

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
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Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

December 19, 2008

LaDonna Castañuela, Chief Clerk  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, Mail Code 105  
Austin, Texas 78711-3087

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2008 DEC 19 AM 11:55  
CHIEF CLERK'S OFFICE

Re: TCEQ Docket No. 2005-1994-RAW  
Application by Waste Control Specialists, LLC for new Radioactive Material  
License No. R04100

Dear Ms. Castañuela:

Enclosed for filing, please find the original and seven copies of the Executive Director's Response to Hearing Requests in the above-referenced matter. By this letter, I am also providing a copy of the Executive Director's Response to Hearing Requests to all persons on the attached mailing list.

Sincerely,

A handwritten signature in cursive script that reads "Don Redmond".

Don Redmond  
Staff Attorney  
Environmental Law Division

cc: Mailing List

Enclosure

TCEQ Docket No. 2005-1994-RAW

DEC 19 AM 11:55

CHIEF CLERKS OFFICE

Application by  
Waste Control Specialists, LLC  
For New Radioactive Material License  
No. R04100

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Before the  
Texas Commission on  
Environmental Quality

## EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

### I. INTRODUCTION

The Executive Director of the Texas Commission on Environmental Quality (Executive Director) files this Response to Hearing Requests on the application (Application) by Waste Control Specialists, LLC (WCS or Applicant) for a radioactive material license authorizing low-level radioactive waste disposal in Andrews County.

The Executive Director received timely hearing requests from the following persons: Mr. Cruz Montañez of Odessa, Texas and Mrs. Rose Gardner of Eunice, New Mexico. In addition to the individual requests, two associations also submitted timely hearing requests. Dr. Ken Kramer of the Sierra Club submitted a hearing request on behalf of approximately twelve members of the Sierra Club who reside in Lea, County New Mexico and one member in Andrews County, Texas, and the Sierra Club specifically identified Mrs. Rose Gardner and Mrs. Fletcher Williams of Eunice, New Mexico as members. Mr. Montañez, who writes in his individual request that he is a member of the Sierra Club, was not specifically identified in the Sierra Club's hearing request. Ms. Diane D'Ariggo submitted a hearing request on behalf of the Nuclear Information and Resources Service (NIRS) of Takoma Park, Maryland. NIRS states that they have 300 members in Texas including Andrews County and 200 members in New Mexico including the town of Eunice, but NIRS does not identify any individual members or provide any other detail about their qualifications for membership.

The Executive Director has provided copies of this response to the hearing requestors. The Executive Director also mailed copies of the Executive Director's Response to Public Comments and the draft license to all commenters and persons who requested to be on the application mailing list and filed it with the Office of the Chief Clerk on December 2, 2008.

The Executive Director has attached the following items to this response:

Exhibit A	Technical Summary and Executive Summary
Exhibit B	Compliance History of the Applicant

Exhibit C                      Map, depicting proposed facility location, locations of nearby hearing requestors, and three mile radius from proposed facility

## **II. DESCRIPTION OF THE APPLICATION AND PROPOSED FACILITY**

### **A.     Description of the Applicant**

In addition to this application, WCS has several existing and proposed permitted and licensed activities. The other licenses, permits, and applications are separate matters handled under separate proceedings. This Response to Hearing Requests addresses only the application requesting authorization for commercial low-level radioactive waste disposal of compact waste and federal facility waste under radioactive material license R04100.

WCS currently possesses TCEQ Radioactive Material License R04971 authorizing commercial receipt, storage and processing of radioactive material at an existing facility on the same site in western Andrews County. WCS also possesses TCEQ Hazardous Waste Permit 50358 authorizing storage, processing and disposal of hazardous and industrial waste at an existing facility on the site.

WCS was recently issued TCEQ Radioactive Material License R05807 authorizing commercial disposal of by-product material also on the site. The by-product facility has not been constructed and is not yet receiving radioactive material. In addition, WCS has a pending permit application with the TCEQ for a separate Hazardous Waste Permit requesting authorization for mixed low-level radioactive waste disposal at the proposed federal facility waste disposal facility, or FWF, that is also the subject of this licensing action (both a hazardous waste permit and a radioactive materials license are required for mixed waste disposal).

### **B.     Description of the Application and Proposed Facility**

WCS has prepared and submitted to the TCEQ a license application for authorization to develop, operate, and close two separate facilities for the disposal of low-level radioactive waste at a site located near the Texas-New Mexico state line. The low-level radioactive disposal facility is proposed to be located within the WCS site at 9998 West Highway 176, approximately 30 miles west of the city of Andrews in Andrews County, Texas. The proposed facility is located approximately five miles east of the city of Eunice, New Mexico.

Under Texas law and rules, radioactive waste is classified by the origin or generating activity that resulted in the waste. Low-level radioactive waste is defined in TEX. HEALTH & SAFETY CODE §401.004 and in rule at 30 TEX. ADMIN. CODE (TAC) §336.2(76), by what it is not. Low-level radioactive waste does not include high-level radioactive waste such as spent nuclear fuel, transuranic waste produced by the defense nuclear weapons program, tailings and other by-products from the production of source material and uranium mining, oil and gas naturally-

occurring radioactive material (NORM), and non-oil and gas NORM waste. Consequently, low-level radioactive waste is a subset of a broad category of nuclear waste produced by nuclear utilities, industries, university research, and medical facilities. Generally, low-level radioactive waste is material which has been declared as waste that has been contaminated by or contains short-lived radionuclides or longer-lived radionuclides in relatively low concentrations. There are sub-categories of low-level radioactive waste that are subject to near-surface land disposal requirements: Class A low-level radioactive waste; Class B low-level radioactive waste; and Class C low-level radioactive waste. The classification of A, B, and C low-level radioactive waste is based on the concentration of certain long-lived radionuclides.

The proposed licensing action would authorize the development of two facilities under one license for near-surface land disposal of low-level radioactive waste. The first is a compact waste disposal facility (CWF) which is proposed to accept low-level radioactive waste for commercial disposal of waste subject to the Texas Low-Level Radioactive Waste Disposal Compact (Texas Health and Safety Code Chapter 403) and described in the application as originating from waste generators in Texas and Vermont. The second is a federal facility waste disposal facility, or Federal Waste Facility (FWF) as termed in the license application, which is proposed to accept low-level radioactive waste that is the responsibility of the federal government under the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985, such as low-level radioactive waste from federal facilities. WCS has also requested authorization to dispose of mixed low-level radioactive waste, as defined in TEX. HEALTH & SAFETY CODE §401.221, in the proposed FWF. Mixed low-level radioactive waste is a combination of hazardous waste and low-level radioactive waste.

