



## NUCLEAR REGULATORY COMMISSION

[Docket No. 70-7005; NRC-2020-0209]

### Waste Control Specialists LLC

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Environmental assessment and finding of no significant impact; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) in support of the NRC's consideration of a request from Waste Control Specialists LLC (WCS) to continue to store transuranic waste that originated from the Los Alamos National Laboratory (LANL) without an NRC license under the terms of a 2014 order. The 2014 order exempted WCS from the NRC's regulations concerning special nuclear material (SNM). The current action is in response to a request by WCS dated August 24, 2020, to extend the possession time to temporarily store certain waste at specific locations at the WCS Site until December 23, 2022.

**DATES:** The EA and FONSI referenced in this document are available on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Please refer to Docket ID **NRC-2020-0209** when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2020-0209**. Address questions about Docket IDs in Regulations.gov to Jennifer Borges; telephone: 301-287-9127; e-mail: [Jennifer.Borges@nrc.gov](mailto:Jennifer.Borges@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

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**FOR FURTHER INFORMATION CONTACT:** Harry Felsher, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-6559; e-mail: [Harry.Felsher@nrc.gov](mailto:Harry.Felsher@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

Waste Control Specialists LLC operates a facility in Andrews County, Texas (the WCS Site), that is licensed to process and store certain types of radioactive material contained in low-level waste (LLW) and mixed waste. The WCS Site is also licensed to dispose of radioactive, hazardous, and toxic waste. Under an Agreement authorized by the Atomic Energy Act of 1954, as amended, a State can assume regulatory authority over radioactive material. In 1963, Texas entered into such an Agreement and assumed regulatory authority over source material, byproduct material, and SNM under critical mass. The WCS Site is licensed by the Texas Commission on Environmental Quality (TCEQ) for possession, treatment, and storage of radioactive waste and disposal of LLW under Radioactive Materials License (RML) R04100.

Section 70.3 of title 10 of the *Code of Federal Regulations* (10 CFR) requires persons who own, acquire, deliver, receive, possess, use, or transfer SNM to obtain a license pursuant to the requirements of 10 CFR part 70. The licensing requirements in

10 CFR part 70 apply to persons in Agreement States possessing greater than critical mass quantities, as defined in 10 CFR 150.11. However, pursuant to 10 CFR 70.17(a), “the Commission may grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.”

On September 25, 2000, WCS first requested an exemption from the licensing requirements in 10 CFR part 70 (ADAMS Accession No. ML003759584). On November 21, 2001, the NRC issued an order to WCS (2001 Order) granting an exemption to WCS from certain NRC regulations and permitted WCS, under specified conditions, to possess waste containing SNM in greater quantities than specified in 10 CFR part 150, at the WCS storage and treatment facility on the WCS Site in Andrews County, Texas, without obtaining an NRC license pursuant to 10 CFR part 70. The 2001 Order was published in the *Federal Register* on November 15, 2001 (66 FR 57489). The NRC issued superseding Orders to WCS in 2004 (i.e., modified list of reagents) and 2009 (i.e., modified sampling requirements) that modified the conditions in the 2001 Order.

On February 14, 2014, a radiation release event occurred at the U.S. Department of Energy (DOE) Waste Isolation Pilot Plant (WIPP) Facility (WIPP incident). In response, the DOE suspended operations at the WIPP Facility. In April 2014, WCS began receiving some specific waste from DOE that both WCS and DOE understood to meet both the U.S. Department of Transportation (DOT) shipping requirements and the conditions in the 2009 Order. WCS began storing that waste at the Treatment, Storage, and Disposal Facility (TSDF), identified as the storage and processing facility in RML R04100. The waste was DOE transuranic waste that originated at LANL that was destined to be disposed of at the DOE WIPP Facility (i.e., “LANL Waste”). In June 2014, WCS received information from DOE that some of the LANL Waste being temporarily stored at the TSDF may be similar to the waste that might be the cause of the WIPP Incident. In response, WCS moved some of the LANL Waste from the TSDF to the

Federal Waste Facility (FWF) disposal cell for temporary storage.

By letter dated July 18, 2014, WCS requested an exemption from the NRC's regulations to possess SNM in excess of the critical mass limits specified in 10 CFR 150.11 while temporarily storing some LANL Waste in the FWF disposal cell. The NRC issued a new order to WCS on December 3, 2014 (2014 Order) that superseded the 2009 Order. The 2014 Order was published in the *Federal Register* on December 11, 2014 (79 FR 73647). The 2014 Order added new conditions, primarily related to the temporary storage of the LANL Waste both at the TSDF and in the FWF disposal cell. The State of Texas incorporated the 2014 Order Conditions into WCS' (TCEQ-issued license) RML R04100.

