

**SOAH DOCKET NO. 501-97-1364
TDH DOCKET NO. D-841-1997-0001**

APPLICATION OF WASTE	§	BEFORE THE STATE OFFICE
CONTROL SPECIALISTS, L.L.C.	§	
FOR TEXAS DEPARTMENT OF	§	
HEALTH LICENSE NO. L04971	§	OF ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. Introduction

In March 1996, Waste Control Specialists, L.L.P. (WCS or applicant) filed an application with the Texas Department of Health (TDH or Department) for a license to authorize the receipt, temporary storage, and processing of radioactive materials. WCS would build the radioactive materials facility on a 1338 acre tract of land, located on 16,000 acres of land it owns in Andrews County, one mile north of State Highway 176, 250 feet east of the Texas/New Mexico state line, and thirty miles west of Andrews, Texas. At this location, WCS presently operates a facility that is fully permitted by both the Texas Natural Resource Conservation Commission (TNRCC) and the United States Environmental Protection Agency (EPA) for the treatment, storage, and disposal of hazardous and toxic wastes.

The TDH has jurisdiction over this application pursuant to Chapter 401 of the TEXAS HEALTH & SAFETY CODE ANN. (Vernon Supp. 1997) (TH&SC). The staff of the Department's Bureau of Radiation Control (BRC) reviewed the application and supporting materials and determined the proposed license provides reasonable assurance that the radioactive waste facility will be sited, designed, operated, decommissioned, and closed in accordance with the requirements of the Texas Regulations for Control of Radiation (TRCR);¹ the issuance of this license will not be adverse to the health and safety of the public or environment; and the proposed activity will not have a significant effect on the human environment. The BRC then issued a *Notice of Proposed Issuance* for Radioactive License No. L04971 on June 10, 1997. 22 Tex. Reg. 5862-5863 (June 17, 1997)

Following receipt of several requests for hearing, the Department referred this matter to the State Office of Administrative Hearings (SOAH) on July 17, 1997. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Chapter 2003 of the Texas Government Code.

II. Recommendation

The recommendation in this PFD and proposed Order is presented to the Department solely on

¹ Adopted by reference in 25 TEX. ADMIN. CODE (TAC) Chapter 289)

the threshold issue of whether certain persons who seek a hearing on the merits of WCS's application are "affected persons" with standing to challenge the application. Whether this application will be considered in a hearing on the merits is contingent upon the Department's decision on this standing issue.

Upon consideration of the evidence and argument presented, and for the reasons set forth below, the ALJs recommend the Department find the requestors have not demonstrated they are "affected persons" pursuant to the standards set forth in Section 401.003(15) of the TH&SC and Section 13.2 of the TRCR and deny all requests for party status. They further recommend that the Department take further action on the application without a hearing as provided for in its rules.

III. Procedural History

Pursuant to applicable notice requirements,² Leslie Craven, an Administrative Law Judge (ALJ) with SOAH, conducted the preliminary public hearing in the above referenced matter on August 7, 1997, in Andrews County, Texas. As stated in the notice, the purpose of this hearing was "to convene the hearing, establish jurisdiction, take public comment, determine party status, and take up such other preliminary matters as determined by the administrative law judge." The TDH separately noticed a public-comment-only session for that same evening.

After jurisdiction was established and public comment concluded, two statutory parties were named: the Department and the applicant. Party status was then requested by individuals Peggy Pryor, Melodye Pryor, Avis Ficks, and the organization known as Atomic Waste and Radiation Education (A.W.A.R.E.), collectively designated "requestors."³ A.W.A.R.E. represents approximately seventy people from the local area around Andrews. WSC, which had earlier filed, on July 28, 1997, a timely motion⁴ to contest the standing of the requestors, reasserted its objections at the evidentiary hearing. Thereafter, evidence and argument on the issue of party status was presented by both the applicant and requestors at the August 7 hearing. In the interests of fairness, since the requestors were participating *pro se*, and over the applicant's objections, the ALJ gave the requestors an opportunity to file additional support for their requests, subject to applicable evidentiary objections and the applicant's opportunity to respond.

