

ATTACHMENT 3-3 AGENCY CONSULTATION



DEPARTMENT OF THE ARMY
FORT WORTH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 17300
FORT WORTH, TEXAS 76102-0300

REPLY TO
ATTENTION OF:

August 29, 2007

Planning, Environmental, and Regulatory Division
Regulatory Branch

SUBJECT: Project Number SWF-2007-173

Mr. Ed Jennrich
Project Manager
URS Corporation
756 East Winchester Street
Salt Lake City, Utah 84107

Dear Mr. Jennrich:

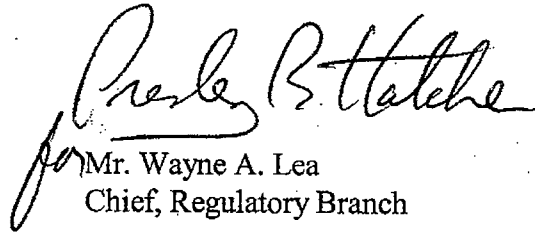
Thank you for your letter of April 30, 2007, concerning a proposal by Waste Control Specialists, LLC (WCS) to dispose of low-level radioactive waste located at WCS facility adjacent to the State of Texas and State of New Mexico border just north of State Highway 176 in the City of Frankel City, Andrews County, Texas. This project has been assigned Project Number SWF-2007-173. Please include this number in all future correspondence concerning this project. Failure to reference the project number may result in a delay.

We have reviewed this project in accordance with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. Under Section 404, the U.S. Army Corps of Engineers (USACE) regulates the discharge of dredged and fill material into waters of the United States, including wetlands. The USACE responsibility under Section 10 is to regulate any work in, or affecting, navigable waters of the United States. Based on your description of the proposed work, other information available to us, and current regulations and policy, we have determined that this project will not involve any of the above activities. Therefore, it will not require Department of the Army authorization under the above laws. However, it is incumbent upon you to remain informed of any changes in USACE Regulatory Program regulations and policy as they relate to your project.

The USACE based this decision on a preliminary jurisdictional determination (JD) that there are not waters of the United States on the project site. This preliminary JD is valid for a period of no more than five years from the date of this letter unless new information warrants revision of the delineation before the expiration date. It is incumbent upon the applicant to remain informed of changes in the Department of the Army regulations.

Thank you for your interest in our nation's water resources. If you have any questions concerning our regulatory program, please contact Ms. Kelly Allen at the address above or telephone (817)886-1732.

Sincerely,

Handwritten signature of Charles B. Hatch in cursive script.

for Mr. Wayne A. Lea
Chief, Regulatory Branch

Enclosure

JURISDICTIONAL DETERMINATION
U.S. Army Corps of Engineers

Revised 8/13/04

DISTRICT OFFICE: FORT WORTH
FILE NUMBER: SWF-2007-173

PROJECT LOCATION INFORMATION:

State: TEXAS
County: ANDREWS COUNTY
Center coordinates of site (latitude/longitude): 32.44558 & -103.04298
Approximate size of area (parcel) reviewed, including uplands: 1.338 acres.
Name of nearest waterway: Monument Draw
Name of watershed: LANDRETH-MONUMENT DRAWS BASIN

JURISDICTIONAL DETERMINATION

Completed: Desktop determination ☒ Date: 29 August 2007
Site visit(s) ☐ Date(s):

Jurisdictional Determination (JD):

☒ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☒ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☐ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).
Check all that apply:

☐ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☐ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☐ *There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.

☐ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

BASIS OF JURISDICTIONAL DETERMINATION:

A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":

☐ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":

☐ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

☐ (2) The presence of interstate waters including interstate wetlands¹.

☐ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.

☐ (4) Impoundments of waters otherwise defined as waters of the US.

☐ (5) The presence of a tributary to a water identified in (1) - (4) above.

☐ (6) The presence of territorial seas.

