

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
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Richard A. Hyde, P.E., *Executive Director*



Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 28, 2014

Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

**RE: WASTE CONTROL SPECIALISTS, LLC
TCEQ DOCKET NO. 2014-0851-RAW**

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to Hearing Request in the above-entitled matter.

Sincerely,


Eli Martinez, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2014-0851-RAW

IN THE MATTER OF THE	§	BEFORE THE
APPLICATION OF WASTE	§	
CONTROL SPECIALISTS, LLC FOR	§	TEXAS COMMISSION ON
RADIOACTIVE LICENSE NO. R04100	§	
AMENDMENT 26	§	ENVIRONMENTAL QUALITY

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO HEARING REQUEST**

COMES NOW, the Office of Public Interest Counsel (“OPIC”) of the Texas Commission on Environmental Quality (the “Commission” or “TCEQ”) and files this Response to Hearing Request in the above-referenced matter.

I. INTRODUCTION

Waste Control Specialists LLC (“WCS” or “Licensee”) holds radioactive Material License R04100, which authorizes commercial disposal of low-level radioactive waste (LLRW) and storage and processing of radioactive waste. WCS currently conducts a variety of waste management services at its site in Andrews County, Texas and is the licensed operator of the Compact Waste Facility (CWF) and Federal Waste Facility (FWF) for commercial and federal LLRW disposal. The land disposal facility for LLRW disposal and the storage and processing facility for radioactive waste is located at 9998 West State Highway 176, approximately one mile north of State Highway 176 and approximately one half mile east of the Texas-New Mexico state boundary and approximately 30 miles west of the City of Andrews in Andrews County, Texas.

WCS applied to the TCEQ for major amendments to Radioactive Material License R04100: 1) application dated August 5, 2013 with a revision dated October 28, 2013 and supplements dated February 17, 2014 and February 21, 2014 to expand the Compact Waste Facility (CWF) horizontally and vertically and change the CWF disposal volume from 2,310,000

cubic feet to 9,000,000 cubic feet, expand the Federal Waste Facility (FWF) horizontally and vertically to replace the Non-Containerized Disposal Unit (NCDU), and allow an increase in the CWF decay corrected radioactivity through minor amendment; 2) application dated August 5, 2013 with a revision dated November 22, 2013 and a supplement dated January 28, 2014 to remove the carbon-14 (C-14) limit in the CWF, remove the C-14, technetium-99 (Tc-99) and iodine-129 (I-129) limits in the FWF, authorize the disposal of large quantities of depleted uranium (DU), and to authorize the Licensee to accept for disposal all Class A, B and C low level radioactive waste; and 3) application dated August 8, 2013 with supplements dated December 13, 2013 and February 28, 2014 to revise the financial assurance amounts and to implement a methodology to adjust the financial assurance annually without amending the license.

The ED combined these applications and declared the above described applications complete on December 13, 2013 for the application dated August 5, 2013 to expand the Compact Waste Facility and the Federal Waste Facility; August 20, 2013 for the application dated August 5, 2013 to remove or modify disposal concentration limits or waste types; and October 25, 2013 for the application dated August 8, 2013 to revise financial assurance amounts. After a supplement was received on February 17, 2014 for the application dated August 5, 2013 to expand the Compact Waste Facility and the Federal Waste Facility, the ED updated the declaration of administrative completeness on February 28, 2014. The application was declared technically complete on April 16, 2014 and was published on April 20, 2014 in the *Andrews County News* and in the *Texas Register* on April 25, 2014. The comment period ended on May 20, 2014, and the last date on which to request a hearing fell on the same date. The ED issued a Response to Public Comment on July 24, 2014. The TCEQ received a timely hearing request

from the Honorable Lon Burnham, Representative, Texas House of Representatives, District 90, Tarrant County. Pursuant to the analysis provided below, OPIC recommends denying the hearing request.

II. APPLICABLE LAW

The Application is authorized under 30 Texas Administrative Law Code (TAC) Chapters 281, 336 and 305, which have been adopted under the enabling statutes: the Health & Safety Code Chapter 401 (The Texas Radiation Control Act) and Chapter 5 of the Texas Water Code.