### **III. PROCEDURAL BACKGROUND**

WCS originally submitted the license application for low-level radioactive waste disposal on August 3, 2004. Subsequent submissions were made by WCS, including new and revised license application materials, which superseded previously submitted versions.

The license application for low-level radioactive waste disposal was determined to be administratively complete on February 18, 2005. A public meeting was held in Andrews County on March 31, 2005 after notification of completion of the administrative review of the WCS application and prior to the selection of the WCS application to begin technical review. Technical review of the application began on May 2, 2005 in accordance with TEX. HEALTH & SAFETY CODE §401.237. The current application is voluminous, comprised of 14 sections contained in 34 three-ring binders. The Executive Director's staff performed the technical review of the application from May 2005 until August 2008. A technical summary of the application is provided in Exhibit A. Three notices of deficiency were issued on the application, and the applicant submitted over 12 revisions of the application. The Notice of Completion of Technical Review for proposed Radioactive Material License No. R04100 was issued by the

Office of the Chief Clerk on August 13, 2008 and mailed to the application mailing list. The Applicant published notice of Completion of Technical Review in the *Andrews County News* newspaper on August 17, 2008. A second public meeting was held in Andrews, Texas on September 8, 2008. The 30-day hearing request and comment period ended on September 16, 2008, but was extended by the Executive Director to September 17, 2008, so that a commenter affected by Hurricane Ike could submit timely comments.

The Executive Director also filed supporting documentation with the Office of the Chief Clerk on August 11, 2008 for the completion of the technical review of the license application. Supporting documentation for the completion of the technical review included a draft Environmental Analysis (EA) and draft license R04100 (the License). The draft EA is a technical assessment of the Executive Director's staff review of the license application. The draft EA documents the review performed through the technical review period. The EA is organized by subject area, focusing on license application materials submitted by WCS and the related technical analysis of those materials. The draft EA discusses the review and analysis of technical issues in several critical areas that were subsequently addressed in draft license conditions. An updated compliance history report is included as Exhibit B.

#### **IV. EVALUATION PROCESS FOR HEARING REQUESTS**

The rules governing requests for contested case hearings are found at 30 TAC Chapter 55, Subchapter G, Requests for Contested Case Hearing and Public Comment on Certain Applications (§§55.250-55.256). Applications for radioactive material licenses under TEX. HEALTH & SAFETY CODE, Chapter 401 are not subject to the Commission's House Bill (HB) 801 administrative and public participation procedures in Subchapters E and F of 30 TAC Chapter 55.

##### **A. The Request**

A hearing request must substantially comply with the following requirements of 30 TAC §55.251(c):

- (1) give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group.
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how

and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;

(3) request a contested case hearing; and

(4) provide any other information specified in the public notice of application.

A hearing request must also meet the deadline for hearing request.

When a group or association requests a hearing, another layer of requirements applies. Pursuant to 30 TAC §55.252:

(a) A group or association may request a contested case hearing only if the group or association meets all of the following requirements:

(1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;

(2) the interests the group or association seeks to protect are germane to the organization's purpose; and

(3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

(b) The executive director, the public interest counsel of the TCEQ, or the applicant may request that a group or association provide an explanation of how the group or association meets the requirements of subsection (a) of this section. The request and response shall be filed according to the procedure in §55.254 of this title (relating to Hearing Request Processing).

## **B. Affected Person Status**

In addition to complying with the TCEQ procedural rules to request a contested case hearing, a person must be an *affected person* to have a contested case hearing request granted. TEX. HEALTH & SAFETY CODE Chapter 401 and TEX. WATER CODE Chapter 5 provide different definitions of "affected person." The Executive Director recommends the application of the definition in TEX. WATER CODE and 30 TAC Chapter 55, subchapter G to these hearing requests:

For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest

affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.

*See* TEX. WATER CODE §5.115(a) (effective September 1, 1999). The definition of “affected person” as provided in Subchapter G of Chapter 55 of the Commission’s rules and TEX. WATER CODE §5.115(a) was established in 1995 in Senate Bill 1546 subsequent to the codification of the definition in TEX. HEALTH & SAFETY CODE §401.003 to provide a uniform standard for participating in a contested case hearing in the air, waste and water programs consolidated at the TCEQ’s predecessor, the Texas Natural Resource Conservation Commission and reflects the Commission’s traditional standard for participation in a contested case hearing. Under TEX. HEALTH & SAFETY CODE §401.114(a), before the commission grants or renews a license to dispose low-level radioactive waste from other persons, the commission shall give notice and provide an opportunity for a public hearing in a manner provided by the commission’s formal hearing procedures and Chapter 2001, TEX. GOV’T CODE. The public notice that was issued on this application is consistent with the commission’s formal hearing request requirements of Subchapter G and does not address the “affected person” requirements of TEX. HEALTH & SAFETY CODE §401.003(15).

Additionally, 30 TAC §55.256(c) provides the following relevant factors for TCEQ to apply to the affected person determination:

- (1) whether the interest claimed is one protected by the law under which the application will be considered,
- (2) distance restrictions or other limitations imposed by law on the affected interest,
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated,
- (4) the likely impact of the regulated activity on the health and safety of the person and on the use of the property of the person, and
- (5) the likely impact of the regulated activity on use of the impacted natural resource by the person.

Although the Executive Director recommends the application of the TEX. WATER CODE definition of affected person for the analysis of these hearing requests, the Executive Director does not believe any of the requestors would qualify as an affected person under the TEX. HEALTH & SAFETY CODE definition.

## V. ANALYSIS OF THE HEARING REQUESTS

### A. Whether the Requests for Contested Case Hearings complied with the Procedural Requirements

#### 1. The Individuals substantially complied with 30 TAC §55.251(c)(1).

The individual requestors submitted their requests by the deadline and substantially complied with 30 TAC §55.251(c)(1) with the exception of Mrs. Rose Gardner who did not provide her phone number.

#### 2. The Associations have not complied with 30 TAC §55.252.

##### a. The Sierra Club has not complied with 30 TAC §55.252.

To request a hearing, the Sierra Club must meet all three requirements for associational standing in 30 TAC §55.252. First, one or more members must otherwise have standing to request a hearing in their own right. Second, the interests the organization seeks to protect must be germane to the organization's purpose. Third, neither the claim the Sierra Club asserts nor the relief it requests must require individual members to participate in the case. Because the Sierra Club fails to meet the first requirement, the Executive Director need not address the other two requirements.