☐ (7) The presence of wetlands adjacent² to other waters of the US, except for those wetlands adjacent to other wetlands.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above). *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:*

Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)

- ☐ Ordinary High Water Mark indicated by:
 ☐ clear, natural line impressed on the bank
 ☐ the presence of litter and debris
 ☐ changes in the character of soil
 ☐ destruction of terrestrial vegetation
 ☐ shelving
 ☐ other:
- ☐ High Tide Line indicated by:
 ☐ oil or scum line along shore objects
 ☐ fine shell or debris deposits (foreshore)
 ☐ physical markings/characteristics
 ☐ tidal gages
 ☐ other:
- ☐ Mean High Water Mark indicated by:
 ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.
- ☐ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

Basis For Not Asserting Jurisdiction:

- ☒ The reviewed area consists entirely of uplands.
☐ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
☐ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
☐ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
 ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
 ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
 ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
 ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
 ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
 ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
☐ Other (explain):

DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
☐ Data sheets prepared/submitted by or on behalf of the applicant.
 ☐ This office concurs with the delineation report, dated , prepared by (company):
 ☐ This office does not concur with the delineation report, dated , prepared by (company):
☐ Data sheets prepared by the Corps.
☐ Corps' navigable waters' studies:
☐ U.S. Geological Survey Hydrologic Atlas:
☒ U.S. Geological Survey 7.5 Minute Topographic maps: Eunice Northeast
☐ U.S. Geological Survey 7.5 Minute Historic quadrangles:
☐ U.S. Geological Survey 15 Minute Historic quadrangles:
☒ USDA Natural Resources Conservation Service Soil Survey: Andrews County
☐ National wetlands inventory maps:
☐ State/Local wetland inventory maps:
☐ FEMA/FIRM maps (Map Name & Date):
☐ 100-year Floodplain Elevation is: (NGVD)
☒ Aerial Photographs (Name & Date): 2004
☐ Other photographs (Date):
☐ Advanced Identification Wetland maps:
☐ Site visit/determination conducted on:
☐ Applicable/supporting case law:
☐ Other information (please specify):

¹Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

²The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Waste Control Specialists, LLC

File Number: SWF-2007-173

Date: August 29, 2007

Attached

See section below

☐	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)
☐	PROFFERED PERMIT (Standard Permit or Letter of Permission)
☐	PERMIT DENIAL
☐	APPROVED JURISDICTIONAL DETERMINATION
☒	PRELIMINARY JURISDICTIONAL DETERMINATION

A
B
C
D
E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or © not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved jurisdictional determination (JD) or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Ms. Kelly Allen at (817)886-1732

If you only have questions regarding the appeal process you may also contact:

Mr. Jim Gilmore at (214) 767-2457

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process.

Signature of appellant or authorized agent

Date:

Telephone number:

WASTE CONTROL SPECIALISTS LLC

August 2, 2007

Ms. Kelly Allen
Regulatory Branch
U.S. Army Corps of Engineers
Fort Worth District
819 Taylor Street, Room 3A37
P.O. Box 17300
Fort Worth, TX 76102-0300

Re: Project Number SWF-2007-173, Clarification Request for Non-Jurisdictional Determination for WCS Facility, Andrews County, TX

Dear Ms. Allen:

This letter is in response to your discussion with Mr. Jeff Linn (URS Corporation) on July 19 requesting clarification of information provided in the April 30 and May 15 jurisdictional request letters submitted to the Fort Worth District, U.S. Army Corps of Engineers (USACE) for the 1338-acre Waste Control Specialists LLC (WCS) facility located in Andrews County, Texas (see Figure 1). The letters of April 30 and May 15 were submitted to support the non-jurisdictional determination by the Fort Worth District USACE for the subject site. The April 30 letter requested jurisdictional determination for three small playas on the WCS property, while the May 15 letter requested the determination be expanded to encompass the entire 1,338 acres.

