

WASTE CONTROL SPECIALISTS LLC

October 19, 2005

Mr. Albert Hawkins, Executive Commissioner
Texas Health and Human Services Commission
4900 North Lamar
Austin, Texas 78751

Petition for the Adoption of a Rule

Dear Executive Commissioner Hawkins:

Waste Control Specialists LLC ("WCS") proposes that the Department of State Health Services ("DSHS") amend its rules to allow very low-level radioactive material that the U.S. Nuclear Regulatory Commission ("NRC") has exempted from its regulations to likewise be treated as exempt material in Texas.

This second, redefined rulemaking proposal (enclosed) addresses the concerns expressed in your letter dated August 30, 2005, which denied WCS' initial rulemaking petition dated June 30, 2005. WCS' current rulemaking proposal, which is narrower in scope, protects human health and the environment, and is necessary to make Texas regulations consistent with the NRC's regulations as required by the 1963 Agreement State Agreement between the State of Texas and the Atomic Energy Commission. That Agreement states that both the federal government and the State of Texas "recognize the desirability of reciprocal recognition of...exemption from licensing of those materials subject to this Agreement."

The proposal will also eliminate duplicative regulation by the state, thereby reducing state costs; increasing regulatory efficiency by focusing staff resources on issues more important to health and safety; and enhancing the business environment in Texas by eliminating uncertainty in the regulatory process. The rulemaking proposal could generate revenue for the state to the extent that NRC-exempt wastes will be shipped to the state for disposal in approved landfills. WCS' rulemaking proposal is in the national interest because it will promote disposal over storage, which results in reduced costs for generators, the reduced potential for mishandling, illegal dumping, or improper recycling of the materials, and the promotion of research on and application of radioactive material to medical diagnostic and treatment techniques (health care experts avoid radioactive material if the cost of disposal is too high.). It is also in the national interest that the regulation of radioactive material be based on risk rather than the origin or legal classification of the material. WCS' rulemaking proposal will further this position as well as the industry's position that the regulation of radioactive wastes should be consistent and integrated with the regulation of non-radioactive hazardous waste disposal.

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SISP Review Complete

*STP-006 Template
RIDS: SP08*

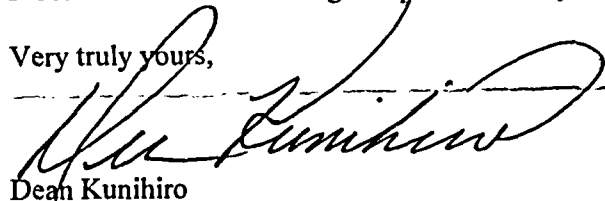
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The above are compelling reasons to adopt WCS' rulemaking proposal and to change the DSHS' current burdensome policy of a "case-by-case" review and rulemaking regarding exemption proposals.

This petition is submitted in accordance with Title 10, Section 2001.021 of the Texas Government Code and Title 1, Section 351.2 of the Texas Administrative Code.

I look forward to discussing this petition with you or your staff at your earliest convenience.

Very truly yours,



Dean Kunihiro
Senior Vice President
Licensing & Regulatory Affairs

Enclosure

cc: Dan Eden
Ruth McBurney
Richard Ratliff
Richard Bays
✓ Janet Schlueter
Larry Camper

PETITION FOR THE ADOPTION OF A RULE
Submitted to the Texas Department of State Health Services
By Waste Control Specialists LLC
October 19, 2005

1.0 Identification of Petitioner

Petitioner is Waste Control Specialists LLC (WCS). Petitioner's address is:

Waste Control Specialists LLC
Three Lincoln Center
5430 LBJ Freeway, Suite 1700
Dallas, Texas 75240

Mr. George Dials is the President and Chief Operating Officer of WCS. Mr. Dean Kunihiro is the WCS Senior Vice President, Licensing and Regulatory Affairs.

2.0 Description Why Change Is Needed

WCS proposes to amend Title 25, Section 289.202(ff) ("General requirements for waste management") of the Texas Administrative Code (TAC), by adding a new paragraph that allows material that has been exempted from regulation by the United States Nuclear Regulatory Commission (NRC) to also be recognized as exempt material in Texas. This change is required to comport Texas regulations with the 1963 Agreement State agreement between the State of Texas and the Atomic Energy Commission (now the NRC), as amended.

3.0 Fiscal Impact

The proposed rulemaking would reduce costs for the State by eliminating unnecessary State reviews that are currently required to exempt material that has already been exempted by the NRC. The proposed rulemaking also has the potential to generate revenue for the State to the extent that NRC-exempt wastes would be shipped to Texas instead of to other states for approved disposal in Resource Conservation and Recovery Act landfills. Quantification of savings and revenue generation would be speculative and has not been performed.

4.0 Statement of Authority to Make Proposed Change

Statutory authority for the promulgation of this rule is found at Title 5 of the Texas Health and Safety Code, Section 401.051, which provides for the Department to adopt rules and guidelines relating to the control of sources of radiation, and Section 401.106, which allows the Department by rule to exempt a source of radiation or a kind of use or user from licensing or registration requirements.

5.0 Text of Proposed Change

Insert the following after 25 TAC 289.202(ff)(3):

- (4) Material lawfully exempted from regulation by the U.S. Nuclear Regulatory Commission shall also be recognized and treated as exempt material in Texas.

WASTE CONTROL
SPECIALISTS LLC



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Ms. Janet R.Schlueter
Director, Office of State and Tribal Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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