The Sierra Club offers two specific members for standing to request a hearing in their own right. The Sierra Club named Mrs. Rose Gardner and Mrs. Fletcher Williams both of Eunice, New Mexico. The Sierra Club also generally included other unspecified 24,000 members in Texas and 8,000 members in New Mexico through the Lone Star and Rio Grande Chapters of the Sierra Club. In its hearing request, the Sierra Club requests a hearing on behalf of approximately a dozen members who reside in Lea County, New Mexico, as well as one member living in Andrews County, Texas and members living in other nearby counties such as Ector. In its hearing request letter, the Sierra Club later writes that they are "identifying two members in good standing that have specifically asked us to request a contested case hearing..." and that "other individuals who are Sierra Club members may decide to make similar requests through our organization..." Mr. Cruz Montañez does mention in his individual request letter that he is a member of the Sierra Club, but he was not identified in the Sierra Club's request. As will be discussed, the Executive Director recommends that the commission determine that Mr. Cruz does not qualify as an affected person in his own right. Thus, for the purpose of the analysis of the Sierra Club's request, the Executive Director evaluates only whether Mrs. Rose Gardner and Mrs. Fletcher Williams have standing in their own right.

The Executive Director recommends a determination that these two individual members would not qualify for standing to request a hearing in their own right because they do not qualify

individually as affected persons. Because the Sierra Club does not identify an individual member who would otherwise have standing to request a hearing in her own right, the Executive Director respectfully recommends that the Sierra Club's request for a contested case hearing be denied.

**b. NIRS has not complied with 30 TAC §55.252.**

To request a hearing, NIRS must meet all three requirements for associational standing found at 30 TAC §55.252. First, one or more members must otherwise have standing to request a hearing in their own right. Second, the interests the organization seeks to protect must be germane to the organization's purpose. Third, neither the claim NIRS asserts nor the relief it requests must require individual members to participate in the case.

NIRS identifies no specific members for standing to request a hearing in their own right. NIRS generally included only unspecified members stating that they have 300 members in Texas including Andrews County and 200 members in New Mexico including the town of Eunice, but NIRS provides no other detail. NIRS itself is headquartered in Takoma Park, Maryland and NIRS facilities would not be impacted by the proposed activity in Andrews County, Texas. (Because NIRS is located in Maryland and NIRS identified no individual members, NIRS is not included on the map in Exhibit C.)

The other individual hearing requestors above did not reveal that they are also members of NIRS. Thus, the Executive Director cannot complete the analysis of whether any individual NIRS members would qualify for standing to request a hearing in their own right because NIRS did not identify any individual members. The comments that NIRS offers on the application have been addressed in the Executive Director's Response to Public Comment. The Executive Director respectfully recommends that the NIRS request for a contested case hearing be denied.

**B. Whether the Requestors Meet the Requirements for Determination of Affected-Person according to 30 TAC §55.256(a) and (c)**

**1. Mr. Cruz Montañez**

The Executive Director recommends that the commission determine that Mr. Montañez is not an affected person. Although Mr. Montañez writes that the Sierra Club is representing him, the Sierra Club did not identify him as a member in its own letter. Mr. Montañez states that he is a property owner and resident of Odessa in Ector County, Texas and is approximately sixty (60) to seventy (70) miles from the proposed facility. Ector County is adjacent to Andrews County, the county in which the proposed facility is located. (Because of Mr. Montañez's distance over 60 miles from the proposed facility, he is not located on the map in Exhibit C.) Mr. Montañez expresses concerns about irreparable damage to the West Texas area and the aquifers under Andrews County. He is also concerned about accidents and who will be accountable for

negative consequences of accidents. He states his request stems from a general concern common to the public, specifically that the concern about accidents is not a matter that concerns Andrews County residents only, but also all Texans. He is concerned about the increase of employment in Andrews County and other economic interests. He asks for consideration for the damage that radioactive waste has made in other areas of the country.

Mr. Montañez does not qualify as an affected person as defined at 30 TAC §55.256(a). His request letter does not include any details about his personal justiciable interest related to a legal right, duty, privilege, power or economic interest. He does not describe a unique interest in the matter that is not common to the interest of the general public. His general interests are as a property owner and about accidents and who will be accountable for negative consequences of accidents. He writes that his request stems from a general concern common to the public, specifically that the concern about accidents is not a matter that concerns Andrews County residents only, but also all Texans. For these reasons, he does not meet the elements of an affected person at 30 TAC §55.256(a) because he describes only interests common to members of the general public.

Mr. Montañez also does not qualify as an affected person in consideration of the relevant factors at 30 TAC §55.256(c)(1)-(5). (1) Mr. Montañez does claim general concerns about groundwater protection, accidents, and economic impacts which are considered by the laws under which the application will be considered. However, Mr. Montañez's concerns with the applicant's efforts to educate the public on radioactive waste, employment opportunities in Andrews County, and damage from radioactive waste in other parts of the country are not issues that are addressed by the laws under which the application will be considered. (2) Texas statutes and rules do not place specific distance restrictions or other limitation on this type of regulated activity. Mr. Montañez lives approximately sixty to seventy miles from the proposed facility and is a resident of Ector County which is adjacent to Andrews County. (3) There is a reasonable relationship between the concern about contamination of aquifers in Andrews County and the regulation of low-level radioactive waste disposal. But, Mr. Montañez's concerns about irreparable damage that may be done to the West Texas area and the aquifers in Andrews County are common interests of everyone. Protection from migration of radioactive materials in groundwater is clearly addressed in the statutes and rules legislated and administered to protect human health and the environment in TEX. HEALTH & SAFETY CODE Chapter 401 and 30 TAC Chapter 336.

(4) The Executive Director does not believe that there is a likely impact of the regulated activity on Mr. Montañez's health, safety and use of property. Mr. Montañez states a concern about accidents. Transportation of all radioactive material to the site must comply with all applicable Texas Department of State Health Service requirements in 25 TAC §289.257 and United States Department of Transportation requirements for packaging, shipping, and transport found in Title 49 Code of Federal Regulations Parts 107, 171-189 and 390-397 for road-based shipments. Mr. Montañez also states that he is a property owner in Ector County, but he does not describe any particular use of his property that distinguishes his interest in his property from that of the

general public. Because Mr. Montañez is located in Odessa and over 60 miles from the proposed facility in western Andrews County, the likely impact of the regulated activity on Mr. Montañez and his property is remote.

(5) The Executive Director does not believe that there is a likely impact of the regulated activity on a natural resource used by Mr. Montañez. He does describe a concern about damage to the West Texas area and the aquifers of Andrews County, but he does not describe his use of groundwater in Odessa that is in a manner that is not common to the general public. The Executive Director reviewed the application, including information on the characterization of the geology and hydrology of the proposed site and the proposed design. The proposed design calls for excavation below the Ogallala-Antlers-Gatuña (OAG) formations for a disposal facility situated in the Cooper Canyon formation of the Dockum group. The Santa Rosa and Trujillo formation, regional aquifers of the Dockum group, are not likely conduits of potential contamination from the proposed disposal facilities to groundwater in Odessa. The Executive Director also recommends revisions to the dimensions of the proposed designs of the FWF presented in the application to maintain an appropriate buffer zone from the disposal facility to areas of saturated groundwater conditions. These draft license conditions are recommended by the Executive Director and are intended to provide additional protection of public health and safety and the environment. Because Mr. Montañez is located over 60 miles from the proposed facility and there are not likely conduits of contamination to groundwater in Odessa, the Executive Director does not consider that Mr. Montañez's use of groundwater resources will be affected by the proposed activity.

