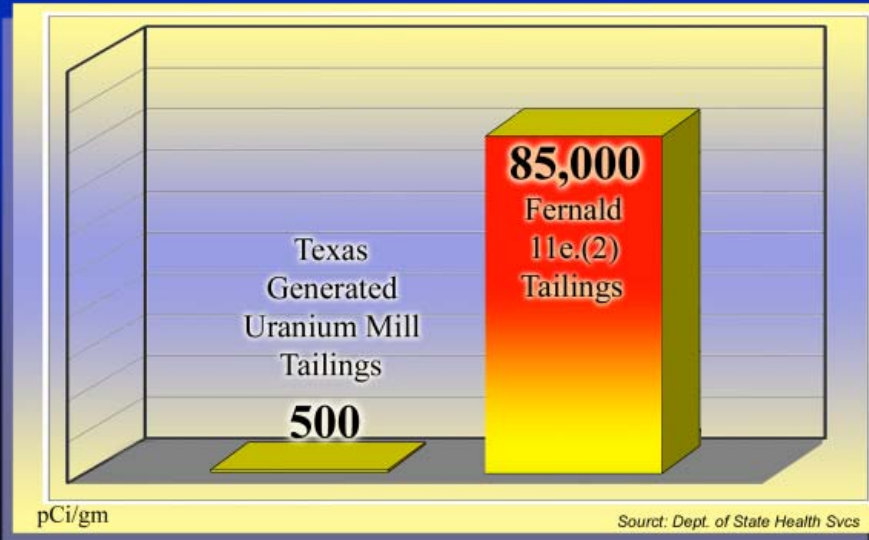
- **Silos 1 and 2** –8,900 cubic yards (240,300 cubic feet) of refined Belgian Congo uranium ore
- **Silo 3** – 5,100 cubic yards (137,700 cubic feet) of cold metal oxides
- **Total amount (Silos 1, 2 & 3) equals 378,000 cubic feet, however, after treatment total volume will be equal to 1,200,000 cubic feet.**

## Radioactivity





# Radioactivity





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April 15, 2004

Ms. Jessie H. Roberson  
Assistant Secretary for Environmental Management  
U.S. Department of Energy  
EM-1, Room 5A-014  
1000 Independence Ave. S.W.  
Washington, D.C. 20585

Re: Planned Shipment of Wastes from Fernald to Nevada Test Site

Dear Ms. Roberson:

The State of Nevada has been advised that DOE's Environmental Management Division is intending imminently to ship some 7,000 containers of radioactive waste from DOE's Fernald, Ohio site to the Nevada Test Site ("NTS") for disposal. DOE's effort to bring this dangerous waste into Nevada is a flagrant violation of applicable federal and state laws and, indeed, of DOE's own rules. Even worse, the consequence of this unlawful action will be to create an extraordinary public health and environmental hazard in our state. Accordingly, Nevada hereby notifies DOE that we intend to seek prompt judicial redress to prevent the transport to and disposal of the Fernald wastes at NTS unless DOE takes immediate action to stop the shipments.

It is Nevada's understanding that the waste destined for disposal at NTS may amount to as much as 153.6 million pounds of material from Silos 1 and 2 and Silo 3 at Fernald, with a volume of at least 14,000 cubic yards, or 378,000 cubic feet. When stabilization is complete, volumes will be substantially greater. We also understand that hazardous constituents in this waste exceed standards established by the Resource Conservation and Recovery Act ("RCRA") for lead and probably other hazardous substances (such as selenium), and thus the waste would normally constitute "mixed waste" under Nevada's federally approved RCRA program.

However, according to DOE documents, this waste has been classified by DOE and EPA as Atomic Energy Act ("AEA") section 11(e)(2) waste, ostensibly providing for an exemption from safe and environmentally sound disposal requirements of RCRA.

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April 15, 2004  
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Moreover, this material is evidently of such a high radioactivity concentration that it cannot be sent for disposal to Envirocare's commercial radioactive waste disposal facility in Utah, a facility properly licensed by the NRC for safe and effective management of radioactive waste and the chosen disposal location for most of Fernald's other radioactive wastes, including mixed wastes.

As discussed in detail below, DOE's designation of this waste as 11(e)(2) material not subject to Nuclear Regulatory Commission ("NRC") or Agreement State regulation blatantly misapplies that section of the AEA. If DOE chooses to classify the waste as 11(e)(2) waste pursuant to the AEA, then DOE must also comply with the waste management requirements established through the AEA in conjunction with the 11(e)(2) waste designation and dispose of the wastes at a facility appropriately licensed by the NRC or an Agreement State for 11(e)(2) waste disposal. The NTS disposal facility is clearly not such a facility.

As a fundamental legal matter, it must be recognized by DOE that the status of waste as "11(e)(2) waste" is not simply a matter of nomenclature, but explicitly entails an array of regulatory treatments including, to be sure, an exemption from RCRA requirements under the 1978 Uranium Mill Tailings Radiation Control Act ("UMTRCA"), but also affirmative obligations to comply with the other requirements of UMTRCA. After all, section 11(e)(2) was added to the AEA by UMTRCA. These attributes of section 11(e)(2) byproduct waste reflect UMTRCA's twofold purpose:

[F]irst, to close the gap in NRC regulatory jurisdiction over the nuclear fuel cycle by subjecting uranium and thorium mill tailings to the NRC's licensing authority; and second, to provide a comprehensive regulatory regime for the safe disposal and stabilization of the tailings.

*Ken-McGee Chemical Corp. v. NRC*, 903 F.2d 1, 3 (D.C. Cir. 1990) (emphasis added).

UMTRCA established regulatory regimes for historical uranium sites (Title I), as well as for those that would continue operating (Title II), and conferred regulatory jurisdiction on EPA and NRC to regulate their activities. DOE's own uranium processing wastes have never been subject to NRC jurisdiction. Section 11(e)(2) was created by UMTRCA to deal with uranium mining and processing hazards not within the DOE complex, authorizing regulation of those hazards by EPA and NRC. DOE cannot now call Fernald wastes section 11(e)(2) wastes, a classification created by UMTRCA, without also complying with all the attributes of such a classification that Congress both required in UMTRCA and, as discussed below, explicitly reaffirmed in the Energy and Water Development Appropriations Act of 2004.

For DOE to avail itself of the benefits of the status of section 11(e)(2) waste but

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absolve itself of any duty to comply with the other requirements of that status—requirements designed by Congress to assure the safe disposal of radiological and non-radiological materials associated with uranium mining and processing—is a transparently unlawful usurpation of prerogatives belonging only to Congress. Such a maneuver would also violate the safety requirements of the Atomic Energy Act applicable to DOE even when it self-regulates, and would fly in the face of requirements in CERCLA at 42 U.S.C. Section 9621(d)(3) that wastes shall be transferred only to a disposal facility operating in full compliance with applicable federal law and all applicable State requirements.

Indeed, escaping from applicable Nevada RCRA disposal safety requirements appears to be the only reason for DOE's strange classification of the Fernald materials as 11(e)(2) waste somehow exempt from NRC or Agreement State regulation, with the perverse result that wastes which were too dangerous to go to a permitted, lined, and adequately monitored facility at Envirocare are now slated for NTS's unpermitted, unlined, and inadequately monitored disposal site. As you are aware, waste reclassification of precisely this convenient sort was soundly overruled in DOE's dispute last summer with the Natural Resources Defense Council in federal court in Idaho.

In any event, even if the Fernald waste is 11(e)(2) waste, it very likely predates the 1978 UMTCA and thus would not be eligible for that statute's RCRA exemption. If, on the other hand, the waste does not predate that statute and is in fact 11(e)(2) waste, federal law clearly contemplates its disposal only at an authorized 11(e)(2) disposal site, and not at a low-level radioactive waste disposal site without such authorization.

The reason for this requirement is obvious. Uranium processing wastes are not merely low-level wastes. Regulations at 40 C.F.R. Part 192 were designed to deal with the fact that uranium processing wastes also contain certain quantities of hazardous constituents. This is evident in that regulation's establishment of maximum concentration requirements for hazardous elements such as lead and selenium (see 40 C.F.R. 192, Subpart A, Table 1, and Appendix I. See also NRC's parallel regulations at 10 C.F.R. Part 40, Appendix A). Thus, 11(e)(2) disposal-site licensing contemplates the performance assessment of accompanying quantities of non-radiological hazardous elements typically associated with uranium processing. (See, e.g., NRC's 10 C.F.R. Part 40, Appendix A Introduction, referring to protection against "nonradiological hazards" as well as radiological hazards.) The same is not true for low-level radioactive waste disposal licensing, even under DOE's self-regulatory regime as reflected in DOE Order 435.1-1, which addresses only radiological hazards.

DOE has no authority to refashion the legal attributes of section 11(e)(2) waste by simply calling the Fernald material post-1978 11(e)(2) waste that is magically

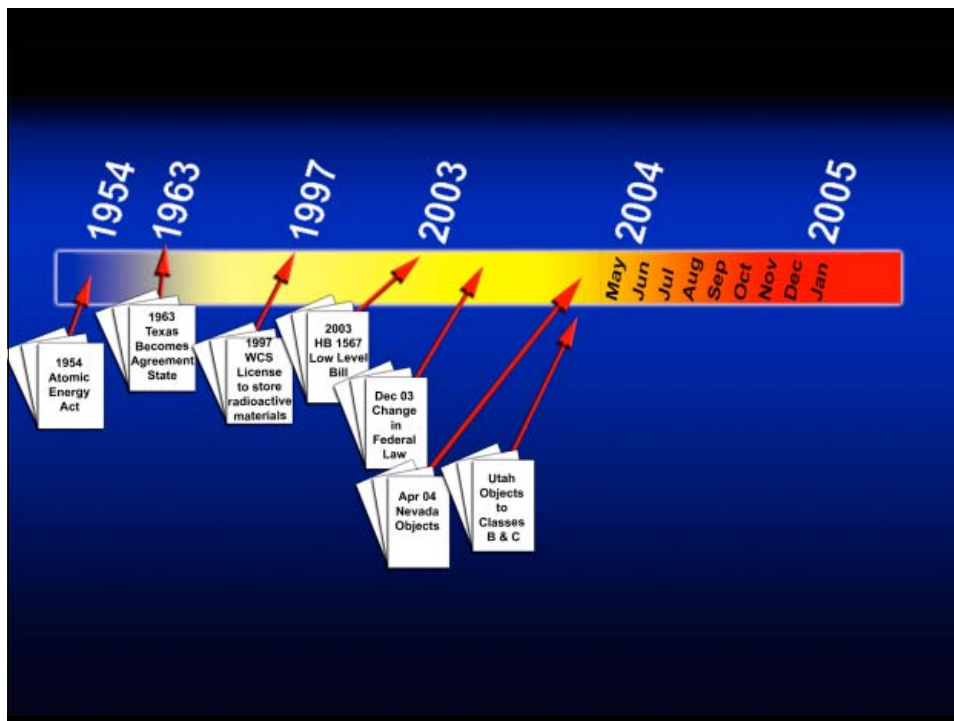
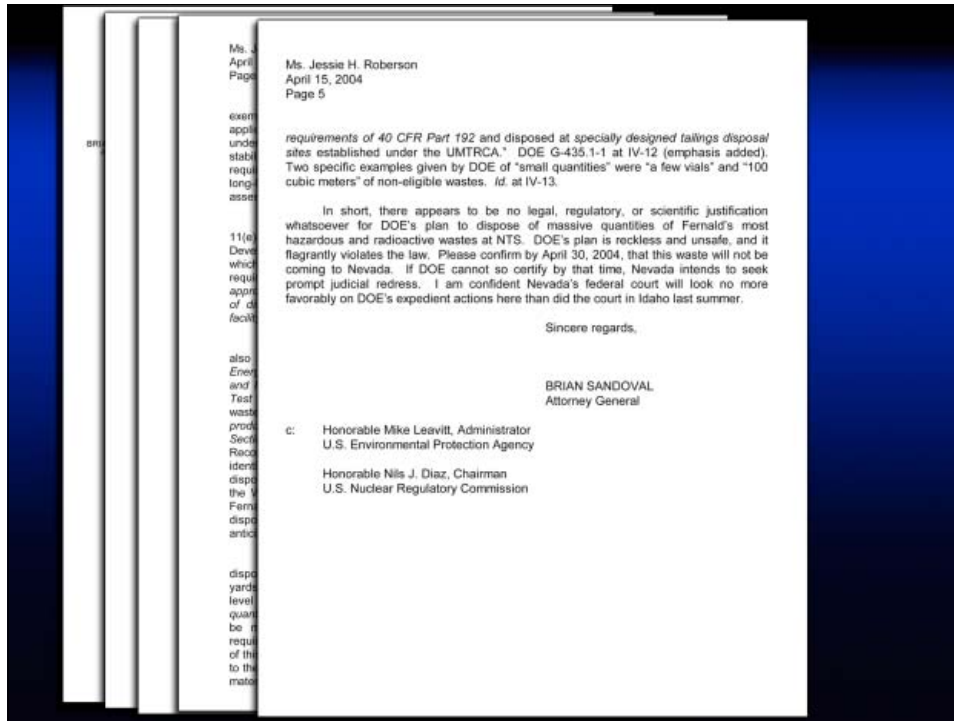
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Page 4

exempt from all federal and state hazardous waste regulations and otherwise applicable 11(e)(2) disposal licensing requirements. Indeed, it is Nevada's understanding that DOE has no plans even to test whether the Fernald wastes, after stabilization, meet the universal treatment standards under the land disposal requirements of RCRA. DOE thereby avoids all appropriate scientific inquiry as to the long-term impacts of hazardous constituents it would dispose of at NTS—the precise assessment required for every other 11(e)(2) and RCRA disposal facility in this country.

Any conceivable doubt about DOE's lack of authority to dump the Fernald 11(e)(2) wastes at NTS was put to rest by Congress in the Energy and Water Development Appropriations Act of 2004 (Public Law 108-137, December 1, 2003), which in Section 312 specifically referred to the Fernald silo wastes at issue and required that "[t]he Nuclear Regulatory Commission or an Agreement State, as appropriate, shall regulate the material as '11e(2) by-product material' for the purpose of disposition of the material in an NRC-regulated or Agreement State-regulated facility." (Emphasis added.) NTS, of course, is not such a facility.

As if that were not enough, DOE's plan to send the Fernald silo wastes to NTS is also in direct conflict with DOE's Record of Decision (ROD) for the Department of Energy's Waste Management Program: Treatment and Disposal of Low-Level Waste and Mixed Low-Level Waste, Amendment of the Record of Decision for the Nevada Test Site (DOE 6450-D1-P). The ROD defines "Low-Level Waste" as "all radioactive waste not classified as high-level waste, transuranic waste, spent nuclear fuel, or by-product tailings containing uranium or thorium from processed ore (as defined in Section 11(e)(2) of the Atomic Energy Act of 1954)." (Emphasis added.) While the Record of Decision for the NEPA documentation completed for the Fernald site identified "NTS or an appropriately-permitted commercial disposal facility" for disposition of wastes, we believe any such designation could not summarily override the Waste Management ROD as it applies to NTS. Moreover, we submit that the Fernald decision was based on DOE's intent to apply for and obtain a RCRA permit for disposal of hazardous waste at NTS. We do not believe the Fernald decision anticipated disposal of these disputed wastes as merely low-level waste.

Finally, DOE's own governing manual of regulations for radioactive waste disposal at NTS, Order M-435.1-1, clearly prohibits the disposal of over 14,000 cubic yards—by any measure hardly a "small quantity"—of 11(e)(2) waste at the NTS low-level waste disposal site. That manual, at Section IV.B(4), provides that "[a]mall quantities of 11e.2 byproduct material and naturally occurring radioactive material may be managed as low-level waste provided they can be managed to meet the requirements for low-level waste disposal in Section IV.P [Performance requirements] of this Manual." (Emphasis added.) DOE's Implementation Guide for M-435.1-1 refers to the legislative intent of the UMTCA in further defining "small quantities" of 11(e)(2) materials that are otherwise "managed by the Department according to the



# Utah Faces Political Uncertainties



# Utah Faces Political Uncertainties



## **19-3-103.7. Moratorium on class B and C radioactive waste.**

On and after May 3, 2003, through February 15, 2005, there is a moratorium prohibiting any entity in the state from accepting class B or C low-level radioactive waste for commercial storage, decay in storage, treatment, incineration, or disposal.

