

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 51022
United States of America Department of Energy
RN108214016
Docket No. 2015-1139-IHW-E

Order Type:

Agreed Order

Media:

IHW

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

southeast New Mexico, approximately 26 miles southeast of Carlsbad, New Mexico (“DOE Facility”); 9998 West State Highway 176, approximately one mile north of State Highway 176 and 250 feet east of the Texas-New Mexico state line, approximately 30 miles west of Andrews, Andrews County (“WCS Facility”)

Type of Operation(s):

Waste Isolation Pilot Plant (“WIPP”); commercial waste transfer, treatment, storage, and disposal facility

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	Waste Control Specialists LLC

Texas Register Publication Date: November 6, 2015

Comments Received: None

Penalty Information

Total Penalty Assessed: \$3,375

Deferred for Expedited Settlement: \$675

Total Paid to General Revenue: \$2,700

Total Due to General Revenue: \$0

Compliance History Classifications:

Person/CN – High
Site/RN – N/A

Major Source: Yes

Statutory Limit Adjustment: No

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: April 2, 2015

Date(s) of NOV(s): N/A

Date(s) of NOE(s): April 2, 2015

United States of America Department of Energy

RN108214016

Docket No. 2015-1139-IHW-E

Violation Information

1. Failed to place waste into interim storage or transfer the waste to an authorized recipient within 365 days of the initial date of receipt [TCEQ Radioactive Material License R04100 Provision 196.B, and provisions of an Authorized Federal Agency letter dated March 28, 2014, between Respondent and the TCEQ].
2. Caused, suffered, allowed or permitted waste to be stored, processed, or disposed of in violation of a permit [30 TEX. ADMIN. CODE § 335.2(b)].

Corrective Actions/Technical Requirements**Technical Requirements:**

1. Within 60 days, submit to the Executive Director for approval a written plan (the "Plan") for the removal and handling of all transuranic ("TRU") waste received at the WCS Facility from the DOE Facility between April 2, 2014 and November 20, 2014. The Plan must include:
 - a. Procedures for the handling, processing as needed, management, removal and transportation of the TRU waste from the WCS Facility, and procedures for management of the contents to ensure that exposure to radiological components of the material are maintained as low as reasonably achievable;
 - b. Procedures for processing the 74 standard waste boxes of TRU waste bearing waste code D001, as necessary, to meet waste acceptance criteria or for transportation to an authorized recipient consistent with the requirement to ensure that exposure to radiological components of the material are maintained as low as reasonably achievable;
 - c. Procedures for updating the TCEQ no less than quarterly on the status of the WIPP resuming normal operations and the viability of other authorized disposal sites for the TRU waste;
 - d. Procedures for removal and transportation of all TRU waste received at the WCS Facility from the DOE Facility from April 2, 2014 through November 20, 2014, to an authorized recipient once the WIPP is re-opened for resumption of TRU waste disposal operations; and
 - e. A schedule for implementing the Plan after it is approved by the Executive Director.
2. Immediately upon written approval of the Plan by the Executive Director, implement the Plan in accordance with the approved schedule.
3. Within 30 days after the Executive Director has approved the Plan, submit written certification to demonstrate compliance with Technical Requirement No. 2.
4. Handle, manage, process (if necessary), and remove all TRU waste from the WCS Facility and transport it to an authorized recipient in accordance with the approved Plan.
5. Within 30 days after the removal of all TRU waste, submit written certification to demonstrate compliance with Technical Requirement No. 4.

Litigation Information**Settlement Date:** October 23, 2015**Contact Information****TCEQ Enforcement Coordinator:** Keith Frank, Enforcement Division, (512) 239-1203**TCEQ Regional Contact:** Michael Edmiston, P.E., Midland Regional Office, (432) 570-1359**Respondent Contact:** Frank Marcinowski, Deputy Assistant Secretary for Waste Management, Office of Environmental Management, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585**Respondent's Attorney:** Matthew Urie, Assistant General Counsel, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	2-Apr-2015		
	PCW	28-Jul-2015	Screening	21-May-2015
			EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	United States of America Department of Energy		
Reg. Ent. Ref. No.	RN108214016		
Facility/Site Region	7-Midland	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	51022	No. of Violations	1
Docket No.	2015-1139-IHW-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Keith Frank
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,750
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	-10.0% Reduction	Subtotals 2, 3, & 7	-\$375
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Notes: Reduction for high performer classification.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$12,847
 Estimated Cost of Compliance: \$110,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,375
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$3,375
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,375
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DEFERRAL	20.0% Reduction	Adjustment	-\$675
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$2,700
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Screening Date 21-May-2015