Thus, the Executive Director respectfully recommends that the commission determine that Mr. Montañez is not an affected person and that his request for a contested case hearing be denied.

## **2. Mrs. Rose Gardner as an individual requestor**

The Executive Director recommends that the commission determine that Mrs. Rose Gardner is not an affected person. Mrs. Gardner is a resident of Eunice, New Mexico. She states that a hearing on the application will provide an honest accounting of the procedures and results submitted in the WCS application and allow all information to be explored by all parties involved. Mrs. Gardner also expresses concerns about a nuclear power plant operating within 100 yards of the proposed WCS disposal facility. While Mrs. Gardner's individual request provides little detail or description of a personal justiciable interest in the WCS application for a low-level radioactive waste disposal license, the Sierra Club describes additional aspects about Mrs. Gardner's interests to support its own request for a hearing. The Sierra Club asserts that Mrs. Gardner resides in Eunice approximately four miles due west of the proposed facility and owns a flower shop and a feed store in Eunice. The Sierra Club states that Mrs. Gardner fears that negative publicity from the radioactive waste disposal facility will negatively affect her businesses. According to the Sierra Club, Mrs. Gardner is concerned about traffic accidents involving radioactive materials or depleted uranium on local roadways or railways. The Sierra

Club states that Mrs. Gardner also owns agricultural land in Eunice for raising alfalfa and hay and fears contamination of groundwater and contamination of her well water used to irrigate the alfalfa. In addition, the Sierra Club asserts that high winds have the potential to carry radioactive materials affecting the health and property of Mrs. Gardner. And finally, the Sierra Club states that Mrs. Gardner is concerned about the limited amount of financial assurance provided by WCS in its application.

Mrs. Gardner does not qualify as an affected person as defined at 30 TAC §55.256(a). Her own letter does not include any details about her personal justiciable interest related to a legal right, duty, privilege, power or economic interest, and the Sierra Club does not offer any additional information to distinguish her interests from members of the general public.

Mrs. Gardner also does not qualify as an affected person as defined by the relevant factors at 30 TAC §55.256(c)(1)-(5). (1) Mr. Gardner's general concerns about groundwater and airborne contamination and financial assurance are addressed by the laws under which the application will be considered. However, concerns about negative publicity, transportation requirements, and the licensing of a nuclear power plant are not addressed by the laws under which the WCS application is reviewed. (2) As noted previously, there are no established distance restrictions or other limitations imposed by law on an affected interest. In this case, Mrs. Gardner lives and owns property over three miles from the proposed facility and is a resident of Lea County, New Mexico which is adjacent to Andrews County, Texas across the Texas/New Mexico state line. Mrs. Gardner's residence and flower shop are located on the map provided in Exhibit C.

(3) There is a reasonable relationship between the concern about groundwater and airborne contamination as well as the amount of required financial assurance and the regulation of low-level radioactive waste disposal. The amount of financial assurance for the proposed radioactive waste disposal facility to cover closure, post closure, institutional control, corrective action and third-person liability is based on cost estimates approved by the executive director under 30 TAC 336.736(b). The draft license requires \$79,912,000 for closure, \$10,256,000 for post closure; \$21,000,000 for institutional control; the build-up to \$25,300,000 for corrective action; and \$3,000,000 per occurrence of liability coverage. Financial assurance is available to the TCEQ as a funding mechanism to perform certain activities. Mrs. Gardner is not a party to any financial assurance requirements and is not liable for any shortfall; therefore, her concerns about the appropriate amount of financial assurance do not provide her a reasonable basis to request a contested case hearing. Furthermore, her concerns about contamination from radioactive materials are common to all and are addressed in the statutes and rules legislated and administered to protect human health and the environment in TEX. HEALTH & SAFETY CODE Chapter 401 and 30 TAC Chapter 336.

(4) There is no likely impact of the regulated activity on Mrs. Gardner's health, safety and use of property. The Sierra Club expressed Mrs. Gardner's concerns about groundwater contamination,

airborne contamination of radioactive materials that may affect her health, safety and property. The Executive Director does not believe that there is a likely impact on Mrs. Gardner's health or property because of groundwater contamination. The Executive Director has determined that the license application provided adequate information on the characterization of the geology and hydrology of the proposed site and proposed design. The proposed design calls for excavation below the Ogallala-Antlers-Gatuña (OAG) formations for a disposal facility situated in the Cooper Canyon formation of the Dockum group. The Santa Rosa and Trujillo formation, regional aquifers of the Dockum group, are not likely conduits of potential contamination from the proposed disposal facilities to groundwater in Eunice. The Santa Rosa and Trujillo formations are separated from the aquitard clays of the Cooper Canyon formation above. The Santa Rosa formation is between 1,140 and 1,400 feet below the surface. The Trujillo formation is situated 600 to 700 feet below the surface. The aquifers of the Trujillo and Santa Rosa formations of the Dockum group are described with a regional flow between 0.3 feet to 84 feet per year to the south/southwest in the WCS area. The Executive Director also recommends revisions to the dimensions of the proposed designs of the FWF presented in the application to maintain an appropriate buffer zone from the disposal facility to areas of saturated groundwater conditions. These draft license conditions are recommended by the Executive Director and are intended to provide additional protection of public health and safety and the environment.

The Executive Director has also reviewed the application under applicable statutes and rules relating to the protection of the environment from windborne migration and contamination. The applicant offered a characterization of air flow patterns, including prevailing winds and high-wind conditions. The application describes prevailing winds primarily from the south, south-southeast, and south-southwest, with the greatest percentage from the south. Mrs. Gardner is due west of the proposed facility. The applicant must demonstrate under 30 TAC §336.724 that concentrations of radioactive material released into the general environment in groundwater, surface water, air, soil, plants or animals do not result in an annual dose above background exceeding an equivalent of 25 millirems. Section 8.3 of the application describes the assessed dose to a hypothetical individual at the site boundary from exposure to groundwater, surface water and air pathways at 0.025 millirems per year and to the nearest resident at 0.00011 millirems per year during operations. The Executive Director's staff reviewed and analyzed the air dispersion modeling in the application and recommends additional draft license conditions. License conditions were added to the draft license to increase the overall safety of site operations and long-term performance. License conditions were added to require a particulate emissions study to address high wind events, to require additional analyses of emissions controls during average and high wind events. Based on the review of the application and the imposition of additional license requirements, the Executive Director cannot conclude that there is a likely impact on Mrs. Gardner or her property from airborne contamination of radioactive materials from the proposed activity.