Enacted by Chapter 73, 2003 General Session

# Utah Faces Political Uncertainties



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Wednesday, January 19, 2005

Enacted

### **Fight over 'hot' waste may lose its sizzle**

Utah official says Envirocare backs ban of Class B, C waste

**By Bob Bernick Jr. and Joe Bauman**  
Deseret Morning News

The call by Gov. Jon Huntsman Jr. to ban importation of Class B and C radioactive waste in Utah may take the sizzle out of what had seemed one of the hottest environmental battles facing the Legislature.

# Utah Faces Political Uncertainties



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Deseret Morning News, Thursday, January 13, 2005

### **Stop N-waste, Huntsman**

**By Jason Groenewold**

*Opportunities are like sunrises — if you wait too long you miss them — William Arthur Ward*

When it comes to nuclear waste disposal, polls have consistently shown that more than 84 percent of Utahns are opposed to allowing higher levels of nuclear waste being dumped in the state. This includes the Class B and C radioactive waste that comes primarily from dismantled nuclear reactors. This waste is dangerous. The Nuclear Regulatory Commission warns us that unshielded exposure to Class C waste can cause a lethal dose of radiation based on a 20-minute exposure at a distance of just 3 feet.

# Utah Faces Political Uncertainties



## 19-3-103.7. Moratorium on class B and C radioactive waste.

On and after May 3, 2003, through February 15, 2005, there is a moratorium prohibiting any entity in the state from accepting class B or C low-level radioactive waste for disposal.

Enacted

### **Fight over 'hot' waste may lose its sizzle**

Utah officials say the moratorium on class B and C waste is still in effect.

Deseret Morning News, Thursday, January 13, 2005

### **Stop N-waste, Huntsman**

By Bill

Deseret

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Deseret Morning News, Friday, January 07, 2005

### **Governor hands back Envirocare's campaign donation**

*May ban Class B, C radioactive waste, says chief of staff*

By Joe Bauman

Deseret Morning News

[deseretnews.com](http://deseretnews.com)

# Utah Faces Political Uncertainties



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By Joe

Deseret

Article Last Updated: 1/19/2005 12:08 PM

### **Borders of Utah may shut for hot waste**

Prospective Envirocare owner indicates he could give up the Class B and C radiation permit

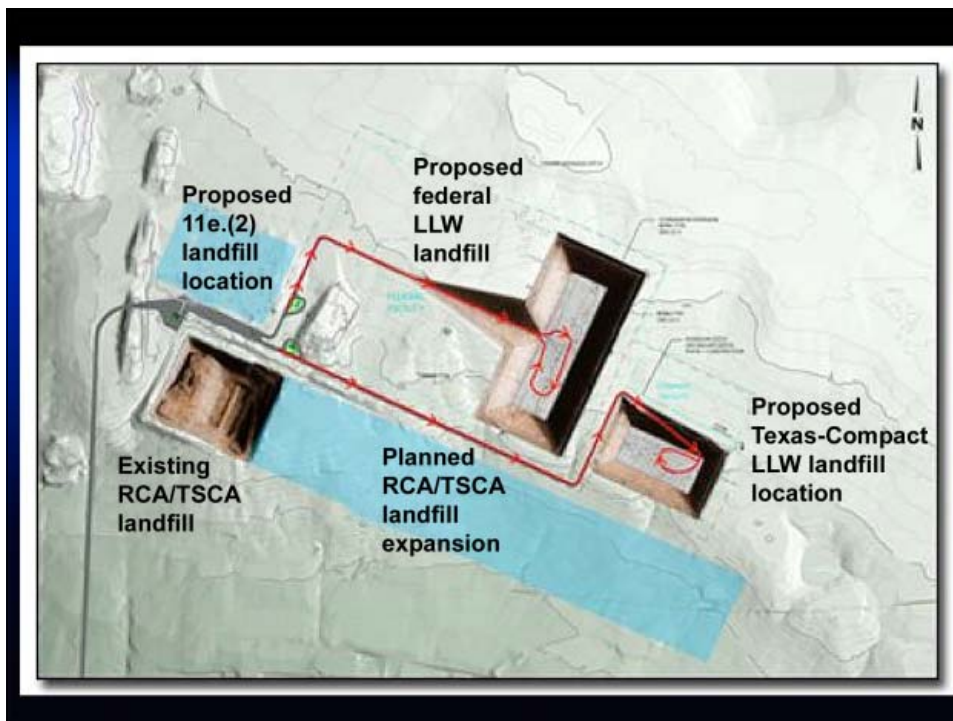
By Patty Henetz  
The Salt Lake Tribune  
Salt Lake Tribune

Envirocare of Utah purchaser Steve Creamer will give up his regulatory permit to accept the hotter Class B and C radioactive waste should the company's sale go through, sources on and off Capitol Hill say.

Jason Chaffetz, Gov. Jon Huntsman Jr.'s chief of staff, on Tuesday said he has had some "indirect conversations" with the purchasers, and has spoken with legislators who said Creamer would relinquish the permit once the sale closes.

## WCS 11e.(2) Applications

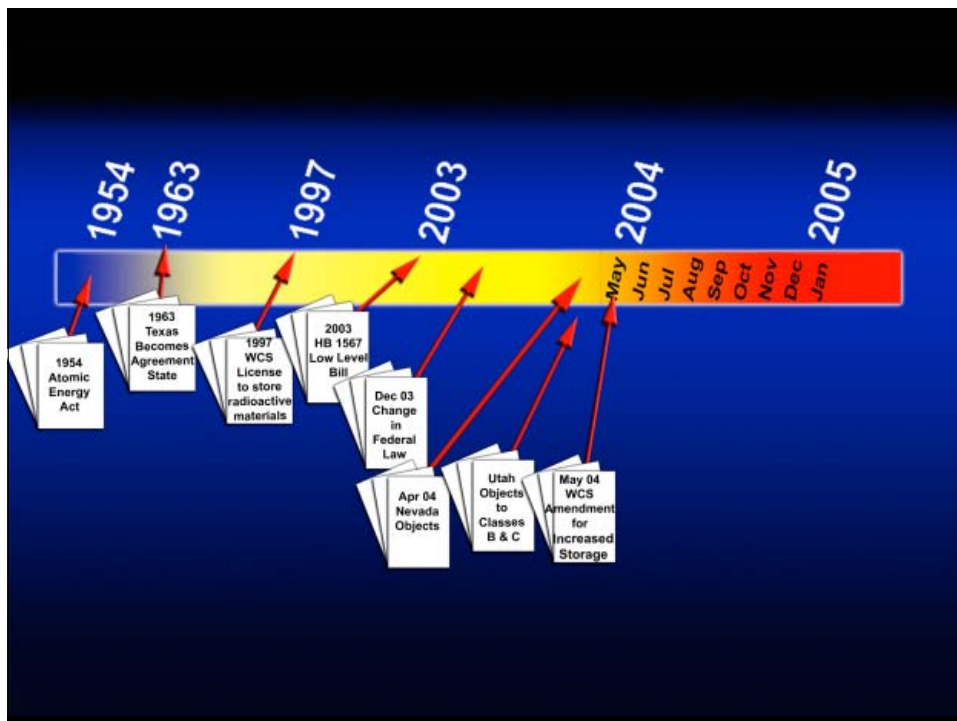
- Both storage & disposal of 11e.(2) waste is regulated by TDSHS
- Amended license over **30** times
- Total new amendment is for **1,500,000** cf of 11e.(2) waste

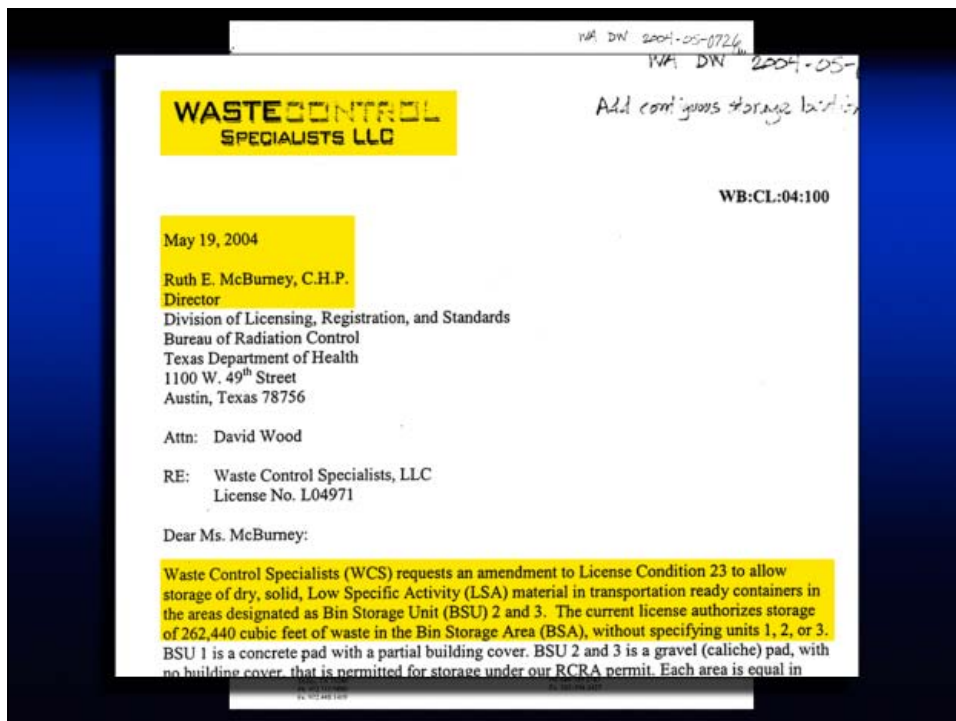
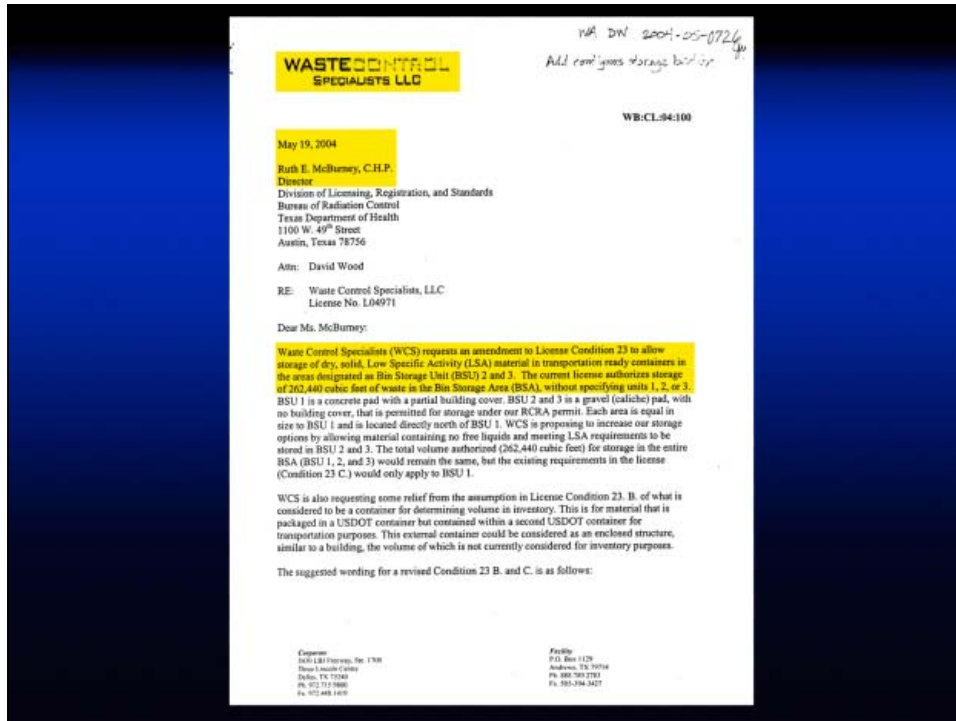




## Licensing Process Difference

- **Amendment to Storage License:**
  - Amendment granted, *before*
  - Public Hearing
- **New License for Disposal:**
  - Public Hearing, *before*
  - License granted





23. B. Add the sentence: If the waste is separately packaged in a strong tight or other USDOT approved container and is contained within a separate USDOT approved container for transportation purposes, then only the internal waste containers shall be counted as full for volume inventory purposes.

23. C. Change to C. 1. and change "Bin Storage Area" to "Bin Storage Unit 1".  
Add C. 2. Waste stored in Bin Storage Unit 2 and 3 will contain no free liquids and will be restricted to Low Specific Activity, as defined by 10 CFR Part 71 (as amended). The material will be maintained in a transportation ready condition in a USDOT approved transportation container that is securely locked. The containers will be inspected monthly to insure that they are maintaining their security and integrity.

In order to allow more flexibility in the financial assurances requirements (Condition 23. D.), WCS is proposing that the allocated amount of financial assurance for cesium-137 contaminated electric arc furnace dust (K061) be modified to allow it to be used for K061 or waste from authorized federal agencies. WCS has not received or stored K061 within the last several years, and the financial assurance allocation for K061 includes disposal, so it is therefore more than adequate to cover an equal volume of authorized federal agency waste.

The suggested wording for License Condition 23. D. 1, 2, and 3:  
After "(U. S. Environmental Protection Agency designation K061)" add, "or waste from authorized federal agencies".

Thank you for your attention to this matter. If you have any questions or need additional information please call me at 717-540-5220.

Sincerely,  
*William P. Dornoff*

William P. Dornoff  
Corporate RSO

cc: T. Jones  
D. Kunihiro  
T. Moore

Corporate  
5426 LBJ Freeway, Ste. 1700  
Three Levels Center  
Dallas, TX 75240  
Ph. 972.712.9800  
Ft. 972.488.1419

Facility  
P.O. Box 1129  
Arlington, TX 76014  
Ph. 817.389.2783  
Ft. 817.326.3427

7.2



Interoffice Memorandum

**THRU:** Ruth E. McBurney *R. McBurney*  
Radiation Safety Branch Manager

**TO:** Waste Control Specialists, L04071

**CC:** David Wood

**FROM:** Gary L. Smith *G. L. Smith*  
Technical Assessments Group Manager

**DATE:** January 10, 2006

**SUBJECT:** Definition of Major Construction and Waste Control Specialists' Request for an Amendment to Expand their Waste Storage Area, Log No. 2004-09-0728

The agency has decided that WCS's amendment request for expansion of its storage scope does not constitute "major" construction. Under agency rules, if the amendment is granted it would take effect immediately with opportunity for hearing thereafter by affected parties.

On examination of §289.254(b)(1) - the definition for Commencement of Major Construction - the following conclusions were made:

1. As an expansion of an open storage area, the proposed pad construction would not qualify as a "major structural erection."
2. As an expansion of existing open storage area, the proposed pad construction would not change the "facility design."
3. The proposed pad construction would not alter the boundaries of the real property on which the storage facility is located.

000020



Austin, Texas  
Interoffice Memorandum

THRU: Ruth E. McBurney *R.E.M.*  
Radiation Safety Branch Manager  
TO: Waste Control Specialists, L04971  
CC: David Wood  
FROM: Gary L. Smith *G.L.S.*  
Technical Assessments Group Manager

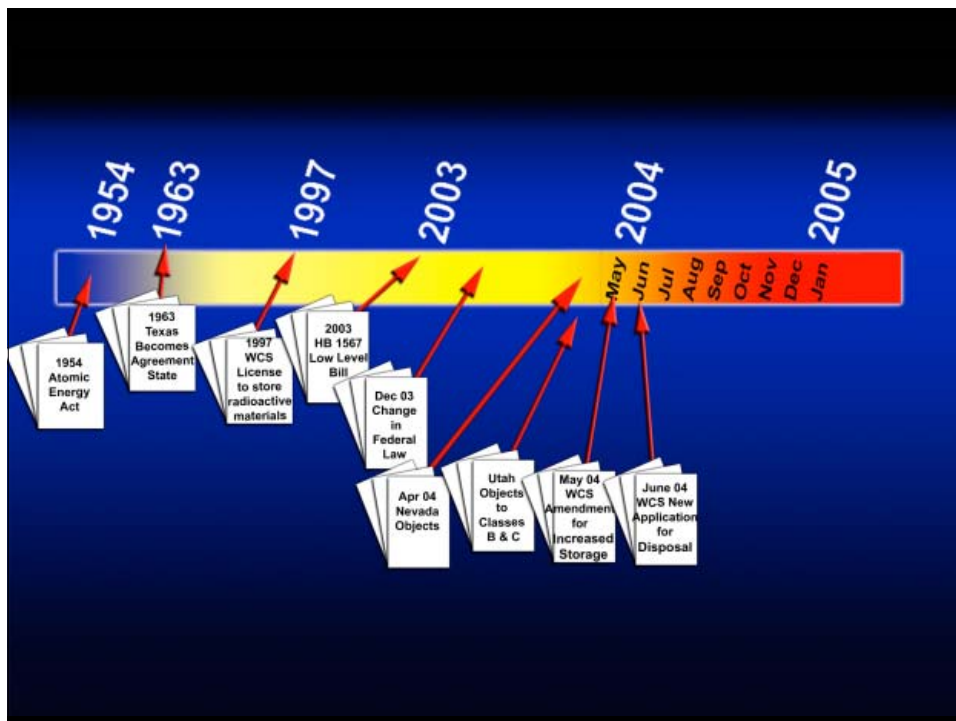
**SUBJECT:** Definition of Major Construction and Waste Control Specialists' Request for an Amendment to Expand their Waste Storage Area, Log No. 2004-05-0726

The agency has decided that WCS's amendment request for expansion of its storage space does not constitute "major" construction. Under agency rules, if the amendment is granted it would take effect immediately with opportunity for hearing thereafter by affected parties.