A. Requirements for Contested Case Hearing Requests

A party that requests a contested case hearing on a radioactive material license application declared administratively complete on or after September 1, 1999 must comply with the requirements of 30 TAC Chapter 55, Subchapter G at §§55.250-256.

Pursuant to 30 TAC §55.251, among those parties who may request a hearing are the Commission, the Executive Director, the Applicant, and an Affected Person when authorized by law. Pursuant to 30 TAC §55.251(b), a request for a contested case hearing by an affected person must be in writing and filed by United States mail, facsimile, or hand delivery with the chief clerk. Pursuant to 30 TAC §55.251(d), a hearing request must be filed with the chief clerk within the timer period specified in the notice. Additionally, the requester 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.

The party requesting the contested case hearing must be an "affected person." To determine whether a party is an affected person, the party must belong to one of the specified categories of persons identified in 30 TAC §55.256. The section defines as "affected person" as the following:

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.

All relevant factors shall be considered in determining whether a personal justiciable interest exists—including, but not limited to:

- (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) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issue relevant to the application.

Chapter 401 Radioactive material licenses are not subject to the requirements of House Bill 801 (76th Legislative Session, 1999) or Section 5.556 of the Texas Water Code containing limitations and scope of contested case hearings.

III. DISCUSSION

The TCEQ received a timely hearing request from the Honorable Lon Burnham, Representative, Texas House of Representatives, District 90, Tarrant County.

Representative Burnham states in his hearing request that he is a Texas taxpayer and legislator who has dedicated a major portion of his career in public service to issues regarding radioactive waste. He has served on the House Energy Resources Committee directly overseeing the development of the legal process governing WCS's operations, and voted on the original authorizing legislation for the facility. Mr. Burnham has consistently participated in the rulemakings, license changes, and permit applications of WCS. Mr. Burnham also asserts that he has a personal justiciable interest, and that his interests are unlike the interests of the general public's because his policymaking activities relate directly to radioactive waste disposal.

While OPIC respectfully acknowledges Representative Burnham's record of public service, we cannot find that his lawmaking activities as a member of the Texas House of Representatives establish a personal justiciable interest. OPIC notes that the ED created a map that indicates Mr. Burnham's district and office is located approximately 350 miles from the facility. Further, the request does not articulate how the regulated activities would impact the requestor's property, health, safety, or his personal use of natural resources. Lastly, although Mr. Burnham works on behalf of the Texas House of Representatives, his request is based on his personal standing rather than the standing of that governmental entity, and §55.256(c)(6) therefore does not apply.

For these reasons, OPIC does not find that Mr. Burnham has a personal justiciable interest in the application and recommends that his hearing request be denied. If the Commission should disagree with OPIC's finding, we recommend that the hearing request be

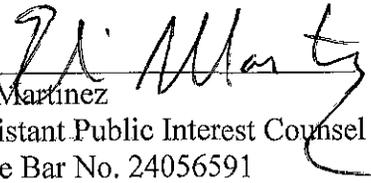
referred to SOAH based on the relevant interests raised in the request, including public health, safety, environmental risks, and potential miscalculations of financial assurance.

IV. CONCLUSION

For the reasons set forth above, OPIC respectfully recommends that the Commission deny the hearing request of the Honorable Lon Burnham. If the Commission should disagree with OPIC in this determination, OPIC recommends that the matter be referred to SOAH for a contested case hearing to determine whether Waste Control Specialists' application meets the requirements of applicable law.

Respectfully submitted,

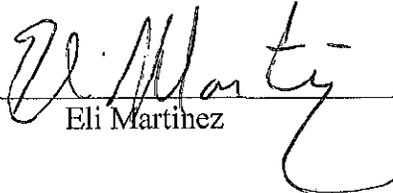
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By 
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CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2014, the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Hearing Request were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.


Eli Martinez

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REQUESTER:

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