(5) Similarly, there is no likely impact of the regulated activity on Mrs. Gardner's use of groundwater resources. As explained above, because of the location of the regional aquifers

below the proposed facility, groundwater flow and gradients within the regional aquifers, and the design of the facility as required in the draft license, the likelihood of groundwater contamination and migration of contaminants into a well used by Mrs. Gardner is remote. Thus, the Executive Director respectfully recommends that the commission determine that Mrs. Gardner is not an affected person and that her individual hearing request be denied. Because Mrs. Gardner does not have standing in her own right, the Executive Director recommends that the commission also determine that Mrs. Gardner cannot provide the basis for conferring associational standing to the Sierra Club under 30 TAC §55.252(a)(1).

### **3. The Sierra Club and its Member, Mrs. Fletcher Williams**

The Sierra Club identified two individual members to demonstrate the Sierra Club's associational standing. As explained above, the Executive Director recommends that the commission determine that Mrs. Rose Gardner is not an affected person. In support of its request, the Sierra Club also identifies Mrs. Fletcher Williams. Mrs. Williams lives in Eunice, New Mexico in Lea County. The Sierra Club states that Mrs. Williams lives approximately 2.5 to 3 miles from the proposed facility. (See Exhibit C.) The Sierra Club cites Mrs. Williams' concerns with traffic and railway accidents, groundwater contamination for wells in the area, and exposure to high winds with potential to carry radioactive materials off-site. The Sierra Club also states that Mrs. Williams frequently travels on the roadways and travels past the proposed site on trips to Andrews, Texas. The Executive Director does not believe that the Sierra Club has identified interests of Mrs. Williams that are distinguishable from interests of the general public. Therefore, the Executive Director respectfully recommends that the commission determine that Mrs. Williams is not an affected person under 30 TAC §55.256(a) and that the Sierra Club's request for a contested case hearing be denied.

Mrs. Williams also does not qualify as an affected person as defined by the relevant factors at 30 TAC §55.256(c)(1)-(5). (1) Mr. Williams' general concerns about groundwater and airborne contamination are addressed by the laws under which the application will be considered. However, the TCEQ does not regulate the transportation of radioactive materials or the use of roadways in Texas and New Mexico. Transportation of all radioactive material to the site must comply with all applicable Texas Department of State Health Service requirements and United States Department of Transportation requirements for packaging, shipping, and transport. In addition, the draft license prohibits the receipt of radioactive material by rail for disposal at the proposed facility. (2) There are no established distance restrictions or other limitations imposed by law on an affected interest. In this case, Mrs. Williams lives over three miles from the proposed facility and is a resident of Lea County, New Mexico which is adjacent to Andrews County, Texas. Mrs. Williams' residence is located on the map provided in Exhibit C.

(3) There is a reasonable relationship between the concern about groundwater and airborne contamination and the regulation of low-level radioactive waste disposal. However, these

concerns are common to all and were addressed in the review of the application and are reflected in the various conditions of the draft license.

(4) There is no likely impact of the regulated activity on Mrs. Williams' health, safety and use of property. The Sierra Club expressed Mrs. Williams' concerns about contamination of wells in the area. The Sierra Club does not state whether Mrs. Williams actually has a well or uses groundwater, though. The Executive Director does not believe that there is a likely impact on Mrs. Williams' health or property because of groundwater contamination. The Executive Director has determined that the license application provided adequate information on the characterization of the geology and hydrology of the proposed site and proposed design. The proposed design calls for excavation below the Ogallala-Antlers-Gatuña (OAG) formations for a disposal facility situated in the Cooper Canyon formation of the Dockum group. The Santa Rosa and Trujillo formation, regional aquifers of the Dockum group, are not likely conduits of potential contamination from the proposed disposal facilities to groundwater in Eunice. The Santa Rosa and Trujillo formations are separated from the aquitard clays of the Cooper Canyon formation above. The Santa Rosa formation is between 1,140 and 1,400 feet below the surface. The Trujillo formation is situated 600 to 700 feet below the surface. The aquifers of the Trujillo and Santa Rosa formations of the Dockum group are described with a regional flow between 0.3 feet to 84 feet per year to the south/southwest in the WCS area. The Executive Director also recommends revisions to the dimensions of the proposed designs of the FWF presented in the application to maintain an appropriate buffer zone from the disposal facility to areas of saturated groundwater conditions. These draft license conditions are recommended by the Executive Director and are intended to provide additional protection of public health and safety and the environment.

The Executive Director has also reviewed the application under applicable statutes and rules relating to the protection of the environment from windborne migration and contamination. The applicant offered a characterization of air flow patterns, including prevailing winds and high-wind conditions. The application describes prevailing winds primarily from the south, south-southeast, and south-southwest, with the greatest percentage from the south. Mrs. Williams is due west of the proposed facility. The applicant must demonstrate under 30 TAC §336.724 that concentrations of radioactive material released into the general environment in groundwater, surface water, air, soil, plants or animals do not result in an annual dose above background exceeding an equivalent of 25 millirems. Section 8.3 of the application describes the assessed dose to a hypothetical individual at the site boundary from exposure to groundwater, surface water and air pathways at 0.025 millirems per year and to the nearest resident at 0.00011 millirems per year during operations. The Executive Director's staff reviewed and analyzed the air dispersion modeling in the application and recommends additional draft license conditions. License conditions were added to the draft license to increase the overall safety of site operations and long-term performance. License conditions were added to require a particulate emissions study to address high wind events, to require additional analyses of emissions controls during average and high wind events. Based on the review of the application and the imposition of

additional license requirements, the Executive Director cannot conclude that there is a likely impact on Mrs. Williams or her property from airborne contamination of radioactive materials from the proposed activity.

(5) The Sierra Club does not state that Mrs. Williams uses any natural resources that may be affected by the proposed facility. As noted previously, the Executive Director does not believe that there is a likelihood of off-site groundwater contamination and migration to Eunice because of the location of the regional aquifers below the proposed facility, groundwater flow and gradients within the regional aquifers, and the design of the facility as required in the draft license. Therefore, the Executive Director respectfully recommends that the commission determine that Mrs. Williams is not an affected person and that the Sierra Club's request for a contested case hearing be denied under 30 TAC §55.252(a)(1).

#### **VI. DURATION OF THE CONTESTED CASE HEARING**

The Executive Director respectfully does not recommend a contested case hearing. In the event that the Commissioners refer this matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing, TEX. HEALTH & SAFETY CODE §401.239 specifies that the administrative law judge shall issue a proposal not later than the first anniversary of the publication date of the notice of draft license which was published on August 17, 2008.