On examination of §289.254(b)(1) - the definition for Commencement of Major Construction - the following conclusions were made:

000020

<http://www.sls.state.tx.us/radiation>  
An Equal Employment Opportunity Employer



**WASTE CONTROL  
SPECIALISTS LLC**

June 21, 2004

Mrs. Ruth McBurney  
Texas Department of Health  
Bureau of Radiation Control  
1100 West 46th Street  
Austin, Texas 78706-3189

RECEIVED

JUN 21 7 04

RADIATION CONTROL

Re: License Application Pursuant to 25 TAC §289.260

Dear Mrs. McBurney:

It is my pleasure to enclose seven copies of a License Application for a byproduct material disposal landfill, to be located at the Waste Control Specialists LLC (WCS) facility in Andrews County, Texas. WCS owns in excess of 15,000 acres of property located on the Texas and New Mexico border and currently operates TDR licensed Class III storage and treatment facilities, as well as Texas Commission on Environmental Quality and EPA authorized hazardous and PCB storage, treatment and disposal facilities on the WCS property. This application has been prepared in accordance with the licensing requirements found at 25 TAC §289.260.

WCS believes that the superior natural characteristics of this site make it the best local site in Texas to construct a byproduct material disposal landfill which will serve to isolate the materials and protect human health and the environment.

I have also enclosed WCS check number 35768 in the amount of \$197,555, which represents the filing fee for the license, as found at 25 TAC §289.204(i)(1)(d). We look forward to working with you and your staff during the review process of this license application.

If you have any questions, please feel free to call me at 972/450-4233 or Steve Cook at Cook-Joyce, Inc. at 512/474-9097.

Sincerely,

  
Dean Kunhiro  
Senior Vice President  
Licensing and Regulatory Affairs

SLC:

Enclosure

cc: Mike Woodward, Hance, Scarborough & Wright  
Steve Cook, Cook-Joyce, Inc.  
WCS Records

Gogarty  
408-1337 Fremont, Ste. 1700  
Texas Lincok Centre  
Dallas, TX 75240  
PH 972 713 9888  
FX 972-488-1815

Field  
P.O. Box 1128  
Andrews, TX 79719  
PH 806 760 2700  
FX 806-294 3427



1.1.3 Waste Characterization

WCS intends to receive byproduct materials for disposal. Byproduct materials are the tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. The proposed landfill has been sited and designed and will be operated with sufficient precautions and safeguards to safely receive all byproduct materials without limitation due to level or concentration of radioactivity, except as such limits are set by law.

Uranium mill tailings contain some residual uranium; rare earth metals such as vanadium, molybdenum, thorium-230, and radium-226 (Ra-226); and their daughter products. The principal potential concern associated with the material results from the production of radon-222 (Rn-222) by the decay of Ra-226. Without proper controls, radon can diffuse through the waste material and be released to the atmosphere where it and its radioactive decay products may be inhaled by humans. The decay chains for uranium-238 (U-238) and thorium-232 (Th-232) are shown in Figure 1.1.

Uranium mill tailings are typically not homogeneous. Radium-226 concentrations in material can vary from less than 10 picocuries per gram (pCi/g) to more than 500,000 pCi/g. Average concentrations in large volumes of material are typically a few hundred pCi/g. Average Ra-226 concentrations at several remediation sites are shown in Table 1.1. Average residual U-238 concentrations in materials are typically about an order of magnitude lower than Ra-226 concentrations.

Information on the potential sources of byproduct material that may be disposed in the proposed landfill is subject to many factors that are not within the control of WCS. Characteristics of the materials proposed for disposal were researched for the evaluation of the landfill's potential impact on workers and the public. The anticipated material sources, characteristics, and, where possible, estimated quantities are summarized below.

**Solution Mining Residues** — These are sludge-like materials that result from processing ore solutions. They contain very small amounts of uranium and all of the thorium and





decay products such as Ra-226, lead-210 and Th-230, as well as minor quantities of other radionuclides. Concentrations of radionuclides, primarily Ra-226, were 189 pCi/g in the Falls City, Texas tailings.

Uranium Mining and Milling Facility Decommissioning Waste — Building decommissioning wastes (including process piping, equipment and containers) from uranium mining and milling facilities are classified as byproduct material for purposes of disposal. Concentrations of radionuclides in these wastes are similar to the concentrations of radionuclides in uranium mill tailings; however, uranium could be found at higher concentrations in the decommissioning wastes than in the tailings from which the uranium has been effectively removed, because the decommissioning wastes may be contaminated at different stages in the milling process.

Uranium Mill Tailings — DOE reports tailings ranging in concentration from around 50 pCi/g for some of the concentrated mill tailings and up to 500 to 600 pCi/g of Ra-226 for mills taking concentrated feed from rich deposits or from concentrators. The primary radionuclides in the mill tailings are Ra-226, Th-230, Rn-222 and lead-210.

Maywood, NJ Residues — Maywood wastes are generally thorium mill tailings and other contaminated residues related to thorium mining. Volumes are estimated to range from 281,280 cubic yards to as much as 470,000 cubic yards. Contamination consists of radium isotopes and heavy metals.

Fernald Environmental Management Plant — At the DOE's Fernald, Ohio facility, operations with uranium and thorium metals and some milling of pitchblende were conducted starting in the 1950s. Pitchblende mill wastes in the form of clay-like sludge will be slurried out of two tanks and solidified with cement. A total of approximately 50,000 cubic yards of mill wastes from the silos and other wastes from decommissioning the project will be generated. An additional approximately 6,100 cubic yards of dry waste is contained in a third silo.

Niagra Falls Site — The Niagra Falls site has a total of about 50,000 cubic yards of waste, mostly soils contaminated by uranium and radium.



decay products such as Ra-226, lead-210 and Th-230, as well as minor quantities of other radionuclides. Concentrations of radionuclides, primarily Ra-226, were 189 pCi/g in the Falls City, Texas tailings.

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Fernald Environmental Management Plant — At the DOE's Fernald, Ohio facility, operations with uranium and thorium metals and some milling of pitchblende were conducted starting in the 1950s. Pitchblende mill wastes in the form of clay-like sludge will be slurried out of two tanks and solidified with cement. A total of approximately 50,000 cubic yards of mill wastes from the silos and other wastes from decommissioning the project will be generated. An additional approximately 6,100 cubic yards of dry waste is contained in a third silo.

Niagra Falls Site — The Niagra Falls site has a total of about 50,000 cubic yards of waste, mostly soils contaminated by uranium and radium.





Available data regarding the radiological and chemical content of typical uranium mill tailings, the Maywood wastes and the Fernald wastes are provided in Appendix 1.B.

## 1.2 APPLICANT INFORMATION

### 1.2.1 Corporate Organization

WCS will be the owner, licensee and the operator of the proposed landfill and will provide security for the payment of closure, institutional care and long-term surveillance and maintenance. Authority and responsibility with respect to operating procedures, radiation safety programs, quality assurance programs and maintenance activities will be managed by WCS.

WCS is an organized Delaware limited liability company. The WCS corporate office is located in Dallas, Texas at the following address:

Waste Control Specialists LLC  
Three Lincoln Centre, Suite 1700  
5400 LBJ Freeway  
Dallas, Texas 75240

WCS is represented by a Texas registered agent, Corporation Service Company, located at the following address:

Corporation Service Company  
800 Brazos Street  
Austin, Texas 78701

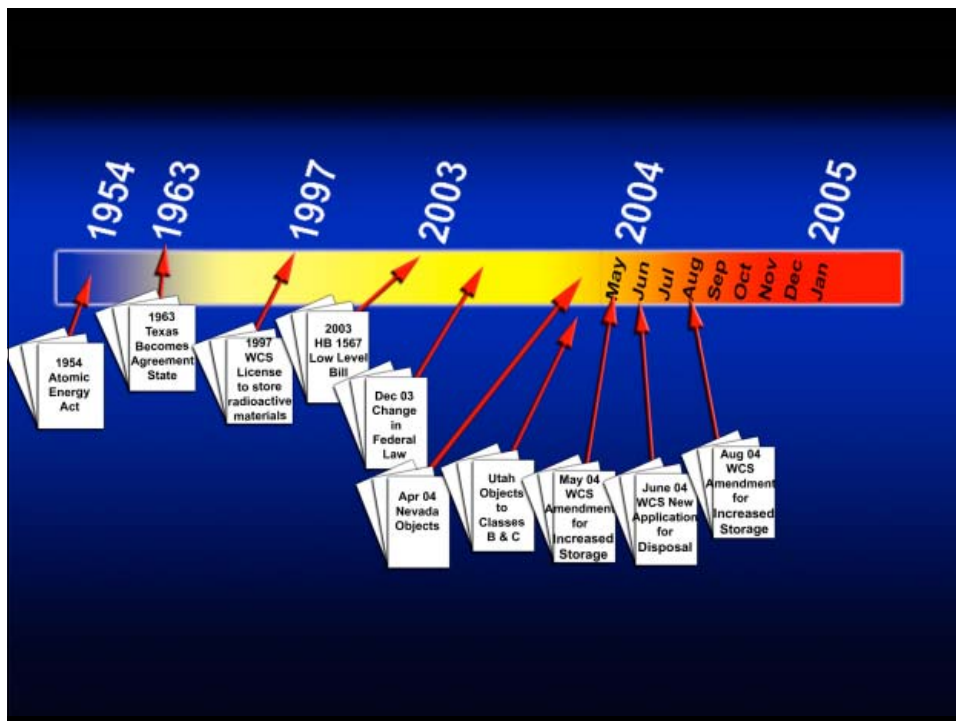
A chart depicting the WCS corporate organization is provided in Figure 1.2. The President and Chief Operating Officer (COO) is responsible for ensuring the facility, including the proposed landfill, complies with all applicable regulatory requirements. The COO directs these responsibilities through the facility's General Manager. In addition to the General Manager, the following positions report to the President and COO: the Senior Vice President of Licensing and Regulatory Affairs; the Senior Vice President of Business Development; the Chief Financial Officer (CFO); and the Director of Planning and Analysis. The Corporate Radiation Safety Officer (RSO) reports directly to the Senior Vice President of Licensing and Regulatory Affairs.

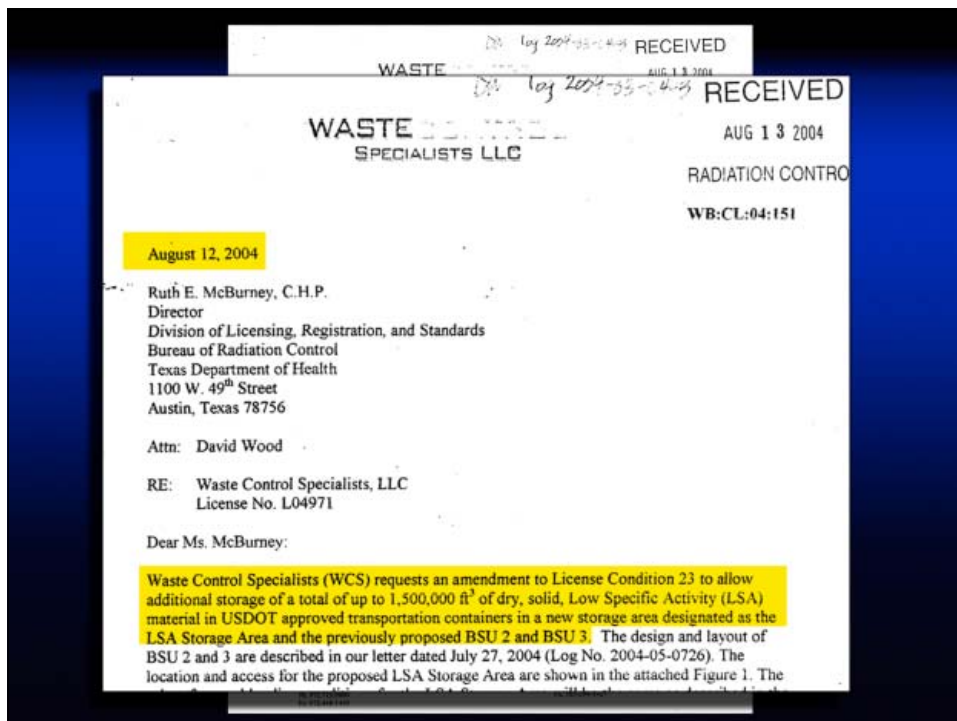
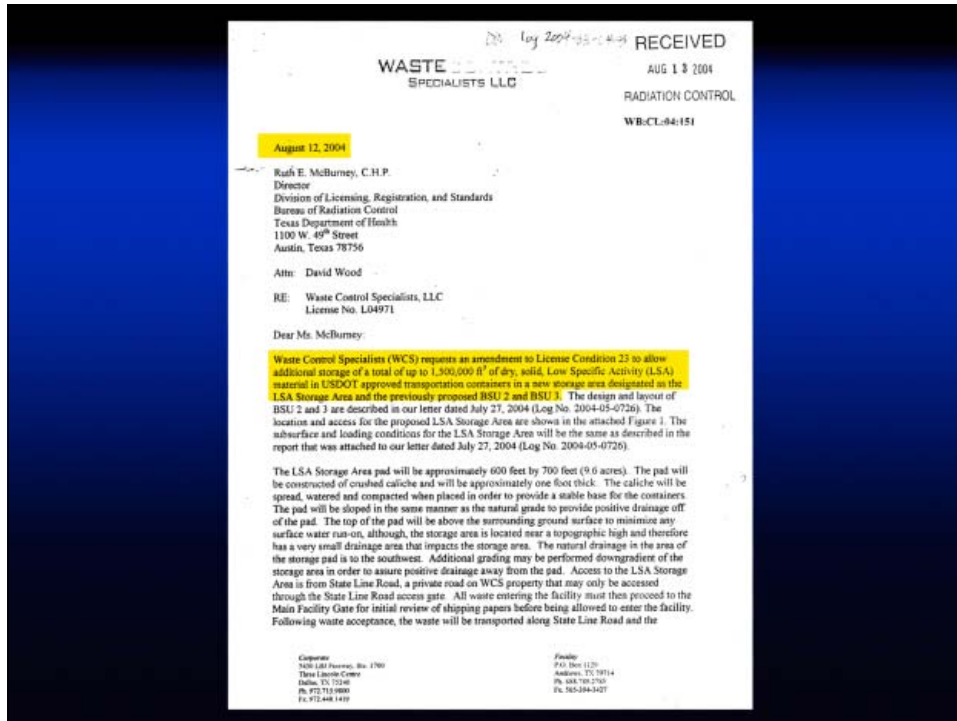
WCS/FINAL/ISSUE/LICENSING APPLICATION  
#046621\_LICENSE APPLICATION.DOC

1-5



9.4







transport vehicles will enter the LSA Storage Area gate and proceed on a caliche access roadway to the LSA Storage Area pad. The containers will be stored in rows of two adjacent containers with two feet of aisle space between each of the rows of two adjacent containers. The largest loaded vehicle that WCS would anticipate traversing the LSA Storage Area is 95,000 lbs.