By letters dated March 28, 2016, and August 30, 2018, (ADAMS Accession Nos. ML16095A361 and ML18250A289), WCS requested the modification of Condition 8.B.4 of the 2014 Order to extend the timeframe for temporarily allowing storage of the LANL Waste at the WCS Site from "two years" to "until December 23, 2018" and "until December 23, 2020." By letters dated September 23, 2016, and December 19, 2018, (ADAMS Accession Nos. ML16097A265 and ML18269A318), the NRC approved modifications of the 2014 Order Condition 8.B.4, extending WCS' authorization to store the LANL Waste at the WCS Site without a license under 10 CFR part 70 to "until December 23, 2018," and subsequently "until December 23, 2020" by citing the closed status of operations at the WIPP Facility in 2016 and the safe temporary storage status of the LANL Waste at the TSDF and in the FWF disposal cell in both 2016 and 2018.

By letter dated August 24, 2020, WCS requested that the effectiveness of its exemption from NRC requirements in 10 CFR part 70 be extended with the modification of Condition 8.B.4 of the 2014 Order to extend the timeframe for temporarily allowing storage of the LANL Waste at the WCS Site for another two years, to "until December 23, 2022." That proposal is the subject of this Environmental Assessment.

## **II. Environmental Assessment**

### *Description of the Proposed Action*

The proposed action is the WCS request to modify the 2014 Order Condition 8.B.4. to allow WCS to continue to store the LANL Waste at specific locations at the WCS Site for an additional two years, until December 23, 2022, without an NRC license.

*Need for the Proposed Action*

WCS is making this request to continue to store the LANL Waste while the DOE-led Interagency Project Team (including WCS, DOE, EPA, NRC, the State of Texas, and the State of New Mexico) works to recommend a path forward for disposition of the LANL Waste. While the WIPP Facility has resumed operations, some of the LANL Waste at the WCS Site cannot be shipped off the WCS Site at this time because it does not meet DOT shipping requirements. WCS has indicated that it will not be able to ship the LANL Waste to another appropriate location by the timeframe specified in the 2014 Order Condition 8.B.4, as modified by the NRC letter dated December 19, 2018. The purpose of this EA is to assess the potential environmental impacts of the WCS request to modify the 2014 Order Condition 8.B.4. to allow WCS to store the LANL Waste at specific locations at the WCS Site for additional two years, until December 23, 2022. This EA does not approve or deny the requested action.

*Environmental Impacts of the Proposed Action*

The NRC does not expect changes in radiation hazards to workers or to the environment. WCS will continue to ensure that the LANL Waste in both the FWF disposal cell and the TSDF remain stored safely and securely, and will notify the NRC of any events as appropriate, as set out in the 2014 Order. No changes to its handling or associated hazards would occur as a result of granting the requested change. Other environmental impacts would be the same as evaluated in the EA that supported the 2014 Order, as applicable to the activities associated with the continued safe storage of the LANL Waste.

*Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the NRC staff could deny the WCS request and therefore, not issue a modification to the Order Condition 8.B.4. that would

authorize continued storage of the LANL Waste at the WCS Site (i.e., the “no action” alternative). Upon expiration of the timeframe in the 2014 Order Condition 8.B.4., as modified by the December 19, 2018, NRC letter to WCS, WCS would still be required to maintain the material safely. In addition, the NRC authorization of any change to the current storage of the LANL Waste at the WCS Site would still be required and WCS has submitted no such proposal to the NRC. As a result, under this alternative, there would be no environmental impacts different from the proposed action, although WCS would be required to secure a license or other regulatory authorization for the storage of the material or potentially be in violation of 10 CFR part 70 upon the expiration of the term in the 2014 Order Condition 8.B.4.

Thus, the “no action” alternative would not result in changes to the environmental impacts evaluated in the NRC’s prior EAs that supported the 2014 Order or the previous NRC orders. Those prior EAs concluded that there would be no significant radiological or non-radiological environmental impacts associated with the storage of SNM at the WCS Site, consistent with the conditions in those NRC Orders.

#### *Agencies and Persons Consulted*

On November 9, 2020, the staff consulted with TCEQ by providing a draft of the EA for review and comment. By e-mail dated November 13, 2020 (ADAMS Accession No. ML20321A189), TCEQ provided comments on and recommended corrections to the draft EA. The NRC staff modified the EA to appropriately address the TCEQ comments and recommended corrections.

The proposed action does not involve the development or disturbance of additional land. Hence, the NRC has determined that the proposed action will not affect listed endangered or threatened species or their critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. Likewise, the NRC staff has determined that the proposed action does not have the potential to adversely affect cultural resources because no ground disturbing activities are associated with the proposed action. Therefore, no consultation is required under

Section 106 of the National Historic Preservation Act.

### **III. Finding of No Significant Impact**

The NRC has reviewed the WCS August 24, 2020, request to supplement the 2014 Order again to extend the possession time of the LANL Waste at specific locations at the WCS Site. The NRC has found that effluent releases and potential radiological doses to the public are not anticipated to change as a result of this action and that occupational exposures are expected to remain within regulatory limits and as low as reasonably achievable. On the basis of this environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Dated: November 24, 2020.

For the Nuclear Regulatory Commission.

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