#### **VII. EXECUTIVE DIRECTOR'S RECOMMENDATION**

The Executive Director respectfully recommends that the Commission deny the requests for a contested case hearing of Mrs. Rose Gardner, Mr. Cruz Montañez, the Sierra Club, and NIRS.

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**CERTIFICATE OF SERVICE**

I certify that on December 19, 2008 the foregoing Executive Director's Response to Hearing Requests was filed in the Office of the Chief Clerk of the Texas Commission on Environmental Quality and sent by first-class or inter-agency mail to all persons on the attached mailing list.

Don Redmond

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TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2008 DEC 19 AM 11:55  
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# EXHIBIT A

**TECHNICAL SUMMARY AND EXECUTIVE DIRECTOR'S PRELIMINARY  
DECISION**

Description of Application

- Applicant: Waste Control Specialists, LLC  
Proposed Radioactive Material License No. R04100
- Location: Waste Control Specialists, LLC is located at 9998 West Highway 176, Andrews County, Texas, approximately one mile north of State Highway 176 and one half mile east of the Texas-New Mexico State boundary (approximately 31 miles west of the City of Andrews, Texas and six miles east of the City of Eunice, New Mexico).
- Compact Waste Disposal Facility Geographical Coordinates (Centroid): North Latitude 32° 26' 25.64", West Longitude 103° 3' 7.93"
- Federal Facility Waste Disposal Facility Geographical Coordinates (Centroid): North Latitude 32° 26' 32.79", West Longitude 103° 3' 16.31"
- General: Waste Control Specialists, LLC currently operates a RCRA hazardous waste disposal facility (Permit No. 50358), a radioactive waste processing and storage facility (License No. R04971), and a by-product material disposal facility (License No. R05807) at their Andrews County site.
- Request: Waste Control Specialists, LLC applied to the Texas Commission on Environmental Quality (TCEQ) on August 4, 2004 for a license to operate a commercial facility for the disposal of low-level radioactive waste (as defined at Section 401.004 of the Texas Health and Safety Code). Waste Control Specialists, LLC also requested an exemption from the requirement that the state or federal government own the land on which low-level radioactive waste is disposed for the federal facility waste disposal facility.
- Authority: The proposed license is required by Chapter 401 of the Texas Health and Safety Code. A draft license has been prepared in accordance with the applicable requirements of Title 30 Texas Administrative Code (TAC) Chapter 336 (Radioactive Substance Rules) Subchapters A, B, C, D, E, H, I, and J.

## Technical Information

This license application has been reviewed in accordance with 30 TAC Chapter 336 and Chapter 401 of the Texas Health and Safety Code. The review included an assessment of the radiological and non-radiological effects of the low-level waste disposal on the public health; an assessment of any effect of low-level waste disposal on a waterway or groundwater; a consideration of alternatives to the activities to be conducted under the license; and consideration of the long-term effects associated with activities, including decommissioning, decontamination, and reclamation impacts, including the management of low-level radioactive waste. The executive director prepared a written environmental analysis on the application that is available to the public for review.

The license will authorize the construction of two facilities for near-surface land disposal of low-level radioactive waste as defined at Section 401.004 of the Texas Health and Safety Code. Low-level radioactive waste is defined in Texas law as radioactive material that is discarded or unwanted and is not exempt by the TCEQ or the Texas Department of State Health Services; is waste, as defined by 10 Code of Federal Regulations (CFR) Section 61.2; and is subject to concentration limits and disposal criteria of the commission. Low-level radioactive waste does not include high level radioactive waste, spent nuclear fuel, by-product material (the tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium), naturally occurring radioactive material (NORM) waste; or oil and gas NORM waste. The licensee will be authorized to receive low-level waste from other persons, but not authorized to generate low-level waste at this licensed site.

The Compact Waste Disposal Facility (CWF) will encompass an area of approximately 30 acres and will have a total capacity of 102,000 cubic yards. The low-level radioactive waste to be received for disposal under this license will consist of the waste generated in the member states of the Texas Low-Level Radioactive Waste Disposal Compact.

The Federal Facility Waste Disposal Facility (FWF) includes two separate units: the containerized disposal unit (FWF-CDU) and the non-containerized unit (FWF-NCDU) encompassing a total area of approximately 90 acres. The FWF inventory consists of 69 waste streams of low-level radioactive waste and mixed low-level radioactive waste from the United States Department of Energy (USDOE). For the first five years after the license is issued, the overall capacity of the FWF is limited to not more than 3,000,000 cubic yards. Upon application for license amendment and after five years from the date of licensing, the capacity of the FWF may be increased by 3,000,000 cubic yards for a total capacity of 6,000,000 cubic yards upon a determination by the commission that increasing the capacity of the FWF would not pose a significant risk to human health, public safety, or the environment.

The new license includes the following:

- A. Authorization for radioisotopes, form of material, maximum radioactivity, and use; definitions;

- B. Standard provisions for the safe operation of the facility; a statement of organizational structure and procedures; radiation controls;
- C. Environmental monitoring; access control; emergency procedures; and
- D. Decommissioning; and financial security.

### Exemption

Waste Control Specialists, LLC has requested exemption from the application of rule 30 TAC §336.734(a) requiring that the disposal of low-level radioactive waste received from other persons may be permitted only on land owned in fee by the State or federal government. While the proposed Compact Waste Disposal Facility will be on land that is transferred to the state of Texas, Waste Control Specialists, LLC will own the land on which the proposed Federal Facility Waste Disposal Facility is located during the operational phase of the project. Upon closure and decommissioning of the Federal Facility Waste Disposal Facility, Waste Control Specialists, LLC will transfer the land to the federal government. No federal facility waste may be disposed until the licensee provides a certification signed by the United States Secretary of Energy, and acceptable to the executive director, stating that the federal government will assume all right, title, and interest in and land and buildings for the disposal of federal facility waste.

The executive director recommends approval of the requested exemption.

### Licensing Order

Under Texas Health and Safety Code §401.204(a), an application for a compact waste disposal facility license may not be considered unless the applicant has acquired the title to and any interest in land and buildings as required by commission rule. Under 30 TAC 336.207(4), an application may be approved if the commission determines that the applicant for a license issued under 30 TAC Chapter 336, Subchapter H has acquired the title to and any interest in land and buildings, including the surface and mineral estates, on which the facility or facilities are to be located by having acquired an undivided ownership of the buildings, surface estate, and mineral estate in fee simple through purchase or completed condemnation; or an undivided ownership of the building and surface estate, along with an exemption, granted by the commission in accordance with federal law for use of a surface agreement, in lieu of acquiring fee simple title to the mineral estate.