As set forth in the April 30 letter, the site includes three playas identified on Figure 1. None of the three playas shown on Figure 1 is a wetland. All three are isolated in nature, only contain water for brief and intermittent periods during high precipitation events, and do not have a connection to a water of the U.S. or any tributary to a water of the U.S. Therefore, the three playas are not waters of the U.S. These assessments were summarized in the April 30 and May 15 jurisdictional request letters and attachments previously submitted to the Fort Worth District. While several other smaller areas with geologic deposits typical of playas occur on the 1,338-acre area, the three playas identified on Figure 1 are the largest at 4.93, 1.54, and 1.33 acres.

As noted in the report entitled *Surficial Geology and Supplemental Erosion Assessment of the WCS Waste Disposal Facility, Andrews County, Texas* (available at the WCS website at <<http://64.224.191.188/wcs/Docs/Volume12/Attachment4-3.pdf#page=1>>), the playas are heavily vegetated and presently infilling. The report further states: "A comparison between 1938 and 2000 aerial photographs shows playa deposits have decreased in size. The decrease in size, the presence of the mounds, and dense vegetation indicate that although the playas may have initially formed by other processes, such as deflation, some time ago, they most recently have been filling in with eolian sand."

The site also includes a drainage area, also shown on Figure 1, located to the south-southeast of the South Playa. This drainage area does not have any distinguishable "ordinary high water mark" or defined "bed and bank" and is therefore considered to be very poorly defined. The report noted above states: "The

Corporate
5430 LBJ Freeway, Ste. 1700
Three Lincoln Centre
Dallas, TX 75240
Ph. 972.715.9800
Fx. 972.448.1419

Facility
P.O. Box 1129
Andrews, TX 79714
Ph. 888.789.2723
Fx. 505.394.3427

Ms. Kelly Allen
August 2, 2007
Page 2

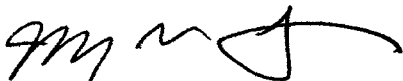
ranch house drainage is distinctly visible on maps and aerial photographs both topographically and from its denser vegetation patterns. In the field, however, the drainage is heavily vegetated, broad, and typically characterized by multiple anastomosing channels that are discontinuous and difficult to follow for any distance. The ranch house drainage presently extends for some 1,700 m, from its headwaters just south of the ranch house, to a broad, multiple-channel area south of the Federal Waste Facility where unit Qa deposits become fan-shaped [NOTE: Qa deposits refer to alluvium with eolian sediments]. The drainage cannot be traced farther downstream than this (either to the southwest or west) in the historical imagery or in the field, as channels appear to be buried by dune sand." The report goes on to state: "Regardless of where the ranch house paleodrainage may have flowed, it is clear that the present drainage is no longer integrated with Monument Draw, New Mexico, the closest significant drainage west of the WCS site, and may not have been for some time." Note that Monument Draw is approximately 3 miles west of the WCS facility.

In addition to the aerial photographic imagery analysis and surficial geologic mapping that were performed for the above referenced report, soil pits were excavated in the ranch house drainage area and other areas for the purposes of mapping geologic deposits and buried soil horizons, and obtaining luminescence ages of the buried sediments and soils. The following is provided in Section 3.8 of the report: "The stratigraphy, soils, and luminescence ages in SP1 through SP6 indicate that eolian deposition has dominated overall at the WCS site for the past ~60,000 years, including pulses of greater sediment accumulation between 54,000 and 60,000 years ago, between 27,000 and 30,000 years ago, around 23,000 years ago, between 6,500 and 10,000 years ago, around 2,000 years ago, and at sometime during the past 2,000 years. There is no evidence for a fully integrated active channel system in the ranch house drainage during this time. Furthermore, since at least 30,000 years ago, eolian deposition, punctuated by periods of landscape stability, has led to infilling of the ranch house drainage."

Therefore from the above and previously submitted information, it can only be concluded that the drainage area is not a water of the U.S. because it is not a tributary to or have significant nexus to downstream traditional navigable waters of the U.S.; the playa basins are not wetlands; and the playa basins do not directly abut nor are they adjacent to a tributary to a traditional navigable water.