Docket No. 2015-1139-IHW-E

PCW

Respondent United States of America Department of Energy

Policy Revision 4 (April 2014)

Case ID No. 51022

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN108214016

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Keith Frank

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> **Repeat Violator (Subtotal 3)**

N/A

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> **Compliance History Summary**

Compliance History Notes

Reduction for high performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -10%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% -10%

Screening Date 21-May-2015

Docket No. 2015-1139-IHW-E

PCW

Respondent United States of America Department of Energy

Policy Revision 4 (April 2014)

Case ID No. 51022

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN108214016

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Keith Frank

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 335.2(b)

Violation Description The Respondent failed to comply with the provisions of an Authorized Federal Agency ("AFA") agreement dated March 28, 2014, between Respondent and the TCEQ. Specifically, Respondent requested its contractor, Nuclear Waste Partnership, LLC, to contract with WCS, to acquire temporary storage services at the WCS facility for radioactive wastes originating from the Los Alamos National Lab and Waste Isolation Pilot Plant. A shipment of standard waste boxes of radioactive transuranic ("TRU") waste was transported by the Respondent to the WCS facility between April 2, 2014 and May 1, 2014, and placed into storage. WCS License R04100 Provision 196.B requires that all waste placed into storage at the storage and processing facility be placed into interim storage or be transferred to an authorized recipient within 365 days of the initial date of receipt. Pursuant to the AFA agreement with the TCEQ, Respondent was required to remove the radioactive wastes from the WCS facility by the end of the applicable one-year limit mandated by the license. As required by the AFA agreement and License Condition 196.B, the TRU waste should have been placed into interim storage or transferred to an authorized recipient on or prior to April 2, 2015, and it was not placed into interim storage or transferred to an authorized recipient within 365 days in violation of the AFA agreement and 30 Tex. Admin. Code § 335.2(b) which provides that no person may cause, suffer, allow or permit its wastes to be stored, processed, or disposed of in violation of a permit.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (15.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0.0%).

Matrix Notes Human health or the environment will or could be exposed to significant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1 49 Number of violation days

Table for frequency: daily, weekly, monthly, quarterly (marked with x), semiannual, annual, single event.

Violation Base Penalty \$3,750

One quarterly event is recommended based on documentation of the violation during the April 2, 2015 investigation to the May 21, 2015 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x).

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$12,847

Violation Final Penalty Total \$3,375

This violation Final Assessed Penalty (adjusted for limits) \$3,375

Economic Benefit Worksheet

Respondent United States of America Department of Energy
Case ID No. 51022
Reg. Ent. Reference No. RN108214016
Media Violation No. 1 Industrial and Hazardous Waste

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Equipment			0.00	\$0	\$0	\$0	
Buildings			0.00	\$0	\$0	\$0	
Other (as needed)	\$110,000	2-Apr-2015	1-Dec-2016	1.67	\$612	\$12,236	\$12,847
Engineering/Construction			0.00	\$0	\$0	\$0	
Land			0.00	\$0	n/a	\$0	
Record Keeping System			0.00	\$0	n/a	\$0	
Training/Sampling			0.00	\$0	n/a	\$0	
Remediation/Disposal			0.00	\$0	n/a	\$0	
Permit Costs			0.00	\$0	n/a	\$0	
Other (as needed)			0.00	\$0	n/a	\$0	

Notes for DELAYED costs Estimated cost to develop and implement procedures for the removal and handling of all TRU waste received at the Facility from the DOE between April 2 and May 1, 2014. Date Required is the investigation date. Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal			0.00	\$0	\$0	\$0
Personnel			0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.00	\$0	\$0	\$0
Supplies/Equipment			0.00	\$0	\$0	\$0
Financial Assurance [2]			0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$110,000

TOTAL \$12,847

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PUBLISHED Compliance History Report for CN600125009, RN108214016, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN600125009, United States of America Department of Energy **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN108214016, United States of America Department of Energy **Classification:** N/A **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: Approximately 1 mile north of State Highway 176 and 250 feet east of the Texas-New Mexico state line, approximately 30 miles west of Andrews, TX, ANDREWS COUNTY

TCEQ Region: REGION 07 - MIDLAND

ID Number(s): **INDUSTRIAL AND HAZARDOUS WASTE NONPERMITTED** ID NUMBER R07108214016

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: April 02, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: April 02, 2010 to April 02, 2015

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Keith Frank

Phone: (512) 239-1203

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY;
RN108214016**

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§

**BEFORE THE

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2015-1139-IHW-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the United States of America Department of Energy ("Respondent" or "DOE") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361 and 401. The Executive Director of the TCEQ, represented by the Enforcement Division, and Respondent, together, stipulate that:

1. The Executive Director and Respondent agree that TCEQ has jurisdiction to enter this Order pursuant to TEX. HEALTH & SAFETY CODE § 361.017 and TEX. WATER CODE §§ 7.002, 7.051 and 7.073, and that Respondent is subject to TCEQ's jurisdiction.
2. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
3. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
4. The Executive Director and Respondent agree on a settlement of the matters addressed in this Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
5. An administrative penalty in the amount of Three Thousand Three Hundred Seventy-Five Dollars (\$3,375.00) is assessed by the Commission in settlement of the violation alleged in Section II ("Allegations"). Respondent paid Two Thousand Seven Hundred Dollars (\$2,700.00) of the penalty. Six Hundred Seventy-Five Dollars (\$675.00) of the penalty is deferred contingent upon Respondent's timely and satisfactory compliance with all the terms and conditions of this Order, and shall be waived only upon full compliance with this Order. If Respondent fails to timely and satisfactorily comply with any requirement contained in this Order, the Executive Director may require Respondent to pay all or part of the deferred administrative penalty."
6. Respondent owns the Waste Isolation Pilot Plant located in southeast New Mexico approximately 26 miles from Carlsbad, New Mexico ("WIPP") and operates the WIPP through its contractor Nuclear Waste Partnership, LLC. Respondent owns the Los Alamos National Lab ("LANL"), located in Los Alamos, New Mexico.
7. At the WIPP, the DOE manages and/or disposes of transuranic ("TRU") waste resulting from the nation's nuclear defense program, including TRU waste generated by the DOE at the LANL.

8. TRU waste generally consists of clothing, tools, rags, residues, debris, soil and other items contaminated with small amounts of plutonium and other man-made radioactive elements.
9. In February 2014, there was a temporary suspension of disposal operations at the WIPP resulting in a need to transport certain TRU waste destined for the WIPP to another licensed facility.
10. Waste Control Specialists LLC ("WCS") owns and operates a commercial waste transfer, treatment, storage, and disposal facility located at 9998 West State Highway 176 in Andrews County, Texas approximately one mile north of the State Highway 176 and 250 feet east of the Texas-New Mexico state line, approximately 30 miles west of Andrews, Texas (the "WCS facility").
11. In March 2014, the TCEQ was contacted by both Respondent and WCS concerning storage of TRU waste from the LANL and other DOE facilities at the WCS facility. Storage of such waste is currently allowed under WCS' TCEQ Radioactive Material License R04100 ("WCS License") and Hazardous Waste Permit 50358 ("WCS Permit").
12. The WCS License requires all waste received at the WCS Storage and Processing Facility to be placed into interim storage or transferred to an authorized recipient within one year (365 days) of the initial date of receipt on a per shipment basis.
13. At the request of Respondent, Nuclear Waste Partnership, LLC contracted with WCS to acquire storage services at the WCS facility for TRU wastes originating from LANL and other DOE facilities.
14. On the manifests provided by DOE, the TRU waste is classified as radioactive waste and hazardous waste.
15. By letter dated March 28, 2014, Respondent committed to the TCEQ in an Authorized Federal Agency letter ("AFA letter") that it recognized the 1-year storage limit in the WCS License and agreed to remove the wastes by the end of the applicable 1-year limit.
16. Following the initial shipments of the TRU waste, Respondent notified WCS and TCEQ that 74 standard waste boxes ("SWBs") in the TRU waste shipments should bear hazardous waste code D001 due to oxidizing material in the waste.
17. The TRU waste from DOE is currently being stored at the WCS Facility. The majority of this waste is being stored in the Container Storage Building of the WCS Storage and Processing Facility while, due to the enhanced protective measures available, the 74 SWBs bearing hazardous waste code D001 are being stored in a disposal area reserved for the disposal of federal facility waste.
18. Respondent, WCS and the TCEQ have agreed that, on the resumption of normal disposal operations at the WIPP, DOE will promptly initiate shipment of the TRU waste from the WCS facility to the WIPP in accordance with a plan submitted by Respondent to and approved by TCEQ.
19. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions contained in this Order.

20. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
21. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

During an investigation conducted on April 2, 2015, a TCEQ investigator documented that Respondent failed to comply with the provisions of an Authorized Federal Agency letter dated March 28, 2014, between Respondent and the TCEQ. Specifically, Respondent requested its contractor, Nuclear Waste Partnership, LLC, to contract with WCS, to acquire temporary storage services at the WCS facility for radioactive wastes originating from the LANL and WIPP. A shipment of standard waste boxes of radioactive transuranic ("TRU") waste was transported by the Respondent to the WCS facility between April 2, 2014 and May 1, 2014, and placed into storage. WCS License R04100 Provision 196.B requires that all waste placed into storage at the storage and processing facility be placed into interim storage or be transferred to an authorized recipient within 365 days of the initial date of receipt. Pursuant to the AFA letter with the TCEQ, Respondent was required to remove the radioactive wastes from the WCS facility by the end of the applicable one-year limit mandated by the license. As required by the AFA letter and License Condition 196.B, the TRU waste should have been placed into interim storage or transferred to an authorized recipient on or prior to April 2, 2015, and it was not placed into interim storage or transferred to an authorized recipient within 365 days in violation of the AFA letter and 30 TEX. ADMIN. CODE § 335.2(b) which provides that no person may cause, suffer, allow or permit its wastes to be stored, processed, or disposed of in violation of a permit.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty as set forth in Section I, Paragraph 5. The payment of this penalty and Respondent's compliance with all of the requirements set forth in this Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here. Penalty payments shall be made payable to TCEQ and shall be sent with the notation "Re: United States of America Department of Energy, Docket No. 2015-1139-IHW-E" to:

Financial Administration Division, Revenue Operations Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
2. Respondent shall undertake the following technical requirements:
 - a. Within 60 days after the effective date of this Order, Respondent shall submit to the Executive Director for approval a written plan (the "Plan") for the removal and handling of all TRU waste received by WCS from the DOE between April 2, 2014 and November 20, 2014. The Plan must include:

- i. Procedures for the handling, processing as needed, management, removal and transportation of the TRU waste from the WCS facility, and procedures for management of the contents to ensure that exposure to radiological components of the material are maintained as low as reasonably achievable;
 - ii. Procedures for processing the 74 SWBs of TRU waste bearing waste code D001, as necessary, to meet waste acceptance criteria or for transportation to an authorized recipient consistent with the requirement to ensure that exposure to radiological components of the material are maintained as low as reasonably achievable;
 - iii. Procedures for updating the TCEQ no less than quarterly on the status of the WIPP resuming normal operations and the viability of other authorized disposal sites for the TRU waste;
 - iv. Procedures for removal and transportation of all TRU waste received at the WCS Facility from the Respondent from April 2, 2014 through November 20, 2014, to an authorized recipient once the DOE WIPP is re-opened for resumption of TRU waste disposal operations; and
 - v. A schedule for implementing the Plan after it is approved by the Executive Director.
- b. Immediately upon written approval of the Plan by the Executive Director, Respondent shall implement the Plan in accordance with the approved schedule.
- c. Within 30 days after the Executive Director has approved the Plan, Respondent shall submit certification to demonstrate compliance with Ordering Provision No. 2.b.
- d. Respondent shall handle, manage, process (if necessary), and remove all TRU waste from the WCS Facility and transport it to an authorized recipient in accordance with the approved Plan.
- e. Within 30 days after the removal of all TRU waste received at the WCS Facility from the DOE from April 2, 2014, through November 20, 2014, to an authorized recipient, Respondent shall submit written certification to demonstrate compliance with Ordering Provision No. 2.d.
- f. All written certifications shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, and shall include the following certification language:
- "I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Respondent shall submit the written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team
Texas Commission on Environmental Quality
Enforcement Division, MC 149A
P.O. Box 13087
Austin, Texas 78711-3087

and:

Michelle Havelka, Manager
Homeland Security Section
Critical Infrastructure Division
Texas Commission on Environmental Quality
12100 Park 35 Circle, Bldg. A, MC-177
Austin, Texas 78753

3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. This Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order, or (2) pursue violations of a statute within TCEQ's jurisdiction or of a rule adopted or an order or permit issued by the TCEQ under such a statute.
8. The obligations set forth in this Order will be governed by all applicable federal and state law.
9. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or

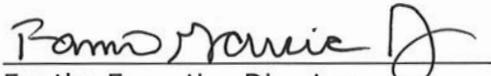
authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

10. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

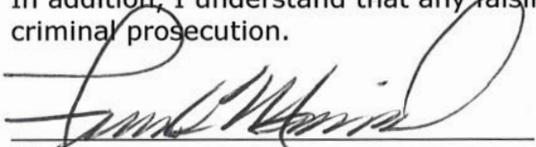
11/6/15
Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this Order and/or failure to timely pay the penalty amount may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature

October 23, 2015
Date

Frank Marcinowski
Name (Printed or typed)
Authorized Representative of
United States of America Department of Energy

Deputy Assistant Secretary for
Waste Management
Title