Waste Control Specialists, LLC does not own all of the mineral interests underlying the proposed land disposal facilities. In a petition dated November 29, 2005, Waste Control Specialists, LLC is requesting that the TCEQ request that the attorney general institute condemnation proceedings to acquire fee simple interest in the outstanding mineral rights (TCEQ Docket No. 2005-1994-RAW).

A licensing order has been drafted stating the application will be conditionally granted upon a demonstration by Waste Control Specialists, LLC that the applicant has acquired free and clear title to and all interests in land and buildings, including the surface and mineral estates, of the proposed disposal site, by either having acquired:

- (A) An undivided ownership of the buildings, surface estate, and mineral estate in fee simple through purchase or completed condemnation; or
- (B) An undivided ownership of the buildings and surface estate, along with an exemption, granted by the commission in accordance with federal law for use of a surface use agreement, in lieu of acquiring fee simple title to the mineral estate.

In addition, the licensing order provides that the license may not be issued, signed, or granted and has no effect until the ownership demonstration required above has been approved by the executive director.

#### Process for Reaching a Final Decision and Opportunities for Public Participation

Once the proposed license is drafted, it is sent to the TCEQ Office of the Chief Clerk for public notice. Public notice of the license application and the executive director's preliminary decision are made through direct mailing and newspaper notices in accordance with 30 TAC Chapter 39 (Public Notice) and with instructions for submitting public comments and requesting a public meeting, and a contested case hearing. Notice is also available on the agency's website, along with a link to the license application, the draft license, the draft environmental analysis, and the TCEQ executive director's technical summary at: [www.tceq.state.tx.us/goto/wcsllrw](http://www.tceq.state.tx.us/goto/wcsllrw). Written comments, requests for a public meeting, and requests for a contested case hearing must be submitted to the Office of the Chief Clerk within 30 days from the date of publication of the newspaper notice.

The TCEQ will hold a public meeting and it will consist of two parts: an Informal Discussion Period and a Formal Comment Period. During the Informal Discussion Period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application and the executive director's preliminary decision, but these informal comments made during the informal period will not be considered by the commissioners before reaching a decision on the application and no formal response will be made. During the Formal Comment Period, members of the public may state their formal comments into the official record. The public meeting is to be held on Monday, September 8, 2008 at 7:00 p.m. at the Andrews High School Little Theater located at 1400 NW Avenue K in Andrews, Texas.

The executive director will consider public comments in making a final decision on this license application. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material, or significant public comments. The response to comments will include the executive director's decision on the application.

A contested case hearing will only be granted if made by the applicant or the executive director; or made by an affected person if the request complies with applicable submission requirements, is timely filed, and is pursuant to a right to hearing authorized by law. The executive director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the executive director will not issue final approval of the license and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled commission meeting. If hearing requests are granted, the hearing will be conducted by the State Office of Administrative Hearings. Decisions regarding the license may be reconsidered in response to a Motion for Rehearing or a Motion for Reconsideration and by appeal to a District Court in Travis County.

Preliminary Decision

The executive director has made a preliminary decision that the proposed license, if issued, will meet all of the statutory and regulatory requirements.

Prepared by:

Reviewed by:

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Devane Clarke  
Manager  
Radioactive Material Licensing Team

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Susan Jablonski, P.E.  
Division Director  
Radioactive Materials Division

# EXHIBIT B



license.

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.4(2)

30 TAC Chapter 335, SubChapter A 335.4(3)

Description: Waste Control Specialists, LLC by causing, suffering, allowing, or permitting the collection, handling, storage, processing, or disposal of industrial solid waste in a manner as to cause the creation and maintenance of a nuisance or the endangerment of the public health and welfare.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

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

1	12/29/2003	(325947)
2	01/26/2004	(325948)
3	02/18/2004	(258131)
4	02/24/2004	(325938)
5	03/30/2004	(325940)
6	04/16/2004	(325942)
7	05/04/2004	(366210)
8	05/26/2004	(273328)
9	06/09/2004	(366211)
10	06/28/2004	(276549)
11	07/01/2004	(278490)
12	07/06/2004	(278806)
13	07/09/2004	(278829)
14	07/12/2004	(366212)
15	08/24/2004	(366214)
16	09/23/2004	(366215)
17	10/25/2004	(366216)
18	11/23/2004	(389610)
19	12/13/2004	(336914)
20	12/27/2004	(366217)
21	01/10/2005	(344650)
22	01/24/2005	(389611)
23	02/10/2005	(350059)
24	02/25/2005	(430686)
25	03/22/2005	(389609)
26	04/22/2005	(430687)
27	06/03/2005	(430688)
28	06/24/2005	(430689)
29	07/25/2005	(430690)
30	08/26/2005	(447261)
31	09/26/2005	(447262)
32	10/26/2005	(491724)
33	11/28/2005	(491725)
34	12/28/2005	(491726)
35	01/19/2006	(491727)
36	01/25/2006	(453238)
37	02/17/2006	(456128)
38	02/23/2006	(455617)
39	03/01/2006	(491722)
40	03/24/2006	(491723)
41	04/24/2006	(505909)
42	05/23/2006	(505910)
43	06/09/2006	(481729)
44	06/26/2006	(505911)
45	07/20/2006	(528153)

46 08/21/2006 (528154)  
 47 09/20/2006 (528155)  
 48 10/20/2006 (528156)  
 49 11/20/2006 (551662)  
 50 12/20/2006 (551663)  
 51 01/18/2007 (551664)  
 52 02/26/2007 (588768)  
 53 03/15/2007 (541224)  
 54 03/19/2007 (588769)  
 55 04/23/2007 (588770)  
 56 05/21/2007 (588771)  
 57 06/22/2007 (588772)  
 58 07/20/2007 (588773)  
 59 08/20/2007 (605589)  
 60 09/20/2007 (605590)  
 61 10/19/2007 (605591)  
 62 11/20/2007 (630468)  
 63 12/20/2007 (630469)  
 64 01/10/2008 (630470)  
 65 01/16/2008 (614777)  
 66 02/18/2008 (677040)  
 67 02/28/2008 (618789)  
 68 03/20/2008 (677041)  
 69 04/18/2008 (677042)  
 70 05/20/2008 (695670)  
 71 06/20/2008 (695671)  
 72 07/18/2008 (695672)  
 73 08/20/2008 (717219)  
 74 09/19/2008 (717220)  
 75 10/20/2008 (717221)  
 76 10/21/2008 (706007)

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

Date: 01/05/2004 (258131)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 335, SubChapter O 335.431(c)  
 Description: It was observed during the investigation that hazardous mixed waste was being stored for more than one year.