Waste stored in the LSA Storage Area will contain no free liquids and will be restricted to Low Specific Activity or Surface Contaminated Object, as defined by 10 CFR Part 71 (as amended). A minimum six foot high chain link fence will be constructed around the perimeter of the LSA Storage Area and site security will be maintained for this area. The fenced area is approximately 17.5 acres. All material in this storage area will be maintained in USDOT approved transportation containers that are securely locked or sealed. All containers will be inspected monthly to insure that they are maintaining their security and integrity.

The suggested wording for revised Condition 23 A. and C. is as follows:

A. *The total volume physically present shall not exceed 1,802,865 cubic feet and shall be further subject to the following building and area limitations:*

1. Bin Storage Units (BSU 1, 2, and 3) and LSA Storage Area: 1,762,440 cubic feet
2. Container Storage Building 36,750 cubic feet
3. Stabilization Building 8,000 cubic feet

(Note: The 1,762,440 ft<sup>3</sup> includes the currently authorized storage in the bin storage area.)

C. *Waste stored in the Bin Storage Units and the LSA Storage Area that is not contained within a High Integrity Container will be restricted to Low Specific Activity or Surface Contaminated Object, as defined by Title 10 of the Code of Federal Regulations (CFR) Part 71 (as amended), or depleted uranium. The material will be maintained in a USDOT approved transportation container that is securely sealed or locked. The containers will be inspected monthly to insure that they are maintaining their security and integrity.*

In order to accommodate the additional storage volumes, the financial assurance requirements in License Condition 23. D. will need to be modified. As discussed with the agency, the existing financial assurance requirements can be reallocated from assumed commercial disposal requirements to the additional authorized federal agency (AFA) transportation and loading requirements. The following assumptions are used for calculating the additional transportation and loading requirements.

- The additional 1,500,000 cubic feet is contained in 7895 - 190 ft<sup>3</sup> containers.
- Transportation is by rail with ten containers per railcar requiring 800 railcars.
- The 1200 mile transport distance (average distance to all DOE sites) requires one week each to load, unload, transport to, and return, for a total transport time of one month per train.
- **Eight unit trains with 100 railcars each will be utilized.**
- Each railcar costs \$3960 per month including car rental and mileage surcharges.
- Crain rental for loading containers is \$10,000 per week for a total of \$80,000 for 8 weeks.

The total transportation and loading cost for 1.5 million ft<sup>3</sup> = \$3960 x 800 + \$80,000 = \$3,248,000. We performed a similar calculation assuming only 5,250 containers for License Condition 23.D Tier 1 for a total cost of \$2,149,000.

transport vehicles will enter the LSA Storage Area gate and proceed on a caliche access roadway to the LSA Storage Area pad. The containers will be stored in rows of two adjacent containers with two feet of aisle space between each of the rows of two adjacent containers. The largest loaded vehicle that WCS would anticipate traversing the LSA Storage Area is 95,000 lbs.

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2. Container Storage Building 36,750 cubic feet
3. Stabilization Building 8,000 cubic feet

(Note: The 1,762,440 ft<sup>3</sup> includes the currently authorized storage in the bin storage area.)

C. *Waste stored in the Bin Storage Units and the LSA Storage Area that is not contained within a High Integrity Container will be restricted to Low Specific Activity or Surface Contaminated Object, as defined by Title 10 of the Code of Federal Regulations (CFR) Part 71 (as amended), or depleted uranium. The material will be maintained in a USDOT approved transportation container that is securely sealed or locked. The containers will be inspected monthly to insure that they are maintaining their security and integrity.*

In order to accommodate the additional storage volumes, the financial assurance requirements in License Condition 23. D. will need to be modified. As discussed with the agency, the existing financial assurance requirements can be reallocated from assumed commercial disposal requirements to the additional authorized federal agency (AFA) transportation and loading requirements. The following assumptions are used for calculating the additional transportation

train.

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- Crain rental for loading containers is \$10,000 per week for a total of \$80,000 for 8 weeks.

The total transportation and loading cost for 1.5 million ft<sup>3</sup> = \$3960 x 800 + \$80,000 = \$3,248,000. We performed a similar calculation assuming only 5,250 containers for License Condition 23.D Tier 1 for a total cost of \$2,149,000.

If it is assumed that the additional dollars required by the various tiers in License Condition 23. D. are due to increased costs for disposal of commercial waste, the assumed disposal cost is \$793.20 per ft<sup>3</sup> [(\$32,881,617-\$7,084,973)÷(36,344-3822)]. The additional loading and shipping costs are equivalent to the assumed disposal of 4195 ft<sup>3</sup> of commercial waste for Tiers 2 & 3 and 2,709 ft<sup>3</sup> for Tier 1. If this amount of commercial waste disposal is reallocated to shipment and loading of AFA waste, then the commercial waste volumes can be reduced accordingly.

The suggested wording for License Conditions 23. D. 1, 2, and 3 is as follows:  
 D. The volume authorized in License Condition No. 23.A shall be further limited in accordance with the amount of Financial Assurance in place with the Agency:

1. Financial Assurance = \$7,084,973. No more than 1,113 cubic feet of waste that has a current commercial disposal option, 58,320 cubic feet of cesium-137-contaminated electric arc furnace dust (U. S. Environmental Protection Agency designation K061) or waste from unauthorized federal agencies, and 1,228,068 cubic feet of waste from authorized federal agencies; or
2. Financial Assurance = \$18,467,478. No more than 13,977 cubic feet of waste that has a current commercial disposal option, 58,320 cubic feet of cesium-137-contaminated electric arc furnace dust (U. S. Environmental Protection Agency designation K061) or waste from unauthorized federal agencies, and 1,730,568 cubic feet of waste from authorized federal agencies; or
3. Financial Assurance = \$32,881,617. No more than 32,149 cubic feet of waste that has a current commercial disposal option, 58,320 cubic feet of cesium-137-contaminated electric arc furnace dust (U. S. Environmental Protection Agency designation K061) or waste from unauthorized federal agencies, and 1,712,396 cubic feet of waste from authorized federal agencies.

Financial assurance for interim storage of additional sealed sources is already satisfactorily covered by the existing instrument. All sealed sources are expected to be received under an AFA letter and any packaging and transportation costs are already included as part of the assumed volume in the existing coverage. Sealed sources not covered by an AFA letter would have to meet all other conditions of the license for interim storage, including having a commercial disposal option.

Thank you for your attention to this matter. If you have any questions or need additional information please call me at 717-540-5220.

Sincerely,

*William P. Domsife*

William P. Domsife  
 Corporate RSO

cc: T. Jones  
 D. Kunitiro  
 T. Moore

8.3

LICENSE REVIEW SHEET									
1. NAME: WASTE CONTROL SPECIALISTS LLC				100 No: 200403663					
2. ADDRESS: P O BOX 1129				3. LICENSE No: L04971		AMENDMENT No: 32 of 33 ?			
CITY: ANDREWS				ZIP CODE: 79714		STATE: TX		REVIEWER: DWOOD	
LOG IN DATE: 08/12/2004	INSP. CAT: 04	USE CODE: N/C	# SITES: 1	TOF: N	FEA PAID DATE:				
ACTION TYPE: AMENDMENT					COPY TO REGIONS (1-10):		FINANCIAL ASSURANCE REQ'D: Y		
4. ADDING LSA storage area plus readdressing FA associated with additional requested volumes of waste to be stored on site.					COPY TO ERIC SKOTAK		EMERGENCY PLAN REQ'D: Y		
CHANGES TO BE MADE IN PERMIT: N/A					3 large engineering shops delivery in person by Steve Cook P, on 8/12/04. Copies provided George Gonzalez at Tech Assessments for eval. Per Br of 8/19/04, also fax mail to: 717-540-5102 & 505-394-3427		ADDITIONAL COMMENTS:		
5. SHOW LOCATION: New caliche pad for storage of dry active waste in DOT approved containers in an outdoor environment. Changed to asphalt cover. Engineering design of the requested pads was sent out under contract to a Randall Charbeneau, PhD, PE, on 1/7/05. The reviewers report findings communicated on 1/13/05 & had copy received on 1/14/05. The findings resulted in another round of deficiencies.									
13. RSO: N/C		TRF: N/C							
14. USRB: N/C		TAB: N/C							
5. HISTORY: N/C		6. FORM: N/C		7. ACTIVITY: N/C		8. USE: N/C		9. REGISTRY: N/C	
DESIGNED BY: William P. Domsife		1. LN DATED: 8/12/04	2. LN DATED: 10/1/04	3. LN DATED: 10/28/04	4. LN DATED: design	5. LN DATED: 11/12/04			
SUMMARY OF CHANGES:  Review issues on Back of Review Sheet.									
<b>000022</b>									
DESIGNED DATE: 9/20/04		10/21/04		1/13/05		COMPLETED DATE:			
REVIEWER: G.S.S.		G.S.S.		G.S.S.		REVIEWER:			
COMMENT CODE: 04-06		LOGOUT DATES & DETAILS FOR LETTERS ABOVE		1/13/05		PRAG LOGOUT DATE:			
		9/20/04		10/21/04					
<small>LSI-1 (10/01) Texas Department of Health, Bureau of Radiation Control    ▲ = CHANGE    - = REMOVE OR TERMINATE    + = ADD</small>									

LICENSE REVIEW SHEET

3

LICENSE REVIEW SHEET

3

1. NAME: WASTE CONTROL SPECIALISTS LLC					LOG No: 2004080443	
DBA:					3. LICENSE No: L04971	
ATTN: TERENCE MOORE, CHP, RSO					AMENDMENT No: 32 of 33 ?	
2. ADDRESS: P O BOX 1129					4. EXP. DATE: 11/30/2004	
CITY: ANDREWS					ZIP CODE: 79714	STATE: TX
LOG IN DATE: 08/12/2004	INSP. CAT: 04	USE CODE: N/C	# SITES: 1	TOT: N	FEE PAID: DATE: BILLING No:	
ACTION TYPE: AMENDMENT			COPIES TO REGION(S) (1-11): Copy to Eric Skotak			FINANCIAL ASSURANCE REQ'D: Y
						EMERGENCY PLAN REQ'D: Y
T4			Adding LSA storage area plus readdressing FA associated with additional requested volumes of waste to be stored on site.			ADDITIONAL COMMENTS: 3 large engineering maps delivery in person by Steve Cook P, on 8/12/04. Copies provided George Gonzales in Tech Assessments for eval. Per ltr of 8/19/04, also fax mail to: 717-540-5102 & 505-394-3427.
CHANGES TO BE MADE IN PERMIT: N/A						
STOR- New caliche pad for storage of dry active waste in DOT approved containers in an outdoor environment. Changed to asphalt cover. Engineering design of the requested pads was sent out under contract to a Randall Charbeneau, PhD, PE, on 1/7/05. The reviewers report/findings communicated on 1/13/05 & had copy received on 1/14/05. The findings resulted in another round deficiency.						
13. RSO: N/C			T&E:			
12. USERS: N/c			T&E:			
5. ISOTOPES: N/C	6. FORM:	7. ACTIVITY:	8. USE:	REGISTRY:		

Review of LSA Pad amendment to provide interim storage of 1.5 million Cu ft of dry active waste from DOE (transferred from Fermat).

Changes Requested: -Volume of waste from 302,865 to 1,802,865 cu ft. (1.5 million new on LSA pad)  
 -New Decommissioning Funding Plan cost estimate blending old data with some new, diverting commercial trucking transport cost to rail cost for reuse in DOE facility.  
 -New location referred to as an LSA storage area, including 2 other areas of open-air storage, mostly on equivalent storage pads.

Volume increase: must be tied to FA cost of transporting and loading of said waste back to its authorized Federal Agency, DOE. First consideration for auto-building storage of waste, and physical requirements (location, containers, and adequacy of new contained procedures for safety storage said waste. Adequacy of storage pad design must be adequate to support weight of containers & loading vehicles, and weather and waste erosion issues and risks of container leakage. LCS 23A&D, 24 and 37, will need modification to reflect these changes as well as the tie-down.

New FA costs: are associated with an additional 1.5 million cu ft of Federal waste. LCS 15B, 23D, and 16, require that DOE owned waste be covered by a written, executed agreement for the Federal Agency to commitment to responsibility and possession within 30 days, and to bare associated costs from transport if necessary, with copies "mailed prior to waste receipt".  
 [Should consider modifying to read that, ...]

16. Copies of authorized federal agency agreements specified in License Conditions 15.B, 23.D and 19.C shall be mailed within seven (7) days of execution and prior to receipt of waste. shall be provided in seven day of execution and prior written approval must be granted by the Agency before receipt of the waste. The written agreement shall be mailed to: ... [This based on prior history with the Federal Agency and the modified wording of their executed agreements.]

Outstanding agreements are: 1) Does the proposed DOE facilities where waste is proposed for retrans possess direct rail access for the receipt, as modified by your new procedure? If not, trucking and prior cost established previously must be utilized for this waste and new figures (volumes per dollar cost) must be submitted until updated at renewal of the license. 2) Why have the modified cost estimates failed to address labor cost for the additionally requested waste? It would appear that there will be labor cost for a) lifting and transporting 7,895 containers (190 cu ft) from the storage pads to the train loading area, b) health physics staff performing surveys, wipe testing and inventories for each of these containers, and c) a crane operator with crew during the proposed month of operations? Note that the 2004 RSMears catalog standards for construction activities post the cost for a crane crew alone, at almost \$3000.00 per day.

New locations of storage: Are the caliche pads and access road built to an adequate standard to ensure stability for weight and water related erosion. Adequacies of design for those already constructed and to be constructed are questions to be resolved by a civil engineer. [As the Agency current has a vacancy in the area of technical assessments, another option would be to have the licensee provide a licensed engineer's evaluation of the physical design.]

Outstanding questions are: 3) As the Agency finds itself without a licensed civil engineer staff at this time, we request that you provide an analysis from a licensed civil engineer that evaluates the adequacy of the proposed caliche pads and road, both as built and as proposed, for standards of designs for which construction has or will meet, and that addresses the adequacy of maintaining integrity under the proposed pressure bearing associate with maximum weights, and abilities to carry off water without compromise. 4) Provide a description of the containment and design specifications for the 7,895 containers offered to hold dry active waste that is classified as Low Specific Activity (LSA) in an outdoor environment for an interim storage period.

License Condition # will need modification due to the changing definition of "Bin Storage Area", as follows:  
 29. A. Waste containers containing radioactive waste meeting the requirements of low specific activity material, group I (LSA-I), as specified in Title 49 of the Code of Federal Regulations, Section 173.403, may be opened for sampling of the contents of container maintenance or repair in an approved permanent structure. **Permitted: the Container Storage Building, Stabilization Building, or Bin Storage Area.**

000023

Review of LSA Pad amendment to provide interim storage of 1.5 million Cu ft of dry active waste from DOE... (transferred from Fermat).

Changes Requested: -Volume of waste from 802,865 to 1,802,865 cu ft. (1.5 million new on LSA pad)  
-New Decommissioning Funding Plan cost estimate blending old data with some new, diverting commercial trucking transport cost to rail cost for return to DOE facility  
-New location referred to as an LSA storage area, including 2 other areas of open-air storage, mostly on equivalent storage pads.

Volume increase: must be tied to EA cost of transporting and loading of said waste back to its authorized Federal Agency, DOE. First consideration for non-building storage of waste, and physical requirements locations, containers, and adequacy of new contained procedures for safely storage said waste. Adequacy of storage pad design must be adequate to support weight of containers & loading vehicles, and weather and waste erosion issues and risks of container leakage. LCS 23A&D, 24 and 37, will need modification to reflect these changes as well as the tie-down.

**New locations of storage:** Are the caliche pads and access road built to an adequate standard to ensure stability for weight and water related erosion. Adequacies of design for those already constructed and to be constructed are questions to be resolved by a civil engineer. [As the Agency current has a vacancy in the area of technical assessments, another option would be to have the licensee provide a licensed engineer's evaluation of the physical design.]

**Outstanding questions are:** 3) As the Agency finds itself without a licensed civil engineer staff at this time, we request that you provide an analysis from a licensed civil engineer that evaluates the adequacy of the proposed caliche pads and road, both as built and as proposed, for standards of designs for which construction has or will meet, and that addresses the adequacy of maintaining integrity under the proposed pressure bearing associate with maximum weights, and abilities to carry off water without compromise. 4) Provide a description of the containment and design specifications for the 7,895 containers offered to hold dry active waste that is classified as Low Specific Activity (LSA) in an outdoor environment for an interim storage period.

