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American Ecology

November 22, 2005

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

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STP

Dear Executive Commissioner Hawkins:

RE: American Ecology Comments on Title 25, Chapter 289 Rulemaking
 Petition Submitted October 19, 2005 by Waste Control Specialists (WCS)

The referenced, revised rulemaking petition seeks to exclude the State from reviewing the disposal of radioactive material exempted from Atomic Energy Act regulation in Texas hazardous waste disposal facilities. Outside of a technical change limiting the non-reviewable exemptions to Nuclear Regulatory Commission (NRC) licensed waste, the revised petition has not changed its original policy intent to bypass State scrutiny.

American Ecology continues to take the position that State review and concurrence with NRC-exempt waste disposal at RCRA facilities is advisable. While NRC regulates the generator of the waste, it does not regulate the receiving disposal facility. The NRC, therefore, lacks both detailed knowledge of facility permit requirements and cumulative information on the types and amounts of material previously disposed at the site. Decommissioning wastes, for example, typically consist of soil, debris, concrete and other materials with low levels of radioactivity. The volumes are sufficiently large to contain significant quantities of radioactive material, particularly if multiple projects accumulate at one disposal site.

We continue to recommend that the State require the following minimum information as part of a review and concurrence process:

- Waste description (i.e. volume, physical form, radiological characteristics);
- NRC exemption documentation and related findings; and
- Impact assessment and safety findings for the specific waste proposed.

We further note that the Texas Commission on Environmental Quality (TCEQ) recently modified the WCS permit to require Department of State Health Services (DSHS)

SISP Review Complete

STP 006 Implants

RIDS: SP08

concurrence with disposal of materials exempted by rule under 25 TAC 289.251 and 10 CFR Parts 30 and 40. It would be inconsistent to allow materials exempted by the NRC on a case-by-case basis to be disposed of without DSHS concurrence when the State RCRA permit requires DSHS concurrence for disposal of generally exempted materials.

Finally, we draw your attention to the following excerpt from the Atomic Energy Act of 1954 as amended, which references state authority to regulate NRC exempt waste:

Sec. 276. State Authority to Regulate Radiation Below Level of Regulatory Concern of Nuclear Regulatory Commission.

42 USC 2023. (a)293 IN GENERAL.—No provision of this Act, or of the Low-Level Radioactive Waste Policy Act, may be construed to prohibit or otherwise restrict the authority of any State to regulate, on the basis of radiological hazard, the disposal or off-site incineration of low-level radioactive waste, if the Nuclear Regulatory Commission, after the date of the enactment of the Energy Policy Act of 1992 exempts such waste from regulation.

In conclusion, a review and concurrence process offers Texas the opportunity to make its own determination, based on its own evaluation of the radiological hazards present and the in-state facility where NRC-exempt waste disposal is proposed to take place. As the operator of a permitted hazardous waste disposal facility in Texas, we recommend that the State proceed accordingly.

Sincerely,

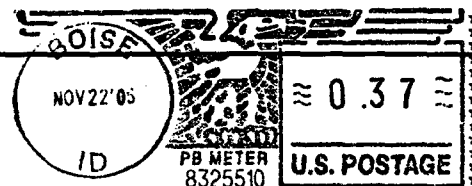
Richard E. O'Hara

Richard E. O'Hara
Director, Environmental Health and Safety

C. Commissioner Eduardo J. Sanchez, Department of State Health Services
Chairman Kathleen Hartnett White, TCEQ
~~Paul E. Haus, Director, NRC Office of State and Tribal Programs~~
Stephen Romano, President and CEO, American Ecology
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