

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Kristine L. Svinicki, Chairman
Jeff Baran
Stephen G. Burns

In the Matter of)
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WASTE CONTROL SPECIALISTS LLC)
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(Consolidated Interim Storage Facility))
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Docket No. 72-1050

CLI-17-10

MEMORANDUM AND ORDER

Earlier this year, the NRC provided notice in the *Federal Register* of the license application of Waste Control Specialists LLC (WCS) to construct and operate a consolidated interim waste storage facility.¹ The notice set a deadline of March 31, 2017, for members of the public to file requests for a hearing and petitions for leave to intervene on WCS's application. In late March, after receiving an unopposed joint motion from WCS and the Sierra Club, the Secretary extended that deadline to May 31, 2017.² The NRC has received no hearing requests to date.

¹ Waste Control Specialists LLC's Consolidated Interim Spent Fuel Storage Facility Project, 82 Fed. Reg. 8773 (Jan. 30, 2017).

² Order (Mar. 29, 2017) (ADAMS accession no. ML17088A627) (unpublished); see *Waste Control Specialists LLC's and Sierra Club's Joint Motion for Revised Schedule Related to Hearing Requests* (Mar. 13, 2017) (ML17072A498).

On April 18, 2017, WCS requested that the NRC temporarily suspend all review activities associated with its application. The next day, WCS and the NRC Staff jointly requested that the hearing notice be withdrawn, explaining that a new *Federal Register* notice to provide a fresh opportunity for interested persons to request a hearing would be issued if review of the application resumes.³ Beyond Nuclear, the Sierra Club, and the Sustainable Energy and Economic Development (SEED) Coalition filed a joint response, explaining that they did not object to WCS and the Staff's joint request.⁴ The response also sought seven additional measures.

We grant WCS's and the Staff's request. We further direct that the Staff publish a *Federal Register* notice withdrawing the opportunity to request a hearing on this license application and direct the Staff to publish a new notice of opportunity to request a hearing in the *Federal Register* if WCS requests that the Staff resume its review of WCS's application.

As for the additional measures that Petitioners seek, we briefly describe and address each in turn. First, Petitioners request that we direct WCS to submit a new application containing all revisions that it has made since it filed its original application, rather than submitting a version that only includes "change-pages," when it requests that the Staff restart its review of the application. We decline this request to specify the format of revisions to the application. An applicant may revise its application several times over the course of the agency's review, and the Staff has broad discretion to request that revisions be provided in a way that facilitates the Staff's review and the public's understanding of the application.

³ *Joint Request to Withdraw the Federal Register Notice Providing an Opportunity to Submit Hearing Requests* (Apr. 19, 2017) (ML17109A480) (attaching Letter to NRC Document Control Desk from Rod Baltzer, WCS (Apr. 18, 2017)).

⁴ *Response by Beyond Nuclear, SEED Coalition, and Sierra Club to Joint Request to Withdraw the Federal Register Notice Providing an Opportunity to Submit Hearing Requests* (Apr. 28, 2017) (ML17118A268) (Response). The three groups refer to themselves collectively as "Petitioners," and we likewise use that reference.

Petitioners will have the opportunity to challenge the adequacy of the application in full, regardless of its form.

Second, Petitioners request that we require WCS to notify Petitioners' counsel when WCS requests the restart of the Staff's review of the application. Because of Petitioners' demonstrated interest in this proceeding, we direct the Staff to notify Petitioners' counsel within three business days of any WCS request to have the NRC resume its review of WCS's application.⁵

Third, Petitioners request that the NRC not publish a new notice of opportunity to request a hearing on WCS's license application until after we have provided a separate opportunity for, and have ruled on, motions to dismiss the application for lack of jurisdiction. This request relates to Petitioners' argument that WCS's application is inconsistent with the licensing scheme set forth by the Nuclear Waste Policy Act (NWPA).⁶ We decline to delay re-noticing the hearing opportunity to add an extra process that is not contemplated under our procedural regulations. This argument may be raised in an intervention petition after the hearing opportunity is re-noticed; 10 C.F.R. § 2.309(f)(1) specifically permits petitioners to present contentions that raise issues of law.