License Condition # will need modification due to the changing definition of "Bin Storage Area", as follows:

29. A. Waste containers containing radioactive waste meeting the requirements of low specific activity

...from a structure, the permanent and interim structures located at DOE facilities, and containers used to hold dry active waste that is classified as Low Specific Activity (LSA) in an outdoor environment for an interim storage period.

License Condition # will need modification due to the changing definition of "Bin Storage Area", as follows:  
29. A. Waste containers containing radioactive waste meeting the requirements of low specific activity material, group I (LSA-I), as specified in Title 49 of the Code of Federal Regulations, Section 173.403, may be opened for sampling of the contents or container maintenance or repair as an approved permanent structure. **Penncon, the Container Storage Building, Stabilization Building, or Bin Storage Area.**

000023

1-10-2004 11:31am 1-10-2004 8:22:31 AM 41-1034841

**TEXAS DEPARTMENT OF STATE HEALTH SERVICES**  
1100 W. 49<sup>th</sup> Street Austin, Texas 78758  
1-800-963-1111 • <http://www.dshs.state.tx.us>

EDUARDO LANGRER, M.D., M.P.H.  
COMMODORE

October 20, 2004

Re: Radioactive Material License  
No. L04971, Amendment No. 29

WASTE CONTROL SPECIALISTS, LLC  
ATTN: TERENCE MOORE  
P.O. BOX 1129  
ANDREWS TX 79714

Dear Mr. Moore:

Please find enclosed amendment No. 29 to Radioactive Material License No. L04971, issued to Waste Control Specialists, LLC (WCS), and a notice of that amendment. The amendment is issued to allow for the licensee to increase quantities of possessed activity in the form of sealed sources and solid radioactive material with radionuclides from Waste Category 1, as specified in Title 25 Texas Administrative Code (TAC) §280.254(d)(1). The amendment also requires implementation of an emergency plan. While authorizing this request, Licensing has corrected the State institution's emergency plan. While authorizing this request, Licensing has corrected through minor changes in License Conditions 15.B and 16, provisions and expectations for supplying source vessels to WCS.

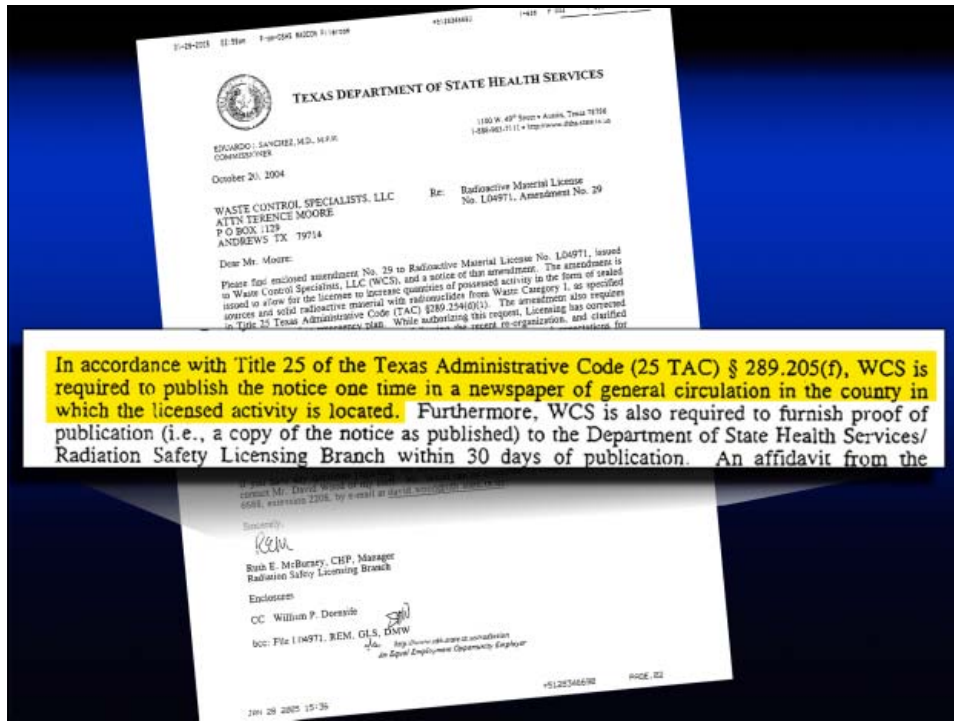
In accordance with Title 25 of the Texas Administrative Code (25 TAC) § 289.205(c), WCS is required to publish the notice on forms in a newspaper of general circulation in the county in which the licensed activity is located. Furthermore, WCS is also required to furnish proof of publication (i.e. a copy of the notice as published) to the Department of State Health Services Radiation Safety Licensing Branch within 30 days of publication. An affidavit from the publisher accompanied by a printed copy of the notice as published shall be conclusive evidence of publication.

If you have any questions regarding the amendment or the publication of the notice, please contact Mr. David Wood of my staff. Mr. Wood can be contacted by telephone at (512) 834-6688, extension 2308, by e-mail at [david.wood@dshs.state.tx.us](mailto:david.wood@dshs.state.tx.us).

Sincerely,  
*REM*  
Ruth E. McBurney, CHP, Manager  
Radiation Safety Licensing Branch

Enclosures  
CC: William P. Deenick  
bcc: File L04971, REM, OLS, DMW  
*WPM*  
<http://www.dshs.state.tx.us> is available  
in Equal Employment Opportunity language

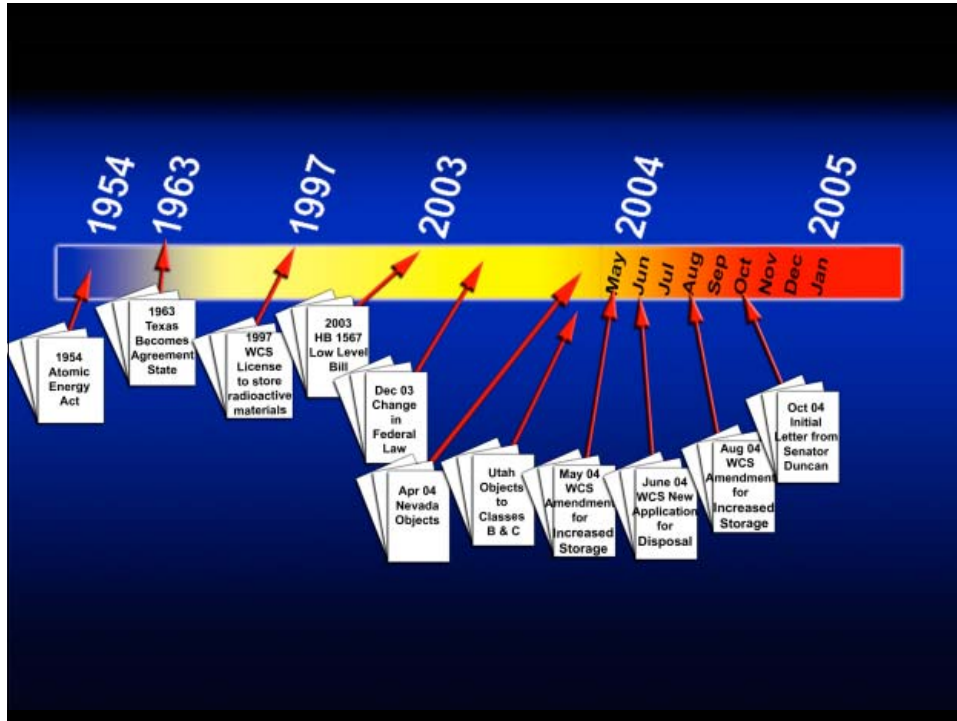
41-1034841-2308 PAGE 02  
2004 28 2005 15:39




**NOTICE OF PUBLIC MEETING**

Notice is hereby given by the Department of State Health Services (department), Radiation Safety Licensing Branch, that a public meeting will be held on the application of Waste Control Specialists, LLC, ("WCS"), to amend Radioactive Material License Number LO4971, to increase the licensed storage capacity of the WCS facility. The WCS facility is located in Andrews County, Texas, one mile north of State Highway 176; 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

A public meeting will be conducted by the department at 6:00 p.m. on Thursday, January 6, 2005, at the Community Room of the National Bank of Andrews, 1501 North Main, Andrews, Texas, 79714. The purpose of the meeting is to receive public comment on the license amendment application of WCS to increase the licensed storage capacity. For information concerning the public meeting, contact Richard A. Ratliff, P.E., Radiation Program Officer, or Ruth McBurney, Manager, Radiation Safety Licensing Branch, Department of State Health Services, 1100 West 49th, Austin, TX, 78756-3189, (512) 834-6688.



  
**ROBERT DUNCAN**  
 STATE SENATOR  
 DISTRICT 28  
 October 8, 2004

Eduardo J. Sanchez, M.D., M.P.H., Commissioner  
 Texas Department of State Health Services  
 1100 West 49th Street  
 Austin, TX 78756

RE: Waste Control Specialists, L.L.C. Amendment to Radioactive Material License No. L04971

Dear Dr. Sanchez:

As you are aware, my office has been monitoring the proposal to amend the above referenced Radioactive Material License for the purpose of accepting, storing, and disposing of radioactive waste from the U.S. Department of Energy (DOE) Fernald Environmental Management Project in Ohio. It is my understanding that Waste Control Specialists, L.L.C., intends to contract with the DOE to store and dispose of this rather significant quantity of waste, classified by the DOE as "11e(2) waste", at a proposed site in Andrews County, Texas. This site is contiguous to or nearby a site that is currently being considered as a low level radioactive waste disposal site through legislation recently approved by the Texas Legislature in 2003 (House Bill 1567). As you know, House Bill 1567 was a hotly debated and carefully crafted legislative plan to fulfill Texas' obligations under its Congressionally ratified low level radioactive waste Compact with Maine and Vermont and to provide a centralized disposal location for Texas generators of low level radioactive waste.

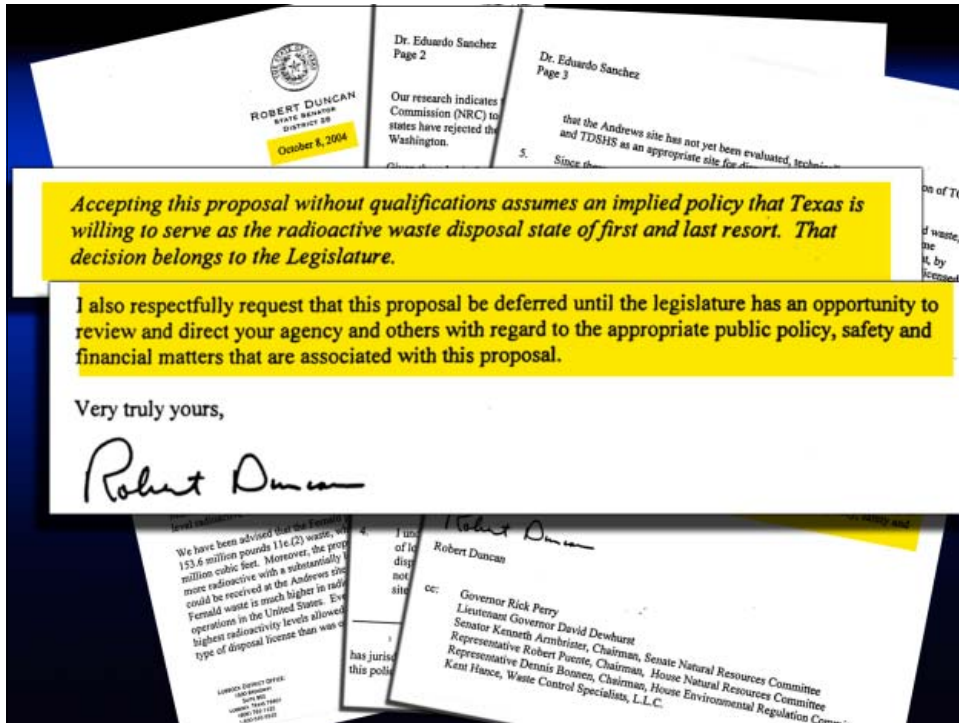
We have been advised that the Fernald proposal contemplates storage and disposal of as much as 153.6 million pounds 11e(2) waste, which would exceed 700 railcars with a volume of over 1.2 million cubic feet. Moreover, the proposed 11e(2) waste, in its current form, is substantially more radioactive with a substantially longer half life than the low level radioactive waste that could be received at the Andrews site under the provisions of House Bill 1567. In addition, the Fernald waste is much higher in radioactivity than other 11e(2) waste derived from mining operations in the United States. Even a treated form of the Fernald waste would be equal to the highest radioactivity levels allowed under House Bill 1567 and would still require a different type of disposal license than was outlined in House Bill 1567.

LAMAR ENERGY OFFICE  
 1000 WEST 49TH STREET  
 AUSTIN, TEXAS 78756  
 PHONE: 787-1222  
 FAX: 787-1222

CAPITAL GROUP  
 1000 WEST 49TH STREET  
 AUSTIN, TEXAS 78756  
 PHONE: 787-1222  
 FAX: 787-1222

BOB DUNCAN DISTRICT OFFICE  
 1000 WEST 49TH STREET  
 AUSTIN, TEXAS 78756  
 PHONE: 787-1222  
 FAX: 787-1222



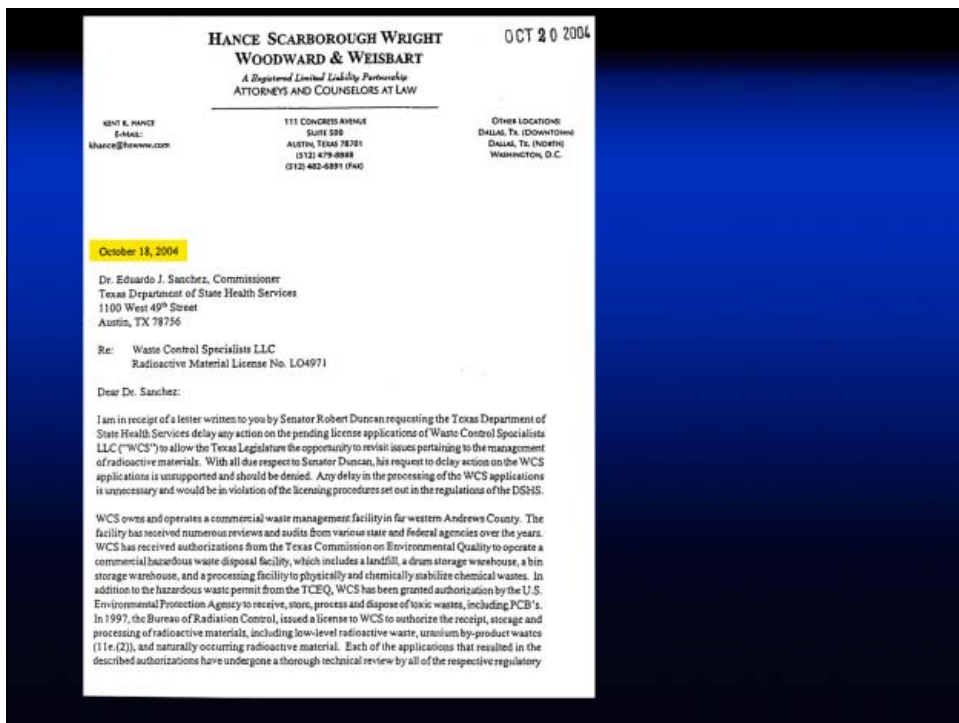


Accepting this proposal without qualifications assumes an implied policy that Texas is willing to serve as the radioactive waste disposal state of first and last resort. That decision belongs to the Legislature.

I also respectfully request that this proposal be deferred until the legislature has an opportunity to review and direct your agency and others with regard to the appropriate public policy, safety and financial matters that are associated with this proposal.

Very truly yours,

*Robert Duncan*



**HANCE SCARBOROUGH WRIGHT  
WOODWARD & WEISBART**  
A Registered Limited Liability Partnership  
ATTORNEYS AND COUNSELORS AT LAW

OCT 20 2004

KENT B. HANCE  
E-MAIL:  
khance@hww.com

111 CONGRESS AVENUE  
SUITE 528  
AUSTIN, TEXAS 78701  
(512) 479-8888  
(512) 402-6891 (FAX)

OTHER LOCATIONS  
DALLAS, TX (DOWNTOWN)  
DALLAS, TX (INDEPENDENT)  
WASHINGTON, D.C.