Please contact Mr. Ed Jennrich (URS Corporation, 801-904-4113), Mr. Steve Cook (Cook-Joyce, Inc., 512-474-9097), or me (972-448-1483) if you have any questions or require additional information concerning this supplemental information.

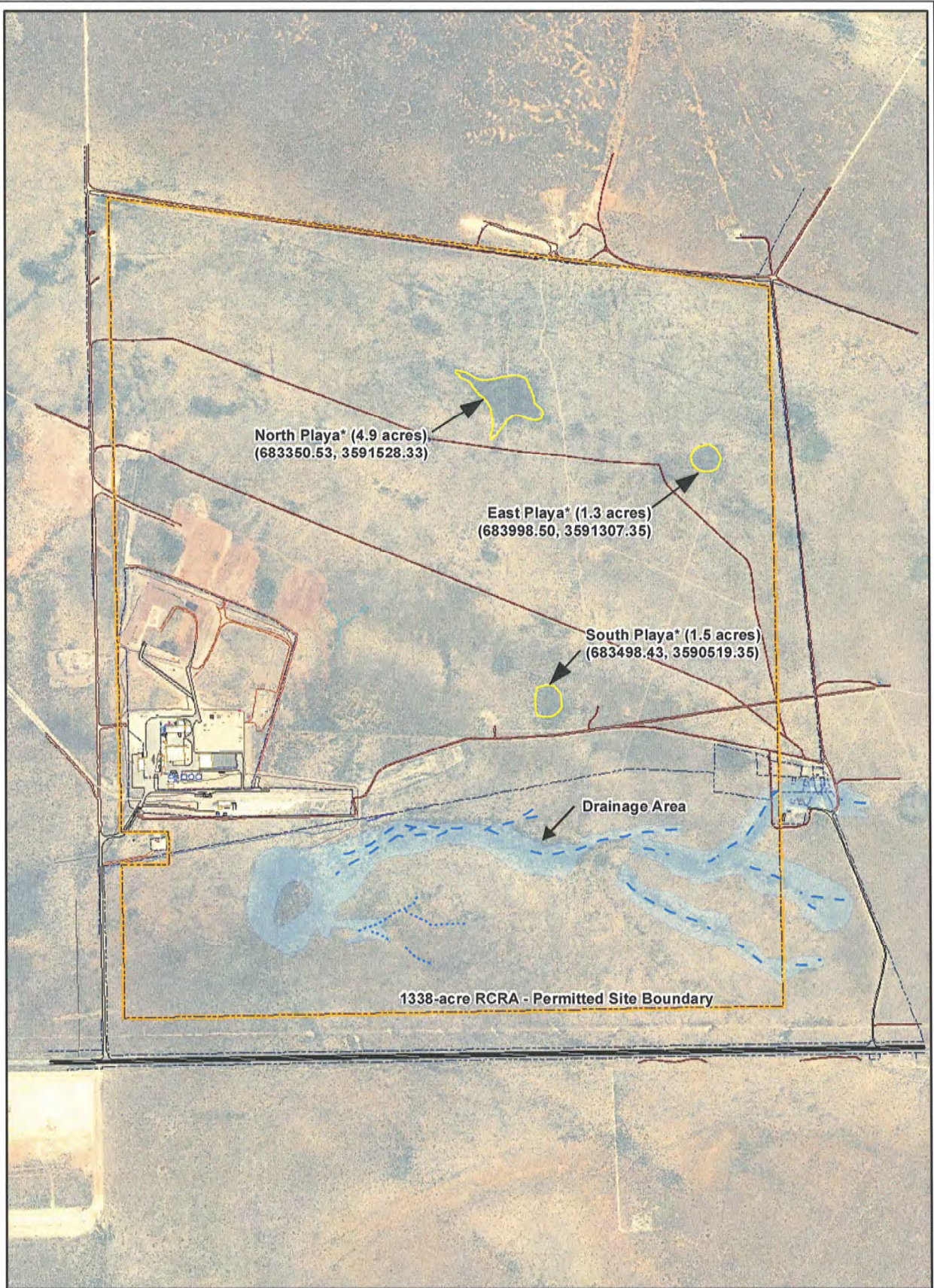
Sincerely,



Jeffrey M. Skov
Vice President, Licensing and Regulatory Affairs

Enclosures:
Figure 1 – Playa Locations

Cc: Rod Baltzer
Ed Jennrich, URS
Steve Cook, Cook-Joyce Inc.



* Note: Playa is not a water of the U.S.



Playa Locations

Figure 1

G:\Projects\WCS



URS

WASTE CONTROL SPECIALISTS LLC

May 15, 2007

Mr. Wayne Lea
Regulatory Branch
U.S. Army Corps of Engineers
Fort Worth District
819 Taylor Street, Room 3A37
P.O. Box 17300
Fort Worth, TX 76102-0300

Re: Project Number SWF-2007-173 Waste Control Specialists Disposal Site- Non-Jurisdictional Determination Request

Dear Mr. Lea:

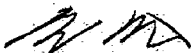
On April 30, 2007, our contractor, URS Corporation sent the Fort Worth District U.S. Army Corps of Engineers (USACE) a letter requesting a non-jurisdictional determination for three small playas present on the Waste Control Specialists LLC (WCS) facility located in Andrews County, Texas (Enclosure 1). WCS would like to request that the determination be expanded to encompass the entire 1,338 acres currently permitted under our RCRA permits and that the determination be expedited for our case.

The 1,338 acre area included in the WCS RCRA permit is shown in the figure included in Enclosure 2. Supplemental information describing this 1,338 acre area is also provided in Enclosure 2.