Pursuant to Order No. 1, on August 15, 1997, the requestors filed additional material to be

² Section 13.5 of the TRCR

³ Section 13.2 of the TRCR.

⁴ Section 13.3(c) of the TRCR.

considered in determining whether they are “affected persons.”⁵ On August 22, 1997, WCS filed its response to the requestors’ supplemental information and a brief on the question of how the transportation of radioactive materials may factor into consideration of party status in this TDH proceeding.

IV. Applicable Standards of Review

The Department’s formal hearing procedures describe a “party” to the hearing “as being a *person affected* in the matter being considered . . .” (emphasis added) 25 TAC § 1.22. All parties must be “persons affected” as defined by the appropriate enabling statute. 25 TAC § 1.25 Pertinent statutory provisions pertaining to this application are found in the Texas Radiation Control Act, TH&SC, Subtitle D, Chapter 401.

Section 401.003(15) of the TH&SC provides:

“Person affected” means a person who demonstrates that the *person has suffered or will suffer actual injury or economic damage* and, if the person is not a local government:

- (A) is a resident of a county, or a county adjacent to that county, in which nuclear or radioactive material is or will be located; or
- (B) is doing business or has a legal interest in land in the county or adjacent county. (emphasis added)

Similarly, Section 13.2 of the TRCR defines a “person affected” as one:

- (1) who is a resident of a county, or county adjacent to the county, in which radioactive materials subject to the Act are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and
- (2) who shall demonstrate that *he/she has suffered or will suffer actual injury or economic damage*. (emphasis added)

No specific definition is given for “actual” injury or economic damage. However, in the

⁵ Ken and Mary Henderson, respectively president and secretary of A.W.A.R.E., provided the additional filing on behalf of A.W.A.R.E.

absence of a specific definition of a word or term, courts will look to the common ordinary meaning of the word. As defined in Black's Law Dictionary 33 (rev. 5th ed. 1979), "actual" means "real; substantial; existing presently in fact; having a valid objective existence as opposed to that which is merely theoretical or possible. Opposed to potential, possible, virtual, theoretical, hypothetical, or nominal."

In general terms, the TDH has established standards for party status which place the burden of proof on the one seeking party status to demonstrate through evidence in the hearing that there is a causal relationship between the injury claimed and the licensing action.⁶ The injury or economic damage must affect the particular requestor, not merely be a general public concern, and such injury or economic damage cannot be based on conjecture or supposition.

In the case of establishing party status for an organization or association, the requestor organization must show (1) at least one of its members would otherwise have standing to sue in his or her own right; *i.e.*, he or she is an "affected person" who has suffered or will suffer actual injury or economic damage; (2) the interests which the group seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor relief requested requires the participation of individual members of the group. *Texas Association of Business v. Air Control Board*, 852 S.W.2d 440, 447 (Tex. 1993)

V. Issue Presented

1. Whether the requestors are affected persons, with the ensuing right to participate as parties in a hearing on the merits of WCS's pending application.

The ALJs recommends the Department find that the requestors have not shown they are affected persons, pursuant to applicable statutory and regulatory standards, and deny their requests for party status.

A. Requestors

Evidence presented shows the requestors are homeowners in the town of Andrews, within the county where the WCS facility would operate. They drink city water, breathe the air, and travel on the highways around the town. The Pryors' home is located on Northwest 12th Street, near NW Mustang Drive. Mustang Drive is a main travel route around the outer perimeter of the city. The wind sometimes blows from the direction of the site towards Andrews. Ms. Fick lives on Crescent Drive in the northeast area of Andrews. Requestors all expressed generally the same concerns, which they contend make them affected persons. For this reason, discussion of their case will refer to them collectively. In addition, Peggy and Melodye Pryor (Pryors) testified they have been diagnosed with a condition called "fibromyalgia." Fibromyalgia is a