October 18, 2004

Dr. Eduardo J. Sanchez, Commissioner  
Texas Department of State Health Services  
1100 West 49th Street  
Austin, TX 78756

Re: Waste Control Specialists LLC  
Radioactive Material License No. LO4971

Dear Dr. Sanchez:

I am in receipt of a letter written to you by Senator Robert Duncan requesting the Texas Department of State Health Services delay any action on the pending license applications of Waste Control Specialists LLC ("WCS") to allow the Texas Legislature the opportunity to revisit issues pertaining to the management of radioactive materials. With all due respect to Senator Duncan, his request to delay action on the WCS applications is unsupported and should be denied. Any delay in the processing of the WCS applications is unnecessary and would be in violation of the licensing procedures set out in the regulations of the DSHS.

WCS owns and operates a commercial waste management facility in far western Andrews County. The facility has received numerous reviews and audits from various state and federal agencies over the years. WCS has received authorizations from the Texas Commission on Environmental Quality to operate a commercial hazardous waste disposal facility, which includes a landfill, a drum storage warehouse, a bin storage warehouse, and a processing facility to physically and chemically stabilize chemical wastes. In addition to the hazardous waste permit from the TCEQ, WCS has been granted authorization by the U.S. Environmental Protection Agency to receive, store, process and dispose of toxic wastes, including PCB's. In 1997, the Bureau of Radiation Control, issued a license to WCS to authorize the receipt, storage and processing of radioactive materials, including low-level radioactive waste, uranium by-product wastes (11e (2)), and naturally occurring radioactive material. Each of the applications that resulted in the described authorizations have undergone a thorough technical review by all of the respective regulatory



Dr. Eduardo Sanchez  
 October 18, 2004  
 Page 2

agencies to ensure compliance with the state and federal environmental protection laws and regulations. Accordingly, Senator Duncan's assertion that the site has not been evaluated technically as an appropriate site is not supported by the facts.

The WCS facility received a thorough review by the Bureau of Radiation Control when the radioactive material license was issued in 1997. The issuance of the license is an indication that the state radiation officials have found the WCS facility to be appropriately situated, designed and operated to safely store and process radioactive materials, including 11e.(2) byproduct material. The natural attributes that make the WCS facility in western Andrews County ideal for the storage of radioactive material include: (1) a remote, rural location, isolated from human population centers; (2) an extremely arid climate, receiving approximately 15 inches of rain per year; (3) no surface water and minimal groundwater, and (4) stable geology, in which the WCS facility is underlain by a geologic formation referred to as the Chinle Claystone (red bed clay), which forms an impermeable barrier to downward migration of contaminants. The Chinle strata is approximately 500 feet thick in the vicinity of the site.

WCS has learned that the United States Department of Energy ("DOE") is considering the possibility of shipping 11e.(2) byproduct material stored in concrete silos at the Fernald Environmental Management Project in Ohio to a licensed commercial facility for interim storage. Such action would allow the DOE to remove the material from its current location over a sole-source drinking water aquifer near a major metropolitan area to a safe and secure storage location, while permanent disposal options are assessed. Senator Duncan seems to be concerned about the relative weight and volume of the byproduct material from Fernald, but volume and weight has little to do with the relative hazard of the material. It is also not true that the processed Fernald byproduct material will be substantially more radioactive than low-level radioactive waste that could be received under the provisions of 10 CFR 1567. An unbiased, scientific analysis will show that the WCS facility is an appropriate regulatory and environmental alternative for the management of this material, and WCS hopes the DOE will consider its facility.

Regulation of 11e.(2) is an established program, first being implemented in 1978 with the passage of the Uranium Mill Tailings Act by the federal congress. The State of Texas added the regulation of 11e.(2) to its NRC agreement state program in 1981. The Texas Department of Health continued to have jurisdiction over all aspects of management of 11e.(2) including disposal, until 1993, when the Texas legislature passed a bill to transfer jurisdiction to the Texas Natural Resource Conservation Commission. Four years later, the Texas legislature switched directions moving jurisdiction back to the Texas Department of Health with the passage of Senate Bill 1857, which passed the Senate by a vote of 31-0. The will of the Texas legislature has been expressed regarding the issues surrounding regulation of 11e.(2) material.

Several uranium mines have operated in the State of Texas over the years, and the management of 11e.(2) byproduct is not a new subject in Texas. Since the end of the Cold War, the price of uranium has been severely depressed. As a result, there has not been as much mining activity in South Texas as there once

Dr. Eduardo Sanchez  
 October 18, 2004  
 Page 3

was. Over the past decade, the primary issues being addressed have involved the environmental restoration of the mines. However, as the supply of surplus uranium dwindles, the price for the metal has started to increase and there is a strong probability that uranium mining activities will pick up in Texas. With this increase in mining activities will come an increased demand for a disposal facility. It is for this reason that WCS is seeking a license for the disposal of byproduct material. An appropriately licensed and constructed commercial disposal facility in Texas will provide a safe and cost effective disposal option for the uranium mines.

In addition, WCS is seeking an amendment to its radioactive materials storage license to authorize the storage of the stabilized and properly confined material that would come from all three silos at Fernald. That application is currently undergoing technical review by your staff. We are confident that the concerns raised by Senator Duncan will be fully addressed in that review, as the staff verifies that the proposal will fully comply with all regulations, including the requirement that the licensee provide sufficient financial assurances and guarantees to ensure no financial risk to the State of Texas. Moreover, officials from the U.S. Department of Energy have offered to send a team of experts to Austin to meet with your staff and any other interested parties to answer questions about the actual form of the stabilized material, transportation requirements, storage and alternatives for final disposition. Please contact me if you would like to have DOE send a team to discuss these issues.

I am enclosing a package of information that contains a fact sheet on the Fernald Silo Material prepared by the contractor for the DOE, and supplemental information on WCS. It should be noted that WCS has worked very closely with the community in Andrews County to keep the citizenry informed of its activities. As a result, WCS has received overwhelming support from the local community for its commercial waste management activities and licensing efforts. When WCS learned there was a possibility to bid on the receipt of the Fernald material, WCS representatives met with community leaders and briefed them on the issues. The community leaders all signed a letter of support, which is enclosed in the packet of information.

The State of Texas has been very deliberate in the consideration of the policy and safety issues surrounding the management of 11e.(2) byproduct material. This is not a new program, as it has existed in the State of Texas since 1981. Unlike the new policies pertaining to low-level radioactive waste, byproduct material has been regulated in Texas for many years. The standards for management of this material are well established, as reflected in the regulations of your agency. Additionally, the receipt of 11e.(2) material currently stored at the Fernald site into the WCS facility would not be a new process. WCS has safely operated its commercial facility in Andrews County receiving, processing and storing significant quantities of radioactive materials over the past seven years. The WCS team has consistently shown themselves to be qualified by reason of training and experience to safely handle these materials, as evidenced by their excellent safety and environmental compliance record. It is for these reasons, we respectfully request the timely processing of the applications of WCS pending before your agency. We are confident that after a thorough technical review of the applications, the radiation control experts in your agency will agree that

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Dr. Eduardo Sanchez  
October 18, 2004  
Page 3

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Dr. Eduardo Sanchez  
October 18, 2004  
Page 4

**the storage and ultimate disposal of the Fernald material at the WCS facility is a safe and appropriate proposal.**

Should you have any questions regarding the operations of WCS, please do not hesitate to contact me. Thank you for taking the time to review this information.

Sincerely,



Kent R. Hance

cc: Governor Rick Perry  
Lieutenant Governor David Dewhurst  
Senator Kenneth Armbrister, Chairman, Senate Natural Resources Committee  
Representative Robert Puente, Chairman, House Natural Resources Committee  
Representative Dennis Bonnen, Chairman, House Environmental Regulation Committee  
Senator Robert Duncan

Dr. Eduardo Sanchez  
October 18, 2004  
Page 3

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Dr. Eduardo Sanchez  
October 18, 2004  
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Sincerely,



Kent R. Hance

cc: Governor Rick Perry  
Lieutenant Governor David Dewhurst  
Senator Kenneth Armbrister, Chairman, Senate Natural Resources Committee  
Representative Robert Puente, Chairman, House Natural Resources Committee  
Representative Dennis Bonnen, Chairman, House Environmental Regulation Committee  
Senator Robert Duncan



TEXAS DEPARTMENT OF STATE HEALTH SERVICES

EDUARDO J. SANCHEZ, M.D., M.P.H.  
COMMISSIONER

1100 W. 49<sup>th</sup> Street • Austin, Texas 78756  
1-888-963-7111 • <http://www.dshs.state.tx.us>

October 20, 2004

The Honorable Robert Duncan  
Texas Senate  
P.O. Box 1206  
Austin, Texas 78711

Dear Senator Duncan:

The Department of State Health Services (DSHS) appreciates your position concerning the license amendment request and new license application filed by Waste Control Specialists, Inc. (WCS) that would allow it to receive, store and dispose of the uranium mill tailings waste from the U.S. Department of Energy, Fernald Environmental Management Project in Ohio.

The DSHS predecessor agency, Texas Department of Health (TDH), began regulation of the uranium recovery and byproduct disposal licensees when Texas became an Agreement State with the Nuclear Regulatory Commission in 1963. In 1991 the Texas Legislature voted to move the radioactive by-product materials program from TDH to the newly created Texas Natural Resource Conservation Commission. Then in 1997 the Texas Legislature voted to reverse the transfer of this program and return it to the TDH primarily to take advantage of the expertise in radiation matters concentrated at TDH. DSHS' radiation programs currently regulate three uranium mill tailings (byproduct material) disposal facilities located in South Texas and two active in-situ uranium licensees.

In 2003 the U.S. Congress in H.R. 2754 declared that the Fernald, Ohio waste was "byproduct material" as defined by section 11e.(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014(e)(2)), and that the Nuclear Regulatory Commission or an Agreement State, as appropriate, would regulate the material as "11e.(2) byproduct material" for the purpose of disposition of the material in an NRC-regulated or Agreement State-regulated facility.

The Fernald, Ohio uranium mill tailings by-product material could contain radium 226 at maximum concentrations of 20 nanocuries per gram. This would be class C waste if it were low-level radioactive waste. However, since it is "byproduct material" as defined by section 11e.(2) of the Atomic Energy Act of 1954, as amended, it is not classified as low-level radioactive waste. The average concentration may be much less.

Since March 11, 2004, DSHS' radiation licensing staff has been thoroughly reviewing the WCS low-level radioactive waste processing and storage license amendment request and will assure that all regulatory requirements are met before proposing to issue or deny the license amendment.



TEXAS DEPARTMENT OF STATE HEALTH SERVICES



TEXAS DEPARTMENT OF STATE HEALTH SERVICES

EDUARDO J. SANCHEZ, M.D., M.P.H.  
COMMISSIONER

1100 W. 49<sup>th</sup> Street • Austin, Texas 78756  
1-888-963-7111 • <http://www.dshs.state.tx.us>

October 20, 2004

The Honorable Robert Duncan  
Texas Senate  
P.O. Box 1206  
Austin, Texas 78711

Dear Senator Duncan:

The Department of State Health Services (DSHS) appreciates your position concerning the license amendment request and new license application filed by Waste Control Specialists, Inc. (WCS) that would allow it to receive, store and dispose of the uranium mill tailings waste from the U.S. Department of Energy, Fernald Environmental Management Project in Ohio.

The DSHS predecessor agency, Texas Department of Health (TDH), began regulation of the

Since March 11, 2004, DSHS' radiation licensing staff has been thoroughly reviewing the WCS low-level radioactive waste processing and storage license amendment request and will assure that all regulatory requirements are met before proposing to issue or deny the license amendment.

Senator Duncan  
Page 2  
October 20, 2004

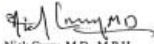
One requirement of DSHS is that the DOE must certify in writing that if WCS cannot meet the requirements of its license, DOE will take back and assume responsibility for the waste from its facilities. However, DSHS does not have the discretion to delay making a determination on the requested license amendment to store the Fernald waste beyond the time necessary to review the application [25 TAC 289.254 (h)]. DSHS does plan to hold a public meeting in Andrews, Texas prior to issuing the amendment.

In addition, the technical review of WCS' application for a byproduct disposal license is also underway, but it is not expected to be completed before September 2005.

The DSHS radiation licensing staff is reviewing both the amendments to the low-level radioactive waste processing license and the new application for a uranium tailings (byproduct material) disposal license in accordance with all the requirements in Chapter 401 of the Health and Safety Code and the Texas Regulations for Control of Radiation (25 TAC Chapter 289). The radiation licensing staff will work closely with the staff at the Texas Commission on Environmental Quality to assure that all issues are thoroughly reviewed and addressed.

Thank you for your interest and support of public health issues in Texas. Mr. Richard Bays, Assistant Commissioner for Regulatory Services will keep you informed on the status of both license issues. He may be contacted at 512-458-7338 for additional information.

Sincerely,



Nick Curry, M.D., M.P.H.  
Deputy Commissioner for Prevention,  
Preparedness, and Regulatory Services

Senator Duncan  
Page 2  
October 20, 2004

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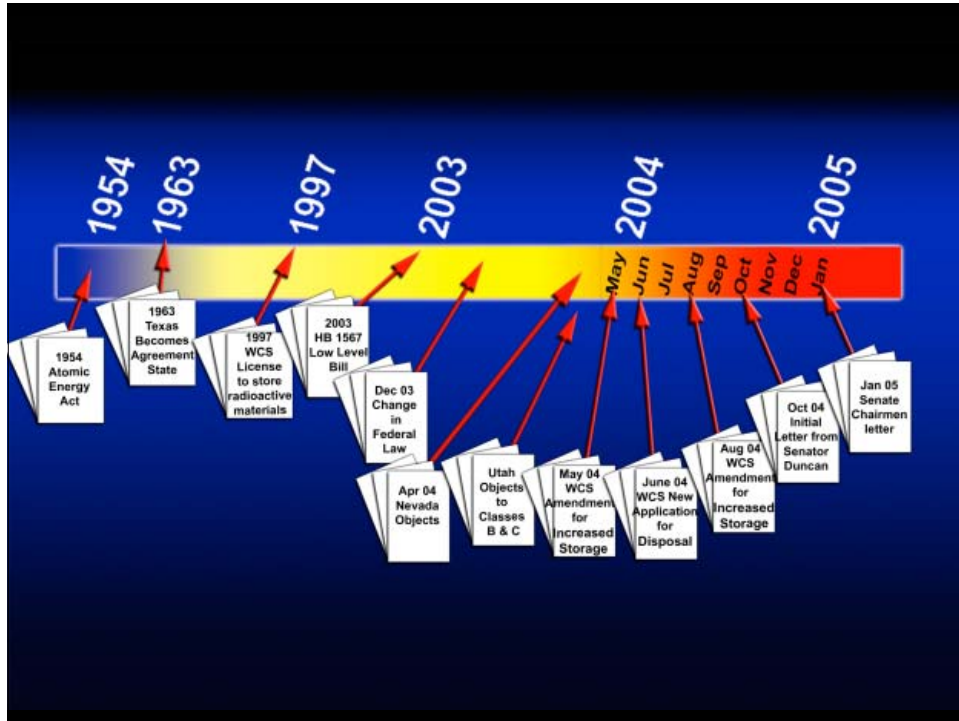
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Thank you for your interest and support of public health issues in Texas. Mr. Richard Bays, Assistant Commissioner for Regulatory Services will keep you informed on the status of both license issues. He may be contacted at 512-458-7338 for additional information.

