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AUG 11 2016

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 11, 2016

Rod Baltzer, President and CEO
Waste Control Specialists LLC
Lincoln Centre
5430 LBJ Freeway, Ste.1700
Dallas, Texas 75240

Frank Marcinowski, Deputy Assistant Secretary for Waste Management
U.S. Department of Energy
Office of Environmental Management
1000 Independence Ave, S.W.
Washington, DC 20585

Re: Agreed Order Docket No. 2015-0514-RAW-E ("WCS Agreed Order") and Agreed Order Docket No. 2015-1139-IHW-E ("DOE Agreed Order")

Mr. Baltzer and Mr. Marcinowski:

TCEQ has reviewed "The Plan for Disposition of LANL TRU Waste in Storage at WCS" (the 'Plan') which summarizes the U.S. Department of Energy (DOE) and Waste Control Specialists LLC (WCS) plan for disposition of the Los Alamos National Laboratory (LANL) transuranic (TRU) mixed waste stored at the WCS facility in Andrews County, Texas. This Plan, dated February 26, 2016, was submitted to the Texas Commission on Environmental Quality (TCEQ) pursuant to Ordering Provision 2 of Agreed Order Docket No. 2015-0514-RAW-E (WCS Agreed Order) between TCEQ and WCS and Agreed Order Docket No. 2015-1139-IHW-E (DOE Agreed Order) between TCEQ and DOE.

TCEQ has determined that the analysis of possible options in the Plan is inadequate, and that the Plan will require further feasibility studies to determine optimal processing and disposal methods for the Type II and Type III waste populations. Options #1, #2, and #8 that would involve permanent disposal of these waste populations in the Federal Waste Facility (FWF) are not viable alternatives and should be removed from the Plan. Not only is the long-term assessment of the health and safety concerns for those options (#1, #2, #8) incomplete, but the assessment relative to institutional impediments due to existing laws and policy is grossly understated.

Below is a list of comments related to the proposed Plan that describes the work still needing to be done for options #3, #4, #5, #6, and #7:

- Discuss the federal or state regulatory actions required in order to implement options #3, #4, #5, #6, and #7.
- Timeframes for all options appear unduly short and unrealistic.



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- The information on page 3 of the Plan is inaccurate in that WCS did not adequately communicate with the NRC and obtain their approval or permission before moving the drums into the FWF.
- The 2015 NRC Branch Technical Position on Concentration Averaging only applies to low-level radioactive waste, not TRU waste, so it cannot be used as a regulatory basis to downblend TRU waste for disposal.
- The method for determining the Execution Difficulty Score (EDS) should clearly describe how values were developed and assigned. The criteria for the EDS should be clearly set out and then followed.
- There does not appear to be any evaluation of exemptions from shipping restrictions on the Type III waste population based on possible negotiations with the U.S. Department of Transportation. It appears that approach is just summarily dismissed. TCEQ encourages WCS and DOE to look at that option in a more objective manner, especially in terms of a possible cold weather transportation plan.
- Option #7, which is the retrieval and shipment of the Type III waste “as is”, warrants further study. DOE continues to state that moving the Type III waste creates a level of risk that is “unacceptable” to DOE. However, there is also a fixed risk associated with leaving the Type III waste where it is currently stored, which may be higher than the fixed risk associated with other disposal sites. From a long-term perspective the greatest risk is to do nothing. While there may be some incremental risk associated with moving the drums from the FWF to some other location for treatment or disposal, the movement could be conducted in limited stages and under optimal conditions to minimize any incremental risk. Please evaluate the incremental risk associated with movement or not moving the waste and please refrain from applying the fixed risk associated with the drums only to movement. The fixed risk associated with final disposition in the evaluation of the options should also be considered.

Based on representations made in briefings by DOE and WCS at TCEQ headquarters, TCEQ understands that all Type I and Type II waste populations can be ready for shipment to WIPP prior to June 1, 2017. Shipments of waste populations from other sites to the WIPP before removing all of the Type I and Type II waste populations from Texas is unacceptable. TCEQ requires that these Type I and Type II waste populations be removed as soon as practicable once the WIPP reopens for disposal but not later than July 31, 2017.

TCEQ encourages WCS and DOE to continue to explore all options other than disposal in place to see if factors affecting suitability of a particular option become more favorable.

TCEQ requires that additional feasibility studies be done by WCS and DOE to determine the best option for timely removal of the Type III waste population from Texas. Based on the estimated schedule from LANL, the deadline for these feasibility studies on Type II and III wastes is December 31, 2017. Outcomes of the feasibility studies will need to be documented in the Plan. In the meantime WCS and DOE should continue to schedule quarterly status report briefings with TCEQ, EPA and NRC and update the Plan based on the comments in this letter.

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Please contact me at 512-239-5308 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Maguire', with a large, sweeping flourish extending to the right.

Charles W. Maguire, Director
Radioactive Materials Division
Texas Commission on Environmental Quality