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 335, SubChapter A 335.2(g)  
 40 CFR Chapter 261, SubChapter I, PT 261, SubPT A 261.4(e)  
 40 CFR Chapter 261, SubChapter I, PT 261, SubPT A 261.4(f)  
 Description: Hazardous wastes involved in treatability studies have been held in storage for greater than a year in violation of 40 CFR 261.4(e) and (f).

Date: 10/31/2004 (389610) CN600616890  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)  
 Description: Failure to meet the limit for one or more permit parameter

Date: 01/06/2005 (344650)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 335, SubChapter O 335.431(c)  
 40 CFR Chapter 268, SubChapter I, PT 268, SubPT E 268.50(c)  
 Description: WCS has stored hazardous mixed wastes for greater than a year without providing the necessary notification for such storage.

Date: 02/17/2006 (456128) CN600616890  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: The permittee was found to be in violation of their Outfall 101 average daily flow parameter (0.020 MGD) in 5 months of 2005.

F. Environmental audits.

Notice of Intent Date: 03/05/2008 (640828)

No DOV Associated

Notice of Intent Date: 03/14/2008 (640831)

No DOV Associated

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

# EXHIBIT C

# Hearing Requestors for Radioactive Material License No. R04100

Protecting Texas by  
Reducing and  
Preventing Pollution



Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087

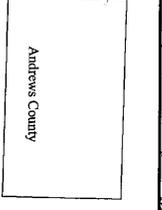
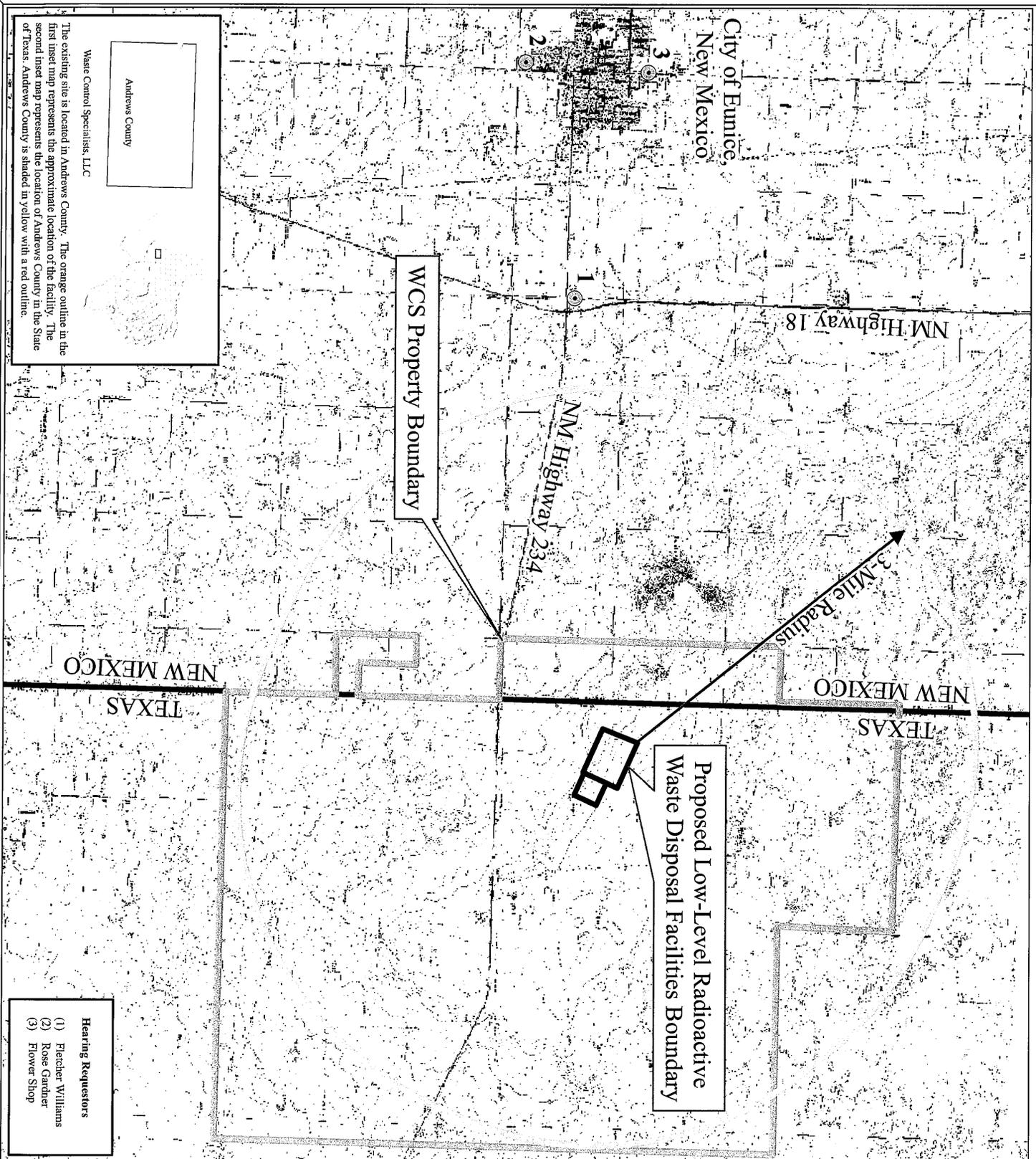
November 17, 2008



Projection: Texas Statewide Mapping System  
(TSSMS)  
Scale: 1:76,571

## Legend

- Hearing Requestor Physical Address
- WCS Property Boundary
- Proposed Low-Level Radioactive Waste Disposal Facilities Boundary
- 3-Mile Radius Around Proposed Facility Boundary



The existing site is located in Andrews County. The orange outline in the first inset map represents the approximate location of the facility. The second inset map represents the location of Andrews County in the State of Texas. Andrews County is shaded in yellow with a red outline.

Waste Control Specialists, LLC

- Hearing Requestors**
- (1) Fletcher, Williams
  - (2) Rose Gardner
  - (3) Flower Shop

Source: This map was requested by TCEQ's Office of Legal Services (OLS). The location of the facility was provided by OLS. The property boundaries depicted were manually digitized and approximated (survey data not available) using paper maps provided by OLS. Hearing Requestor addresses (if shown) were provided by OLS and geocoded using GDT Streets 2006-2007 geodatabase technology. Unmatched addresses are manually plotted based on Google Maps and Map Quest Internet site locators. PO Boxes cannot be located and are not plotted.

The counties are GDT 2000 Line Data (1:100,000). The imagery in this map are georeferenced DRGs (Digital Raster Graphics) scanned from U.S. Geological Survey topographic maps.  
DRG Series: Emice and Hobbs. This is an update of CRF 080306023, April 23, 2008.



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