Sincerely,



Nick Curry, M.D., M.P.H.  
Deputy Commissioner for Prevention,  
Preparedness, and Regulatory Services



*The Senate of  
The State of Texas*

January 16, 2005

Edward J. Sanchez, M.D., M.P.H., Commissioner  
Texas Department of State Health Services  
1106 West 49<sup>th</sup> Street  
Austin, TX 78756

Dear Dr. Sanchez:

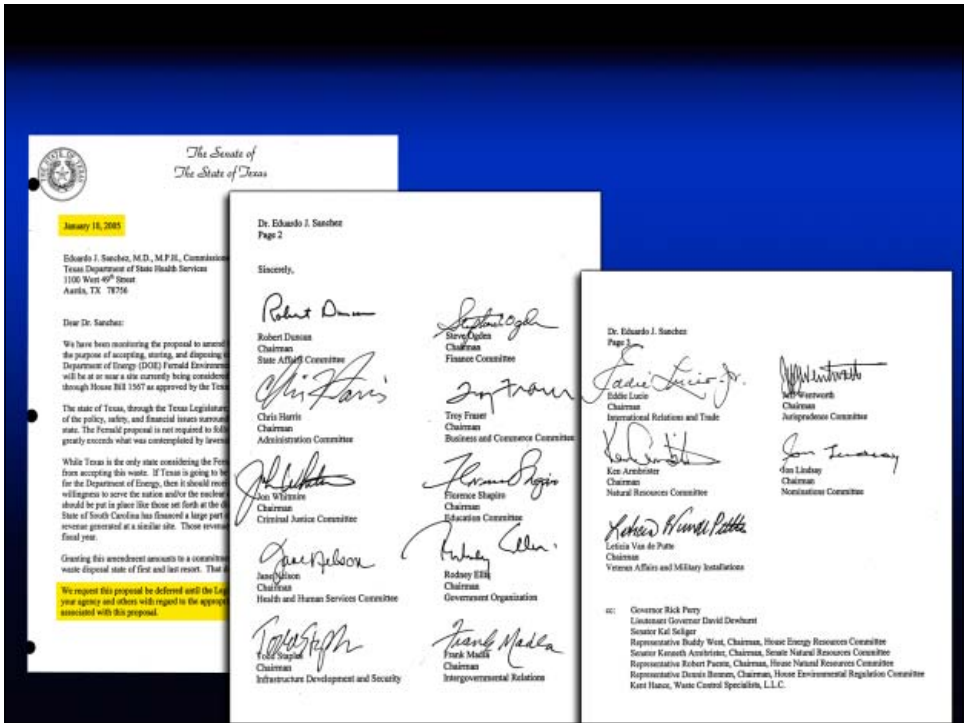
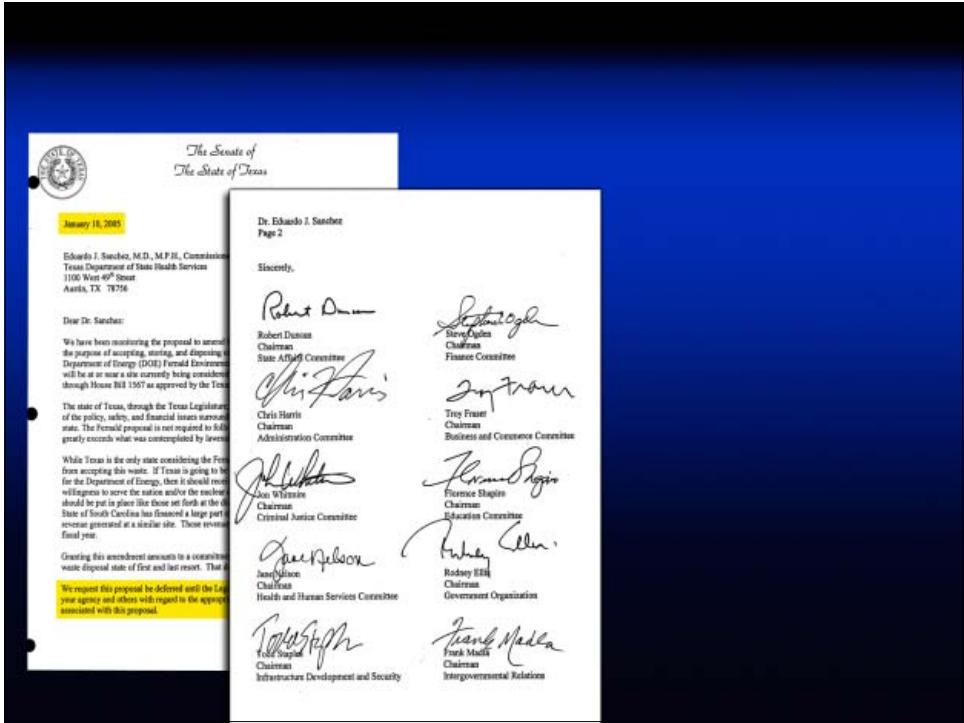
We have been monitoring the proposal to amend Radioactive Material License No. L04971 for the purpose of accepting, storing, and disposing of 116 (2) radioactive waste from the U.S. Department of Energy (DOE) Fernald Environmental Management Project in Ohio. This site will be at or near a site currently being considered for low level radioactive waste disposal through House Bill 1567 as approved by the Texas Legislature in 2003.

The state of Texas, through the Texas Legislature, has been very deliberate in the consideration of the policy, safety, and financial issues surrounding the disposal of radioactive waste in our state. The Fernald proposal is not required to follow guidelines set forth in HD 1363 and it greatly exceeds what was contemplated by lawmakers when we passed that legislation.

While Texas is the only state considering the Fernald proposal, Texas stands to receive no benefit from accepting this waste. If Texas is going to be the radioactive waste disposal site of last resort for the Department of Energy, then it should receive a substantial financial benefit for its willingness to save the nation and the nuclear energy industry in this way. Merit awards should be put in place like those set forth at the disposal site in Barnwell, South Carolina. The State of South Carolina has financed a large part of the state's public education needs from revenue generated at a similar site. These revenues are guaranteed to be at least \$24 million per fiscal year.

Granting this amendment amounts to a commitment by the State of Texas to be the radioactive waste disposal state of first and last resort. That decision belongs to the Legislature.

We request this proposal be deferred until the Legislature has an opportunity to review and direct your agency and others with regard to the appropriate public policy, safety, and financial matters associated with this proposal.



January 10, 2005

Granting this amendment amounts to a commitment by the State of Texas to be the radioactive waste disposal state of first and last resort. That decision belongs to the Legislature.

We request this proposal be deferred until the Legislature has an opportunity to review and direct your agency and others with regard to the appropriate public policy, safety, and financial matters associated with this proposal.



January 11, 2005

Edoardo J. Sanchez, M.D., M.P.H., Commissioner  
Texas Department of State Health Services  
1100 West 49th Street  
Austin, TX 78756

Dear Dr. Sanchez:

We have been monitoring the proposal to amend the purpose of accepting, storing, and disposing of Department of Energy (DOE) Federal Excesses will be at or near a site already being considered through House Bill 1567 as approved by the Texas

The state of Texas, through the Texas Legislature of the policy, safety and financial issues surrounding state. The Federal proposal is not required to fully greatly exceed what was contemplated by law.

While Texas is the only state considering the Federal waste. If Texas is going to be for the Department of Energy, then it should not be required to accept the nation and/or the facilities should be put in place like those set forth at the State of North Carolina has financed a large part enough generated at a similar site. Those events have been.

Granting this amendment amounts to a commitment to be the disposal state of first and last resort. That decision belongs to the Legislature. We request this proposal be deferred until the Legislature has an opportunity to review and direct your agency and others with regard to the appropriate public policy, safety, and financial matters associated with this proposal.

Dr. Edoardo J. Sanchez  
Page 2

Sincerely,

*Robert Deason*  
Robert Deason  
Chairman  
State Affairs Committee

*Chris Harris*  
Chris Harris  
Chairman  
Administration Committee

*John Whitacre*  
John Whitacre  
Chairman  
Criminal Justice Committee

*Jan Johnson*  
Jan Johnson  
Chairman  
Health and Human Services Committee

*Frank Madden*  
Frank Madden  
Chairman  
Infrastructure Development and Safety

*Steve Engler*  
Steve Engler  
Chairman  
Finance Committee

*Troy Frazer*  
Troy Frazer  
Chairman  
Business and Consumer Committee

*Francis Shapiro*  
Francis Shapiro  
Chairman  
Education Committee

*Rodney Ehl*  
Rodney Ehl  
Chairman  
Government Organization

*Frank Madden*  
Frank Madden  
Chairman  
Intergovernmental Relations

Dr. Edoardo J. Sanchez  
Page 3

*Edible Lucio*  
Edible Lucio  
Chairman  
International Relations and Trade

*Ken Anderson*  
Ken Anderson  
Chairman  
Natural Resources Committee

*Leticia Van de Putte*  
Leticia Van de Putte  
Chairman  
Veterans Affairs and Military Installations

*John West*  
John West  
Chairman  
Antitrust Committee

*Jan Lindsay*  
Jan Lindsay  
Chairman  
Notifications Committee

- cc: Governor Rick Perry
- Lieutenant Governor David Dewhurst
- Senator Kel Seliger
- Representative Buddy West, Chairman, House Energy Resources Committee
- Senator Kenneth Anderson, Chairman, Senate Natural Resources Committee
- Representative Robert Puentes, Chairman, House Natural Resources Committee
- Representative Dennis Bonnen, Chairman, House Environmental Regulation Committee
- Kurt Hauck, Waste Control Specialist, L.L.C.

HANCE SCARBOROUGH WRIGHT  
WOODWARD & WEISBART  
A Regional Limited Liability Partnership  
ATTORNEYS AND COUNSLORS AT LAW

WENT B. HAVIS  
NAME:  
whavis@hws.com

111 CONGRESS AVENUE  
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AUSTIN, TEXAS 78701  
(512) 475-5888  
(512) 483-6281 (FAX)

OWEN LOGOTHOS  
DANIEL D. EDWARDS  
DANIEL T. HANCOCK  
WASHINGTON, D.C.

JANUARY 11, 2005

Commissioner Edoardo J. Sanchez, M.D.  
Texas Department of State Health Services  
1100 West 49th Street  
Austin, TX 78756

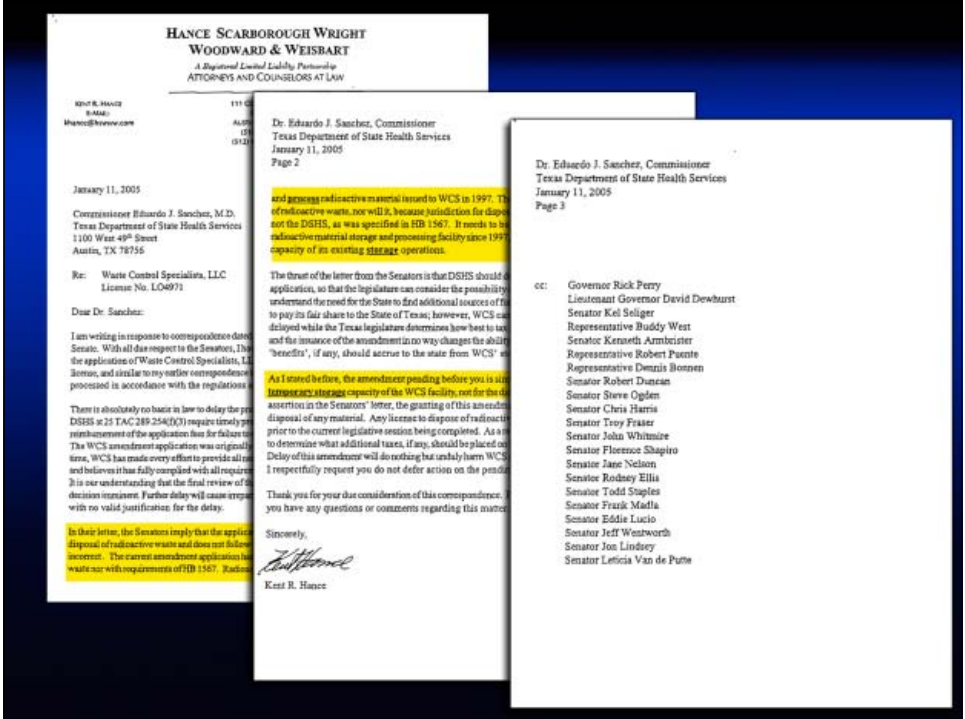
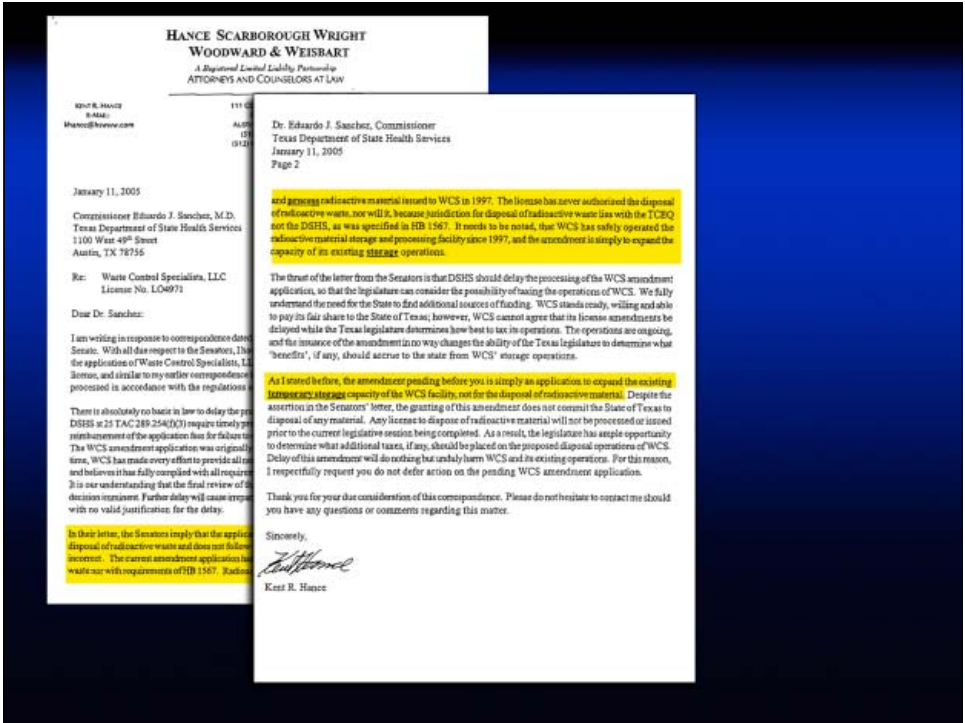
Re: Waste Control Specialists, LLC  
License No. LO4971

Dear Dr. Sanchez:

I am writing in response to correspondence dated January 10, 2005, sent to you by members of the Texas Senate. With all due respect to the Senators, I have to take exception with the request to delay action on the application of Waste Control Specialists, LLC ("WCS") to amend its existing radioactive material license, and similar to my earlier correspondence to you, once again request that the application be timely processed in accordance with the regulations of the Department of State Health Services.

There is absolutely no basis in law to delay the processing of the application of WCS. The regulations of DSHS at 25 TAC 289.254(3) require timely processing of all applications, and the DSHS is subject to reimbursement of the application fee for failure to meet the required time frame for application processing. The WCS amendment application was originally filed with the DSHS in the Spring of 2004. Since that time, WCS has made every effort to provide all necessary information to the reviewers of the application, and believes it has fully complied with all requirements in the regulations for approval of the application. It is our understanding that the final review of the application is close to being completed, and a final decision imminent. Further delay will cause irreparable harm to WCS and its efforts to develop its business, with no valid justification for the delay.

In their letter, the Senators imply that the application to amend existing License No. LO4971 is for the disposal of radioactive waste and does not follow the guidelines of House Bill 1567. This application is incorrect. The current amendment application has absolutely nothing to do with disposal of radioactive waste nor with requirements of HB 1567. Radioactive Material License No. LO4971 is a license to ship





**HANCE SCARBOROUGH WRIGHT  
WOODWARD & WEISBART**  
A Regional Limited Liability Partnership  
ATTORNEYS AND COUNSELORS AT LAW

KEVIN B. HANCE  
E-MAIL:  
khance@hws.com

January 11, 2005

Commissioner Bill  
Texas Department  
1100 West 49th Street  
Austin, TX 78758

Re: Waste Control Specialist  
License No. LO4971

Dear Dr. Sanchez:

I am writing in response to correspondence from the Senate. With all due respect to the Senate, the application of Waste Control Specialist License No. LO4971 is not a license to store, process, or dispose of radioactive waste. It is a license to store radioactive waste, and similar to my earlier correspondence, it is processed in accordance with the Texas Health Code, Chapter 251, Subchapter C, Section 251.254, which requires the disposal of radioactive waste to be approved by the Texas legislature to determine what is in the best interest of the state from WCS' storage operations.