⁶ Section 13.3(c) of the TRCR.

term used to describe a chronic pain condition in the muscles and fibers of the body and is considered by some medical authorities to be related to immune deficiencies in the body. The Pryors contend radiation from the site will worsen the effects of this disease. The following generally describes concerns expressed by the requestors:

1. Winds will blow radioactive particles from the uncovered open pit dump site to Andrews.
2. Property values in Andrews will go down.
3. Home owner's insurance will not cover losses from radiation contamination.
4. Accidents involving carriers of radioactive materials on their way to and from the facility on the highways around Andrews will leak radioactive particles.
5. Even without the occurrence of accidents, chronic exposure to radiation will occur from the general leakage that will occur as trucks pass through town.
6. Increased traffic and fumes from trucks transporting materials to the site will pollute the air.
7. Workers will carry radioactive particle contamination into town on their shoes, clothes, and vehicles.
8. Impaired workers will make mistakes in their work that will cause radiation to escape.
9. Natural events, such as tornados, lightening strikes, and thunderstorms, will transmit contamination from the site to Andrews.
10. Drinking water will be contaminated since the Ogallala Aquifer is located beneath the site. Earthquakes will cause underground radiation leakage into the water system. Wells will be contaminated.
11. No independent study was conducted of area geology and hydrology to be sure the Ogallala Aquifer would not be contaminated.
12. "Temporary" storage at the site will become permanent because there is nowhere else to send this waste.
13. Hazardous fluids will leak from injection wells.
14. Underground storage will leak into the environment.
15. This permit is merely the first step to WCS securing a Department of Energy (DOE) permit for disposal of nuclear waste.
16. Employees' health is not adequately safeguarded at the site.
17. Bio-accumulation will occur, beginning with radiation leaking from the site.
18. WCS has no proven track-record to operate a radiation facility.

Evidence was presented in the form of sworn testimony by the Pryors and Ms. Fick. Peggy Pryor, a member of A.W.A.R.E., also spoke on behalf of A.W.A.R.E. since its President Ken Henderson was sick and could not attend. In their testimony, these individuals identified the above noted concerns and stated their belief that the proposed facility would adversely impact them. The requestors stated their concerns are based, for the most part, on various written materials they've read and a personal awareness of such things occurring as traffic accidents and the wind blowing toward town from the site. No additional evidence regarding how these

people are “affected” was provided either in the hearing or in the requestors’ August 15 supplemental filings.

B. WCS

The applicant presented the following evidence at the hearing in response to concerns expressed by the requestors.

Economic Impacts and Property Values

Dr. Robert F. Hodgkin testified as an expert⁷ in the evaluation of expected economic impacts from placing industrial facilities near communities. Findings in his study on the anticipated economic effects of the WCS facility indicate an annual business volume impact on Andrews County of approximately 7.4 million dollars. These increased dollars will be spent locally, raising the overall level of economic activity. Dr. Hodgkin concluded the proposed facility will have a positive economic impact on the community, describing it as a “relatively small but significant addition to the economic base” of the county. Addressing the claim that property values will decrease, Dr. Hodgkin explained the difficulties of trying to tie negative impacts on property values to any one area industry. He noted the general weight of the evidence in this area of study shows negative impacts on property values tended to occur when the facility in question was “in the immediate area.” Beyond five miles from a site, Dr. Hodgkin found the resulting effect “tends to be nominal and that effect tends to diminish through time.” Dr. Hodgkin’s study of the Andrews area found no evidence consistent with the diminution of property values attributable to the proposed WCS facility. On the contrary, there has been an increase in real estate sales, particularly of higher priced homes.