Fourth, Petitioners request that the new notice of opportunity for hearing provide 120 days for submitting hearing requests. Under 10 C.F.R. § 2.309(b), a petitioner typically has 60 days from the *Federal Register* notice to file hearing petitions. Although it is true that the

⁵ It is incumbent upon Petitioners' counsel to ensure that the Staff has up-to-date contact information.

⁶ Response at 2 (citing Letter to Victor M. McCree, Executive Director for Operations, NRC, from Diane Curran *et al.* (Oct. 27, 2016) (ML16321A372) (requesting that the NRC dismiss the WCS application and stop the environmental review associated with the application because the WCS plan of operations does not comport with the NWPA); Letter to Diane Curran, Harmon Curran Spielberg & Eisenberg, L.L.P. from Marc L. Dapas, Director, Office of Nuclear Material Safety and Safeguards, NRC (Dec. 8, 2016) (ML16337A024) (noting that the issue raised was beyond the scope of the then-ongoing acceptance review)).

Secretary extended the deadline for intervention petitions under the original hearing notice, Petitioners have not adequately explained why an additional 60 days will be necessary in the event the hearing opportunity is re-noticed. We decline to direct that a particular time period, beyond what is already established by our regulations, be established for a hearing opportunity that may be re-noticed at some point in the future.⁷

Fifth, Petitioners request that any new notice of opportunity for hearing provide a procedure for requesting access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information. In the original hearing notice, the access order was inadvertently omitted. We expect that—consistent with our established procedures⁸—the Staff will include in any reissued hearing notice the access procedures for obtaining SUNSI and Safeguards Information. Petitioners further request that the time to allow for requests for access should be doubled from the typical 10-day period to 20 days. We decline to extend the standard 10-day period at this time.⁹

Sixth, Petitioners request that we direct the Staff to publish a *Federal Register* notice clarifying that the NRC's environmental review of WCS's application is suspended and that—contrary to the previously published scoping notices¹⁰—the NRC will not accept public scoping

⁷ This denial does not preclude Petitioners (or, indeed, any interested person) from seeking an extension of time once the Staff reissues the hearing notice. See 10 C.F.R. § 2.307(a) (allowing for extension of time limits by the Commission or presiding officer for good cause).

⁸ See Delegated Authority to Order Use of Procedures for Access to Certain Sensitive Unclassified Information, 73 Fed. Reg. 10,978 (Feb. 29, 2008); see also Procedures to Allow Potential Intervenors to Gain Access to Relevant Records that Contain Sensitive Unclassified Non-Safeguards Information or Safeguards Information (Feb. 29, 2008) (ML080380626).

⁹ This denial does not preclude Petitioners (or, indeed, any interested person) from seeking an extension of time for obtaining access to SUNSI or Safeguards Information once the Staff reissues the hearing notice.

¹⁰ The scoping period began November 14, 2016. See Waste Control Specialists LLC's Consolidated Interim Spent Fuel Storage Facility Project, 81 Fed. Reg. 79,531 (Nov. 14, 2016). The scoping period closed on March 13, 2017, but the Staff reopened the scoping period until

comments on the proposed environmental impact statement for the WCS facility pending further notice. We direct that when the Staff publishes its notice withdrawing the opportunity to request a hearing on this license application, the Staff also clarify that its environmental review and scoping work is likewise suspended.

Seventh, and relatedly, Petitioners request that we direct the Staff to reopen the time period for submitting scoping comments for the environmental impact statement when the Staff resumes its review of WCS's application. Petitioners further request that any reopening should be noticed in the *Federal Register*, and they seek 120 days after publication to submit any scoping comments. We agree that if WCS requests that the review of its application resume, the Staff should reopen the scoping comment period, and should provide notice of that reopening in the *Federal Register*. We decline, however, to direct the Staff to provide a 120-day comment period at this time.¹¹

IT IS SO ORDERED.

For the Commission

NRC Seal

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 22nd day of June, 2017.

April 28, 2017. See Waste Control Specialists LLC's Consolidated Interim Spent Fuel Storage Facility Project, 82 Fed. Reg. 14,039 (Mar. 16, 2017).

¹¹ Again, this does not bar any potential extension requests that Petitioners may seek to obtain from the Staff after the comment period is re-opened.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (CLI-17-10)** have been served upon the following persons by the Electronic Information Exchange:

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[Original signed by Clara Sola _____]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 22nd day of June, 2017