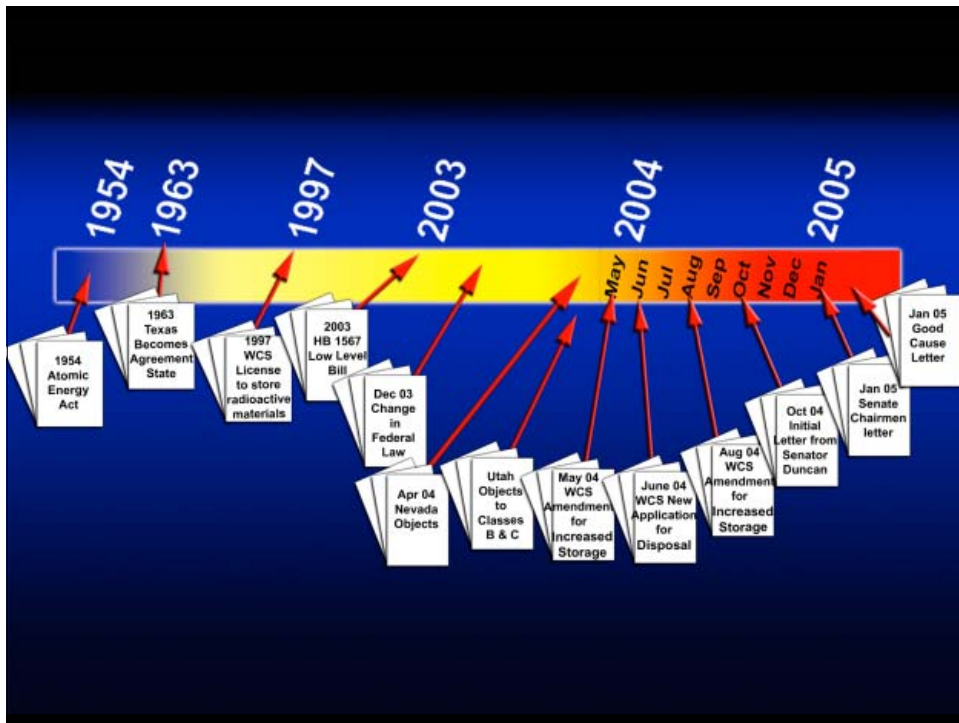
There is absolutely no basis in law to delay the processing of the application for the license. The WCS amendment application was originally filed in 1997. At that time, WCS has made every effort to provide the necessary information to the DSHS and has fully complied with all requirements. It is our understanding that the final review of the application is complete and that the decision is imminent. Further delay will cause unnecessary hardship to WCS and will result in a license with no valid justification for the delay.

In their letter, the Senators imply that the application to amend existing License No. LO4971 is for the disposal of radioactive waste and does not follow the guidelines of House Bill 1567. This implication is incorrect. The current amendment application has absolutely nothing in relation to disposal of radioactive waste nor with requirements of HB 1567. Radioactive Material License No. LO4971 is a license to **store** and **process** radioactive material issued to WCS in 1997. The license has never authorized the disposal of radioactive waste, nor will it, because jurisdiction for disposal of radioactive waste lies with the TCEQ not the DSHS, as was specified in HB 1567. It needs to be noted, that WCS has safely operated the radioactive material storage and processing facility since 1997, and the amendment is simply to expand the capacity of its existing **storage** operations.

As I stated before, the amendment pending before you is simply an application to expand the existing **temporary storage** capacity of the WCS facility, not for the disposal of radioactive material. Despite the assertion in the Senators' letter, the granting of this amendment does not commit the State of Texas to the disposal of radioactive waste.

Sincerely,  
*Kent R. Hance*  
Kent R. Hance

Senator Todd Staples  
Senator Frank Mattox  
Senator Eddie Lucio  
Senator Jeff Westworth  
Senator Jon Lindsey  
Senator Leticia Van de Putte





The Senate of  
The State of Texas  
Austin, Texas 78711

January 12, 2005

Mr. Randy Fritz  
Chief Operating Officer  
Department of State Health Services  
1100 West 49th Street  
Austin, TX 78756-7111

VIA FAX: 512-458-7477

Dear Mr. Fritz:

We are requesting that the Department of State Health Services (DSHS) exercise the good cause exception for exceeding the time period for consideration of a license or an amendment as set forth in your agency rule 25 TAC 289.254(1)(4)(B)(ii) for the license amendment of Waste Control Specialist, L.L.C., Radioactive Material License No. L84971.

Good cause exists in this situation due to the change in federal law on December 1, 2003 regarding the classification of radioactive waste at the U.S. Department of Energy Fernald Environmental Management Project in Ohio. During the interim, between Texas legislative sessions, the Fernald waste was designated by Congress as 11e.(2) radioactive waste (PL 108-137 Section 312). The Texas Legislature has not had an opportunity to review and consider the public policy implications with regards to the storage, processing, and disposal of this newly designated 11e.(2) waste.

Due to the precedent setting nature of this proposed license amendment, exercising agency discretion would be a prudent approach in this matter so that the Texas Legislature may review the current statutory requirements with regards to this new radioactive waste designation.

Thank you for your consideration of our request.

Ken Ambrister, Chairman  
Senate Natural Resources Committee

Robert Duncan, Chairman  
Senate State Affairs Committee

cc: Lt. Governor David Dewhurst  
Ms. Cathy Campbell, General Counsel DSHS  
Mr. Richard Bays, Assistant Commissioner Regulatory Services, DSHS  
Mr. Richard Ratliff, Chief, Bureau of Radiation Control, DSHS  
Mr. Kent Hance, Attorney at Law, representing Waste Control Specialists



The Senate of  
The State of Texas  
Austin, Texas 78711

January 12, 2005

Mr. Randy Fritz  
Chief Operating Officer  
Department of State Health Services  
L84971.

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Ken Ambrister, Chairman  
Senate Natural Resources Committee

Robert Duncan, Chairman  
Senate State Affairs Committee

cc: Lt. Governor David Dewhurst  
Ms. Cathy Campbell, General Counsel DSHS  
Mr. Richard Bays, Assistant Commissioner Regulatory Services, DSHS  
Mr. Richard Ratliff, Chief, Bureau of Radiation Control, DSHS  
Mr. Kent Hance, Attorney at Law, representing Waste Control Specialists

### Waste Control Specialists Update

- In March 2004, Waste Control Specialists (WCS) filed an application with the Texas Department of State Health Services (TDSHS) to amend its existing storage license and was told by TDSHS staff that the amendment would be granted in the second week of January 2005.
- The WCS facility is located in Andrews County in Senate District 31.
- The amendment application increases the existing storage capacity of the WCS facility. There is no disposal authority sought by the current amendment. According to agency rules, this review is almost complete, meeting all the requirements of state law.
- WCS needs the increase in storage capacity for its existing operations and future business opportunities, including potential business from the federal Dept. of Energy.
- WCS has submitted a bid the Dept. of Energy to store 11e.(2) material. No disposal is requested or presently allowed.
- Regarding the possible taxation of 11e.(2) material disposed of at the WCS facility, the Legislature's ability to tax such disposal can occur at any time, and has nothing to do with WCS' amendment to store more radioactive material.
- If this delay creates a competitive advantage to out-of-state competitors, there will potentially be no financial opportunity either for the facility, the community or the State of Texas.

### WASTE CONTROL SPECIALISTS LLC

"Meeting the Nation's needs for cost effective waste management services"

#### Current Treatment Facilities

WCS operates a 20,000 ft<sup>2</sup> state-of-the-art waste treatment facility, which is divided into the following two facilities:

- bulk stabilization of a variety of RCRA/TSCA wastes;
- and (2) treatment of radioactive and mixed LLW.

#### Current Storage Facilities

More than 100,000 ft<sup>2</sup> of waste-storage capacity (one covered container storage building [CSB] and one covered and eight uncovered bin/bulk storage areas [BSAs])

- "Indefinite" storage of RCRA and TSCA regulated waste
- "Indefinite" storage of radioactive waste (1) meeting the site's radioactive possession and concentration limits, and (2) having a plausible disposal solution
- Up to 365 days of storage of radioactive waste (1) meeting the site's radioactive possession and concentration limits, and (2) not having a plausible disposal solution

#### Current Disposal Capabilities

- More than 10,000,000 yd<sup>3</sup> of Land-Disposal-Restriction (LDR)-compliant RCRA, TSCA and Industrial Non-Hazardous wastes, including PCB-contaminated waste
- Nuclear Regulatory Commission (NRC) exempt and exempt mixed waste, including selected NORM wastes

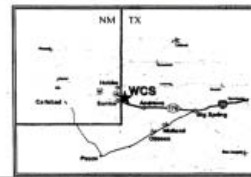
The only thing that hasn't changed is our name!

#### Major Recent and Current Projects

- Stabilization of 2,200 55-gallon drums of high alpha "by-pass sludge" from the Rocky Flats Environmental Test Site
- Treatment of mercury-contaminated mixed LLW from the Brookhaven National Laboratory site
- Treatment in on-site glove boxes of 60 55-gallon drums of oil from the Mound site containing 125,000 curies (Ci) of tritium
- Treatment of transuranic-equivalent waste ( $\approx$  >100 nanoCi of transuranic isotopes with a half-life longer than 20 years per gram of waste) from the Fernald site
- Direct disposal from gondola rail cars of 21,000 tons of exempt radioactively contaminated soil from Linde-Tonawanda site
- Treatability study on in-container vitrification of depleted uranium and PCB-contaminated soil from the Rocky Flats Environmental Test Site using the Geomelt® technology

#### Pending Capabilities and Services

- By Nov. 2004, a 250,000 yd<sup>3</sup> increase in RCRA/TSCA-waste disposal capacity
- By Aug. 2005, license to dispose of 10,746,000 ft<sup>3</sup> of 11e.(2) materials/waste
- By Dec. 2007, license to dispose of 42 million ft<sup>3</sup> of LLW and mixed LLW



## Class Capabilities

	So. Carolina
Class A	Yes
Class B	Yes
Class C	Yes

## Class Capabilities

	So. Carolina	Utah
Class A	Yes	Yes
Class B	Yes	No
Class C	Yes	No

## Class Capabilities

	So. Carolina	Utah	Requested by WCS
Class A	Yes	Yes	Yes
Class B	Yes	No	Yes
Class C	Yes	No	Yes

## Class Capabilities

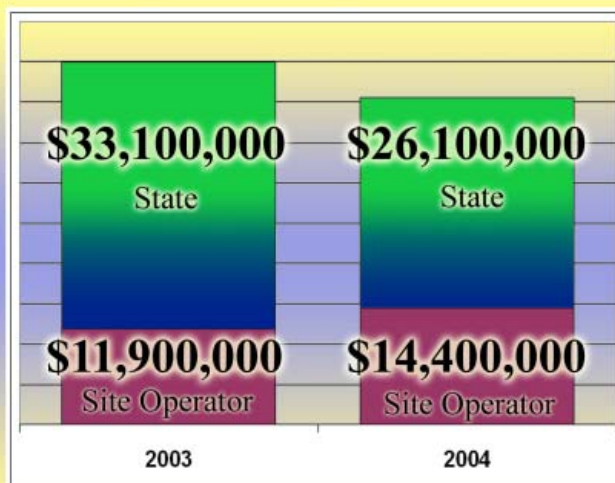
	So. Carolina	Utah	Requested by WCS
Class A	Yes	Yes	Yes
Class B	Yes	No	Yes
Class C	Yes	No	Yes

*Closed 2008*

## Barnwell

- Oversight: So. Carolina Energy Ofc
- Guaranteed rate of return for private site operator
- High percentage return to state.

## Barnwell Revenue Distribution



## Barnwell

- Flat rate: \$600 / cu ft
- Calculated rate based on:
  - Weight
  - Plus additional cost:
    - Amount of Radiation
    - Hazard of the waste



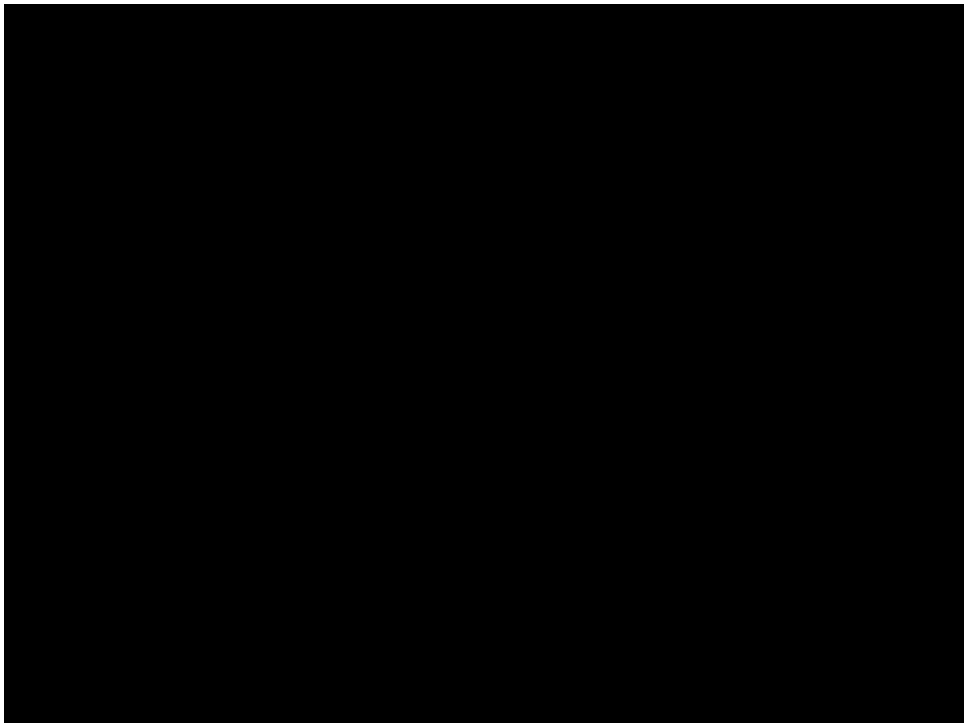
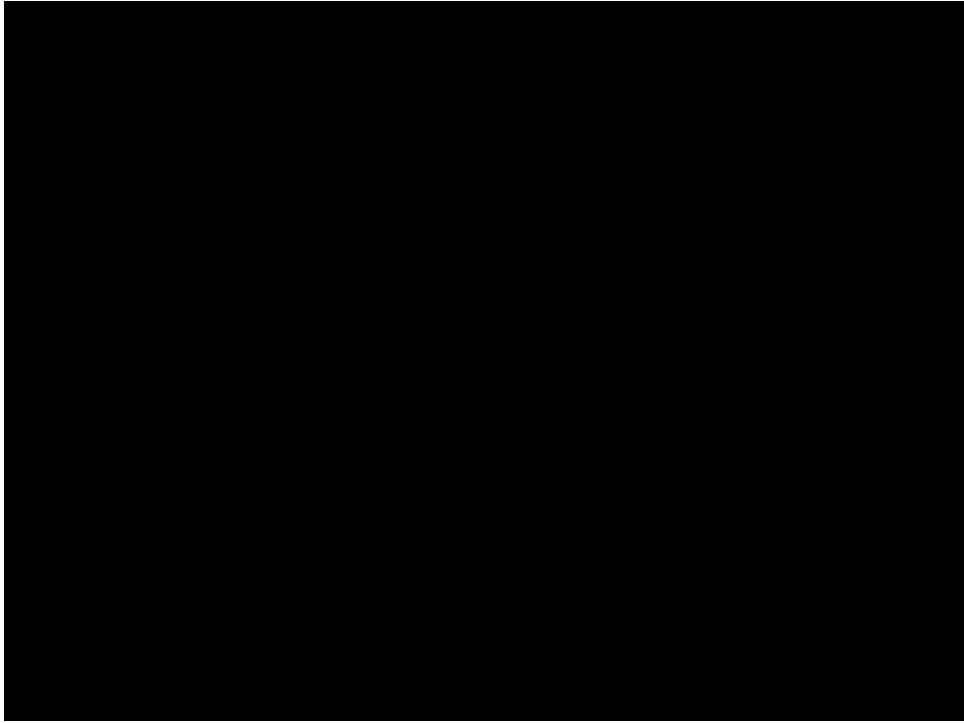
## Conclusion



Senate Natural Resources  
Committee Hearing  
February 1, 2005







## Change in Federal Law