Impacts on Surface and Ground Water

Allen Messenger, President of A.M. Environmental and a registered professional engineer in Texas, testified concerning the engineering safety and geology of the site area⁸. Mr. Messenger is the expert in charge of the development, siting, and design of the WCS facility. Mr. Messenger personally participated in the extensive boring program and groundwater characterization work required to receive hazardous and toxic waste disposal permits from the TNRCC and EPA. He testified that this work and his review of an independent study by Dr. Tom Lehman of Texas Tech University, show the Ogallala Aquifer does not exist beneath the WCS site. Mr. Messenger explained that some of the confusion concerning the location of the Ogallala Aquifer may stem from descriptions of where the formation is, as opposed to the aquifer itself, and noted that “formation” refers to the type of soil present at a certain elevation. The Ogallala Aquifer and the Ogallala Formation both exist in Andrews County, but the aquifer

⁷ Credentials listed in Exhibit No.7 in the record.

⁸ Credential listed in Exhibit No. 8 in the record.

does not lie under the site.

Mr. Messenger noted there is basically no surface water on site and no surface runoff when storms occur. He explained the facility is designed to direct storm water away from storage and processing activities. Storm water is carefully saved for reuse since it is the highest quality water at the facility.

Facility Safety, Design, and Operations

Mr. Messenger testified that waste will arrive in DOE prescribed containers and, in general terms, processing will only occur in a containment structure that is, itself, contained within another building. Containers will not be opened outside these buildings or otherwise handled in a manner which could allow particles to escape and be blown elsewhere. Regarding the characterization of waste, Mr. Messenger explained the materials are carefully tracked from the point of departure to the site. Upon arrival, the contents are re-verified to ensure they are the same as claimed to be when shipped. The facility uses a bar code system to keep track of each container and its contents while stored on site. Mr. Messenger added that procedures for extensive characterization of the waste are also required pursuant to the facility's TNRCC hazardous waste permit. Finally, Mr. Messenger reiterated that the application at issue is for authority to receive, possess, store, and process radioactive materials. Storage is temporary and is only above ground in concrete sealed curbed containment buildings. There are no "open pits" associated with the radioactive waste operations at this site.

Wind Direction

Mr. Messenger testified that part of the information required to obtain the TNRCC hazardous waste permit involved analyzing the prevailing wind directions in Andrews County. This analysis is done using the Texas Climatic Atlas, which provides weather station data from the Midland-Odessa area. Although Mr. Messenger acknowledged winter northers come through and blow from north to south, the results of the study show the prevailing wind direction in Andrews County is south to north. The weather data shows the wind blows from the west to the east, towards the city of Andrews, approximately four percent of the time. This equates to approximately fourteen days per year.

Employee and Public Safety

Carl Kee, a health physicist and radiation protection officer, testified about the likelihood of possible impacts from radiation coming from the site and passing through town in trucks. Mr. Kee is an expert in the study of protecting humans and the environment from the harmful effects of radiation with special expertise in developing the standards and procedures used to protect

workers at a site, the general public, and the environment.⁹ Mr. Kee testified that under normal operations, no airborne exposure will take place measured at the fence line of the facility. Part of his work for the WCS facility involved an analysis of a worst case scenario occurring, which included airborne materials. Mr. Kee found, even assuming multiple negative contingencies all occurring at one time, radiation exposure at the fence line of the facility would be well within regulatory guidelines, no detrimental exposure would occur within a few miles of the facility, and no exposure, whatsoever, would occur thirty miles away in the city of Andrews. Mr. Kee further noted the analysis of data from a worst case scenario involving a tornado showed no resulting significant public health risk.

Mr. Kee testified regarding his preparation of the workers' protection plan for this facility and described the procedures and controls developed therein for the safety and health of workers at the site. Besides the workers being required to wear protective clothing, all personal vehicles are restricted from waste management areas. If procedures are followed, Mr. Kee believes there is no possibility workers will carry radioactive materials from the site. Mr. Messenger added that, besides safety procedures and design required for the TDH permit, the facility is subject to additional safety oversight by the TNRCC and EPA by virtue of having been issued hazardous and toxic waste permits. Messrs. Kee and Messenger both testified that, besides the on site workers' training, WCS trains emergency response personnel in Andrews and Eunice counties, and at Permian General Hospital.

