

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)	
WASTE CONTROL SPECIALISTS LLC)	Docket No. 72-1050
(Consolidated Interim Storage Facility))	April 19, 2017

**JOINT REQUEST TO WITHDRAW THE *FEDERAL REGISTER* NOTICE PROVIDING
AN OPPORTUNITY TO SUBMIT HEARING REQUESTS**

I. INTRODUCTION

Waste Control Specialists LLC’s (“WCS”) Application under 10 C.F.R. Part 72 for a Consolidated Interim Storage Facility (“CISF”) in Andrews County, TX is pending before the U.S. Nuclear Regulatory Commission (“NRC”). The NRC published a *Federal Register* notice on January 30, 2017 (“Hearing Notice”) providing an opportunity for interested persons to file a request for a hearing on the CISF Application by March 31, 2017.¹ The Commission later extended that deadline to May 31, 2017.² No hearing requests have been submitted to date.

As shown in Attachment 1, WCS submitted a letter to the NRC on April 18, 2017 requesting that the NRC temporarily suspend all safety and environmental review activities as well as public participation activities associated with the CISF Application (“Suspension Request”).³ The Suspension Request was based on a number of factors, articulated in the letter and summarized below, which demonstrate good cause for suspending the opportunity to request a hearing on the Application.

¹ License Application; Docketing and Opportunity to Request a Hearing and to Petition for Leave to Intervene, 82 Fed. Reg. 8773, 8775 (Jan. 30, 2017).

² See Commission’s Order at 2 (Mar. 29, 2017) (ML17088A627) (“Commission Extension Order”).

³ See Letter from R. Baltzer, WCS, to NRC (Apr. 18, 2017) (“Suspension Request”).

Consistent with the Suspension Request, WCS and the NRC Staff jointly request that the Commission withdraw the Hearing Notice for this proceeding, which would effectively suspend the opportunity for hearing requests on the CISF Application. WCS expects to go forward with this project at the earliest possible opportunity after completion of the sale of the company to the parent of EnergySolutions. Once WCS has notified the NRC Staff that it is ready to proceed with review of the CISF Application, then the NRC Staff would utilize its typical procedures to issue a new *Federal Register* notice that would provide a new opportunity for interested persons to request a hearing on the CISF Application.

II. PROCEDURAL BACKGROUND

WCS submitted the CISF Application to the NRC in April 2016.⁴ Following responses to NRC requests for supplemental information, the NRC docketed the Application on January 23, 2017.⁵ In the *Federal Register* notice of docketing, the NRC also provided an opportunity for any persons to file a request for a hearing and petition for leave to intervene by March 31, 2017.⁶ Various organizations filed requests to extend that deadline by 120 days.⁷ Although WCS and the NRC Staff did not support the full extension request, WCS agreed with Sierra Club, and the NRC Staff did not oppose, a revised hearing request deadline of May 31, 2017.⁸ The

⁴ Waste Control Specialists, LLC, Consolidated Interim Spent Fuel Storage Facility License Application (Apr. 28, 2016) (ML16182A162).

⁵ See Hearing Notice at 8773.

⁶ *Id.* at 8773, 8775.

⁷ See Sierra Club's Motion for Extension of Time to Intervene in Licensing Proceeding (Mar. 2, 2017) (ML17062A897); Sustainable Energy and Economic Development Coalition (SEED Coalition) Request for Extension of 120 Days for Submission of Hearing Requests and Petitions to Intervene (Mar. 7, 2017) (ML17080A493); Nuclear Information and Resource Service and Nineteen other Organization's Request for Extension on Deadline (Mar. 9, 2017) (ML17069A492). Sierra Club later withdrew its request and submitted a joint motion with WCS with a revised briefing schedule. Waste Control Specialists LLC and Sierra Club's Joint Motion for Revised Schedule Related to Hearing Requests (Mar. 13, 2017) (ML17072A498).

⁸ See Commission Extension Order at 2.

Commission issued an order on March 29, 2017 that extended the hearing request deadline until May 31, 2017 with corresponding extensions for answers and replies.

III. THE COMMISSION SHOULD WITHDRAW THE HEARING NOTICE

WCS has demonstrated good cause to suspend without prejudice the deadlines and opportunities to submit hearing requests on the CISF Application, which would occur through withdrawal of the Hearing Notice. As explained in the Suspension Request, WCS has requested suspension of all safety and environmental review activities as well as public participation activities associated with the CISF Application for a period commencing on the date of the Suspension Request and continuing through the completion of the sale of WCS to EnergySolutions.⁹ As explained more fully in the Suspension Request, WCS must focus its limited financial resources on those expenditures necessary to safely run and maintain its currently licensed facilities, proceed through the trial set for April 24, and complete the sale to EnergySolutions.¹⁰

No hearing requests have been submitted to date challenging the CISF Application, and withdrawing the Hearing Notice will not disadvantage any potential intervenors. To the contrary, various organizations filed requests to extend the deadline for hearing requests beyond even the current May 31, 2017 deadline.¹¹

The Commission previously has withdrawn a hearing notice at this stage of the proceeding. In the STP Units 3 and 4 combined license proceeding, the NRC initially published a hearing notice on December 27, 2007 giving petitioners 60 days to submit a hearing request on

⁹ See Suspension Request at 1.

¹⁰ See *id.*

¹¹ See Commission Extension Order at 1.

the application.¹² Prior to any hearing requests, various petitioners requested that the Commission suspend indefinitely the opportunity to submit a hearing request, claiming the application was incomplete.¹³ The Commission withdrew the hearing notice (rendering petitioners' requests moot), stating that the NRC would republish the notice once the applicant informed the NRC that it was prepared to support a review of the complete application.¹⁴ Following the applicant's notification, the NRC published a new hearing notice with a new opportunity to submit hearing requests.¹⁵

WCS is optimistic about the near term resumption of its pursuit of the Part 72 license after completion of the sale, which WCS currently believes to be by late summer 2017.¹⁶ WCS and the NRC Staff jointly request that the Commission withdraw the Hearing Notice. Once WCS has notified the NRC Staff that it is prepared to proceed with review of the CISF Application, then the NRC Staff would issue a new *Federal Register* notice that would provide a new opportunity to request a hearing on the CISF Application.¹⁷

As a courtesy, WCS also has notified the organizations that filed earlier requests to extend the initial hearing request deadline—Sierra Club, Nuclear Information and Resource Service, and Sustainable Energy and Economic Development Coalition.

¹² See South Texas Project Nuclear Operating Company; Notice of Hearing and Opportunity To Petition for Leave To Intervene on a Combined License for the South Texas Project Units 3 and 4, 72 Fed. Reg. 73,381 (Dec. 27, 2007).

¹³ See South Texas Project, Petition to Suspend Hearing Notice Regarding Application for Combined License for South Texas Project Units 3 and 4 or, in the Alternative, Request for an Extension of Time to Submit Hearing Request and Contentions and Request for Expedited Consideration (Feb. 8, 2013) (ML080420600).

¹⁴ Commission Order, Docket Nos. 52-012, 52-013 (Feb. 13, 2008) (ML080450208). The Order was issued pursuant to the Secretary's authority under 10 C.F.R. § 2.346(a).

¹⁵ See South Texas Project Nuclear Operating Company Application for the South Texas Project Units 3 and 4; Notice of Order, Hearing, and Opportunity To Petition for Leave To Intervene, 74 Fed. Reg. 7934, 7934-7935 (Feb. 20, 2009).

¹⁶ See Suspension Request at 2.

¹⁷ See *id.* at 3.

IV. CONCLUSION

For the reasons noted above, WCS and the NRC Staff request that the Commission withdraw the Hearing Notice related to the CISF Application. The NRC Staff would issue a new notice once WCS has notified the NRC Staff that it would like to proceed with review of the Application.

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

Timothy P. Matthews
Stephen J. Burdick
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: 202-739-5527
E-mail: timothy.matthews@morganlewis.com

Counsel for Waste Control Specialists LLC

Executed in Accord with 10 C.F.R. § 2.304(d)

Sara Brock Kirkwood
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, DC 20555-0001
Phone: 301-287-9187
E-mail: Sara.Kirkwood@nrc.gov

Counsel for Nuclear Regulatory Commission Staff

Dated in Washington, D.C.
this 19th day of April 2017

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)	
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WASTE CONTROL SPECIALISTS LLC)	Docket No. 72-1050
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(Consolidated Interim Storage Facility))	April 19, 2017
)	

CERTIFICATE OF SERVICE

I hereby certify that, on this date, a copy of the “Joint Request to Withdraw the *Federal Register* Notice Providing an Opportunity to Submit Hearing Requests” was filed through the E-Filing system.

Signed (electronically) by Stephen J. Burdick
Stephen J. Burdick
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: 202-739-5059
Fax: 202-739-3001
E-mail: stephen.burdick@morganlewis.com

Counsel for Waste Control Specialists LLC

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AMERICA'S NUCLEAR SOLUTION

April 18, 2017

10 CFR Part 72
Docket No. 72-1050
CAC No. L25175

Document Control Desk
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852

Dear Sir or Madam,

Waste Control Specialists LLC (“WCS”) filed an application with the U.S. Nuclear Regulatory Commission (“NRC”) under 10 CFR Part 72 for a Consolidated Interim Storage Facility (“CISF”) license for its facility in Andrews County, TX, Docket No. 72-1050.

WCS has also entered into an agreement for the sale of WCS to the parent company of *EnergySolutions*. The United States has filed a lawsuit seeking to enjoin that sale on antitrust grounds, and the trial on that matter is set to commence on Monday, April 24, 2017. We expect it to conclude on or before May 5, 2017. WCS and *EnergySolutions* believe the proposed transaction should be allowed because it adds WCS’ disposal facility with *EnergySolutions*’ integrated nuclear services business and will result in substantial benefits to the safe and effective storage and disposal of LLRW in the United States. The companies believe they will be successful in their defense of this challenge and closing the transaction.