Transportation

Regarding transportation concerns, Messrs. Kee and Messenger noted there are already many radioactive materials transported on the highways of this country, and United States Department of Transportation data shows there has never been an injury related to the release of radiological material during transportation of those materials. Alvin Collins, an independent oil and gas operator and long time resident of Andrews County, testified concerning the existing shipments of radioactive materials around Andrews as result of the oil business. He stated that no adverse impacts have been experienced in the community from transporting these radioactive materials, and the roads are already designed to handle the types of trucks which carry such materials. In addition, there is no one prescribed route through Andrews, which would concentrate trucks in one location as they pass through on their way to the site.

WCS further argues that radiological impacts associated with the transportation of radioactive materials is not an appropriate basis for determining actual injury or economic damage because the field of safety in the transportation of hazardous materials, including radioactive materials, is generally preempted by federal law and states cannot prohibit the transport of such materials

⁹ Credentials listed in Exhibit No. 11 in the record.

on a basis of safety hazards.¹⁰ Citing Section 401.112 of the TH&SC, WCS argues the language is clearly drafted to exclude consideration of radiological impacts from transportation, and submits that appropriate considerations are clearly the “socioeconomic” impacts of transportation such as truck traffic, noise, dirt, and accident rates. WCS contends the requestors have submitted no proof that the incremental number of radioactive materials shipments resulting from the operation of the WCS facility will cause them actual harm.

C. ALJs’ Analysis

Pursuant to the applicable standards for determining party status as set forth in Part IV of the PFD, it is the requestors’ burden to show they are “affected” persons. Regarding the need for persons challenging an action to show concrete harm, the United States Supreme Court, Justice Kennedy, observed in *Luzan v. Defenders of Wildlife*, 112 S. Ct. 2130, 2147 (1992) that:

This requirement is not just an empty formality. It preserves the vitality of the adversarial process by assuring that the parties before the court have an actual, as opposed to professed, stake in the outcome . . .

The ALJs find the requestors have not shown they are persons that have “suffered or will suffer actual or economic damage” if the application is approved. Nor have they shown even a reasonable likelihood that they will suffer such damage.

Evidence presented by the requestors shows they are concerned about essentially hypothetical events (*i.e.*, what could happen, what is possible, or what they “feel” will happen), all of which lack a causal showing of actual injury or economic damage to these persons.¹¹ While the requestors’ evidence does establish they have a sincere belief they will suffer harm if this facility is permitted, their evidence does not establish facts upon which a finding can be made that they will actually be affected by the proposed facility. For example, requestors’ transportation-related concerns reference such things as increased accidents and leaking of radiation from passing trucks. However, they do not show how or why it is reasonable to conclude that some unknown number of trucks, going to the site using commonly traveled roads, over which radioactive materials unrelated to this site already travel by truck, will present an actual threat to their personal or economic safety. In addition, while Requestor Avis Fick fears lost property values, she also stated she has no present or future intention of selling her home. Ms. Fick further testified she has not seen or heard anything which supports this concern. It is based solely on her opinion that she wouldn’t buy in this area again if she knew about the

¹⁰The two exceptions to federal pre-emption, federal waiver and a state’s designation of specific routes, do not apply to this case.

¹¹*E.g.*, Requestors live in the town of Andrews, generally thirty miles east of the site, in an area where prevailing winds blow south to north over ninety percent of the year. Requestors do not take their water from private wells, they drink city water. The facility is located on 16,000 acres of private land and the facility lies more than a mile from the boundary. Requestors are not employed at the facility and have no occasion to drive near the facility as any part of their daily activities.

“dump.”

Moreover, several of the requestors’ concerns have little or nothing to do with the subject of this hearing and are not issues that can be addressed in this proceeding.¹² Finally, as is detailed in V(B), WCS presented evidence which addressed the reasonableness of the requestors’ concerns regarding such things as: (1) escaping radiation, (2) winds carrying radiation to Andrews, (3) public and employee safety, (4) surface and ground water characterization, and (5) the safe design and operations of the facility itself. This evidence reinforces the ALJs’ finding that requestors have not shown even a reasonable likelihood that this facility, if permitted, will cause them actual injury or economic damage.