WCS respectfully requests that the NRC temporarily suspend all safety and environmental review activities as well as public participation activities associated with WCS’ license application for a period commencing on the date of this letter and continuing until the completion of the sale of WCS to *EnergySolutions*, which we currently believe to be by late summer 2017. WCS expects to go forward with this project at the earliest possible opportunity after completion of the sale. However, due to the substantially increased application review and related costs, WCS must focus its limited financial resources on those expenditures necessary to safely run and maintain its currently licensed facilities, proceed through the trial set for April 24, and complete the sale to *EnergySolutions*.

Corporate
5430 LBJ Freeway, Ste. 1700
Three Lincoln Centre
Dallas, TX 75240
Ph. 972-715-9800
Fx. 972-448-1419

Facility
P.O. Box 1129
Andrews, TX 79714
Ph. 888-789-2783
Fx. 505-394-3427

CISF Plans for Andrews County, Texas

As one of its initiatives intended to help WCS eventually become profitable and following on the recommendations of the 2012 Blue Ribbon Commission on America's Nuclear Future and the encouragement of the host city, county and State, WCS leaders began considering the possibility of siting a CISF at its Andrews County, TX facility – a much reviewed location, adjacent to URENCO's enrichment facility and in a location already found suitable for LLRW disposal. WCS' approach to this project has necessarily been fiscally conservative – primarily staffed with in-house effort, minimal cash outlays, and in-kind and cost-sharing contributions from its partners (TN Americas and NAC International).

Enormous Financial Challenges

WCS respects the NRC's process, understands that the NRC seeks to efficiently use its resources, and is fulfilling its statutory mandate to protect the public health and safety and the environment, as well as its requirements for public participation. But WCS also is faced with a magnitude of financial burdens that currently make pursuit of licensing unsupportable. This is so because following the recent docketing of the CISF application in January 2017, the cost profile for WCS' pursuit of the CISF application has increased dramatically.

The NRC recently provided WCS an estimate of the cost of the application review of \$7.5 million, which is significantly higher than we originally estimated. Also, the costs associated with the commencement of the public participation process and a potential adjudicatory hearing before the Atomic Safety and Licensing Board, are estimated to be considerable, especially in the very near term. The cost sharing arrangement WCS had in place with one of its partners for this project has been depleted, and WCS has been unable to reach an agreement to extend these arrangements. At the same time, WCS has faced significant operating losses in each of its operating years, and the cost of actively pursuing the project only serves to increase those losses.

Request

For the reasons discussed above, WCS respectfully requests that the NRC Staff temporarily suspend all safety and environmental review of the CISF application and that it seek to efficiently capture and preserve the work completed to date, as practicable. WCS requests that NRC approve an extension period commencing on the date of this letter until the completion of the sale of WCS to EnergySolutions, which we currently believe to be late summer 2017. WCS is optimistic about the near term resumption of its pursuit of the Part 72 license after completion of the sale.

Accordingly, WCS requests that the Commission, as the Presiding Officer, suspend without prejudice the deadlines and opportunities to submit hearing requests identified in the NRC's notice published in the *Federal Register* on January 30, 2017 (82 Fed. Reg. 8773), as amended by the Commission's Order, dated March 29, 2017 (ML17088A627), and that the NRC suspend the deadlines for environmental scoping comments identified in the NRC's notice also published in the *Federal Register* on January 30, 2017 (82 Fed. Reg. 8771).

WCS expects that, once it has requested resumption of review of the CISF application, NRC will issue notices imposing new deadlines for hearing requests and public scoping comments. This path is consistent with requests from multiple intervenor groups in the environmental scoping

meetings for additional time to prepare their challenges and imposes no unfairness to any prospective party who will be able to file contentions by the new deadlines. This path is also consistent with the steps the NRC, WCS, and stakeholders are taking to plan for the safe and effective consolidated interim storage of spent nuclear fuel.

WCS commits to keep the NRC Staff timely apprised of changes to its readiness to resume this important licensing action. We will provide as much advance notice as possible of a target date for a resumption request, and work within the NRC's resource allocation processes.

WCS appreciates the significant work and utmost professionalism on the part of the NRC Staff, as well as that on the parts of its employees and CISF partners. We appreciate the continued support of our State and local communities and look forward to resuming this important project and playing a significant role in America's safe nuclear future.

If you have questions, please contact me, or Michael Ford, Vice President, Licensing & Corporate Compliance, mford@valhi.net or 972.450.4284.

Sincerely,



Rod Baltzer

cc:

Chairman Svinicki
Commissioner Burns
Commissioner Baran
Secretary of the Commission
Marc Dapas, NRC, NMSS
Michael Layton, NRC, NMSS/SFM
Tony Hsai, NRC, NMSS/SFM
John McKirgan, NRC, NMSS/SFM/SFLB
John Nguyen, NRC, NMSS/SFM/SFLB
Jim Parks, NRC, NMSS/FCSS&ER/ERB