VI. Conclusion

For the reasons stated above, based on the following Findings of Fact and Conclusions of Law, the ALJs find the evidence does not show the requestors are “affected” persons and recommend that the Department deny their requests for party status. Moreover, they recommend that the Department take further action without a hearing as provided for in its rules.

FINDINGS OF FACT

1. In March 1996, Waste Control Specialists (WCS) filed an application with the Texas Department of Health (TDH or Department) for a license to authorize the receipt, temporary storage, and processing of radioactive materials.
2. Upon completion of its review of the application and supporting materials, the staff of the Department’s Bureau of Radiation Control issued a *Notice of Proposed Issuance* for Radioactive License No. L04971 on June 10, 1997, published in 22 Tex. Reg. 5862-5863 (June 17, 1997).
3. The Department and applicant provided notice of the August 7, 1997 hearing on WCS’s application as follows:
 - (a) Notice was issued by the Department on June 10, 1997, and published in 22 Tex. Reg. 5862-5863 (June 17, 1997).
 - (b) Notice was mailed by WCS on June 27, 1997, by direct certified mail to those persons listed on Exhibit No. 2 in the record, being owners of real property contiguous to the land upon which the facility is located, owned by WCS in Texas and New Mexico.

¹² *I.e.*, whether WCS ever seeks a DOE permit, home owners’ insurance, hazardous waste leaking from injection wells and “open pit” holes in the ground at the site which are the result of operations conducted pursuant to the TNRCC and EPA permitted hazardous and toxic waste landfill.

- (c) Notice was published on June 29, 1997, by WCS in the *Andrews County News*, a newspaper regularly published in Andrews County, Texas.
4. Notice of the hearing included a statement of the time, place, and nature of the hearing; a statement identifying the location of the proposed facility and describing the activities for which authorization is requested; a statement of the legal authority and jurisdiction under which the hearing was to be held; a statement of the opportunity for a hearing of a person affected; and a recitation of the standard defining an “affected” person, who may intervene.
 5. As stated in the notice, the purpose of the August 7, 1997 hearing was to convene the hearing, establish jurisdiction, take public comment, determine party status, and take up such other preliminary matters as determined by the Administrative Law Judge.
 6. Following receipt of hearing requests by Peggy Pryor, Avis Fick, George and Virginia Young, Kenneth and Mary Henderson, and the organization named Atomic Waste and Radiation Education (A.W.A.R.E.), the TDH referred this case to the State Office of Administrative Hearings (SOAH) on July 17, 1997, for a hearing on the application.
 7. On July 28, 1997, ten days prior to the hearing, the applicant filed a Motion to Contest Standing of those persons and entities requesting party status, contending they are not “affected” persons as defined by Section 401.003(15) of the Texas Health and Safety Code (TH&SC) and Section 13.2 of the TRCR, and requesting those persons and entities show proof, by admissible evidence at hearing, that they met the requirements for standing. This motion was also timely served, on July 28, 1997, to the requestors identified in Finding of Fact No. 6.
 8. At 10:00 a.m. on August 7, 1997, the evidentiary public hearing was held in Andrews, Texas regarding the application.
 9. At the August 7, 1997 hearing, party status was requested by Peggy Pryor, Melodye Pryor, Avis Fick, and the organization known as Atomic Waste And Radiation Education (A.W.A.R.E.), collectively designated “requestors.”
 10. At the August 7, 1997 hearing and by supplemental filing on August 18, 1997, the requestors, WCS, and the TDH staff were given the opportunity to submit evidence regarding the issue of requestors’ standing.
 11. Requestors have not and will not suffer actual injury or economic damage related to the subject of and activities proposed in this application, nor is there a reasonable likelihood they will suffer such actual harm.
 12. There will be a positive economic effect on the Andrews area community from the WCS

facility.

13. Housing and general property values have remained the same or risen slightly in the Andrews area despite general public awareness and knowledge of the pending WCS application.
14. Negative impacts on property values tend to occur when a facility is planned for the immediate area.
15. Beyond five miles, effects on property values are nominal and diminish further with time.
16. Requestors' homes are located in Andrews, Texas, thirty miles from the proposed facility.
17. Requestors have no present or future plans to sell their homes.
18. The prevailing wind in this area runs generally south to north over ninety percent of the year and the proposed facility is located thirty miles east of Andrews, Texas.
19. The WCS facility will not adversely affect area surface and groundwater.
20. Extensive studies to characterize the surface and groundwater at this site were performed by WCS as a prerequisite to receiving permits for the present operation of a hazardous and toxic waste landfill at this site.
21. WCS's studies, plus an independent study by Texas Tech University, confirm the Ogallala Aquifer is not located beneath the facility.
22. Requestors receive city water service and do not have wells on their property.
23. Waste received at the WCS facility will be characterized, and safely handled and stored in a manner which minimizes or eliminates leakage of any radiation from the waste.
 - (a) The WCS facility will receive waste in Department of Energy prescribed containers.
 - (b) Containers will only be opened in sealed buildings.
 - (c) Waste will be categorized upon departure from the supplier and again upon receipt at the WCS facility.
 - (d) Tracking and monitoring of each waste container and its specific contents will continue throughout the time the container is in storage.

- (e) Storage of waste will be temporary and only take place above ground in sealed curbed containment buildings.
- 24. WCS personnel will wear protective clothing, to prevent contamination of skin and personal clothing, and all personal vehicles are restricted from waste management areas.
- 25. WCS personnel will receive detailed and comprehensive training on safety and operational procedures associated with their jobs at the site.
- 26. WCS will train emergency response personnel in Andrews and Eunice counties and at the Permian General Hospital.
- 27. Assuming a worse-case scenario of multiple negative contingencies occurring at one time, no airborne radiation exposure would occur thirty miles away in the town of Andrews, Texas.
- 28. Under normal operations, no airborne radiation exposure will occur as measured at the fence line of the WCS facility, within the 16,000 acres of land surrounding the facility site.
- 29. The 1338 acre facility site is located over a mile inside the boundary of the 16,000 acres of land privately owned by WCS.
- 30. The WCS site is not located along public highways along which members of the general public must travel near it to conduct their ordinary daily business and personal activities.
- 31. Radioactive materials, not associated with the WCS facility, have been transported by truck on the streets and highways in and around the town of Andrews for many years with no known detrimental health or safety impacts.
- 32. There is no one designated route for trucks to follow through Andrews on their way to the WCS site, which would concentrate trucks in one location and precipitate an increased risk of accidents.

CONCLUSIONS OF LAW

- 1. The State Office of Administrative Hearings has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to Chapter 2003 of the Texas Government Code.

2. Notice of the application and opportunity for hearing was provided as required by Section 13.5 of the TRCR, 25 TAC § 289.112, Section 401.114 of the TH&SC, and Chapter 2001 of the Administrative Procedure Act.
3. The public hearing in this matter was held under the authority and in accordance with Chapter 401 of the TH&SC and 25 TAC Chapter 289.
4. The Department has authority to consider this application and the issue of standing in accordance with Chapter 401 of the TH&SC, 25 TAC Chapter 289, and the TRCR.
5. Requestors have the burden of proof to demonstrate they are “affected” persons.
6. Requestors failed to demonstrate or otherwise prove they are “persons affected” within the meaning of Section 401.003(15) of the TH&SC and Section 13.2 of the TRCR.

ISSUED IN AUSTIN, TEXAS, the 24th day of September 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

**LESLIE CRAVEN
ADMINISTRATIVE LAW JUDGE**

**HENRY D. CARD
ADMINISTRATIVE LAW JUDGE**