WCS requests that the determination of non-jurisdiction be expedited in order to meet deadlines set by the Texas Commission on Environmental Quality (TCEQ) for the review of WCS' application for a license to dispose of low-level radioactive waste at our facility in Andrews County, TX. The application process and deadlines were set as a matter of law and through a rulemaking process. The application is currently in the final stages of technical review and the TCEQ has requested a non-jurisdictional determination letter prior to the completion of their review, which is expected in September 2007. Therefore, we respectfully request that the non-jurisdictional determination letter be completed by USACE by August 1, 2007.

Please contact me at (972) 450-4235 if you have any questions or require additional information concerning this request.

Sincerely,



Rodney A. Baltzer
President

Enclosures:

Enclosure 1 – Letter dated April 30, 2007

Enclosure 2 – Description of WCS RCRA Permitted Area

Corporate
5430 LBJ Freeway, Ste. 1700
Three Lincoln Centre
Dallas, TX 75240
Ph. 972.715.9890
Fx. 972.448.1419

Facility
P.O. Box 1129
Andrews, TX 79714
Ph. 888.789.2783
Fx. 505.394.3427

Enclosure 1

**URS Corporation April 30, 2007 Letter
Playa Non-Jurisdictional Determination – WCS Facility, Andrews County, TX
U.S. Army Corps of Engineers
Project Number SWF-2007-173
Waste Control Specialists Disposal Site- Non-Jurisdictional Determination Request**



30 April 2007

Mr. Wayne Lee
Regulatory Branch
U.S. Army Corps of Engineers
Fort Worth District
819 Taylor Street, Room 3A37
P O. Box 17300
Fort Worth, TX 76102-0300

Re: Playa Non-Jurisdictional Determination – WCS Facility, Andrews County, TX

Dear Mr. Lee:

This letter is to request a jurisdictional determination by the Fort Worth District U.S. Army Corps of Engineers (USACE) for three small playas present on the Waste Control Specialists LLC (WCS) facility located in Andrews County, Texas (see Figure 1, attached). The WCS facility is located adjacent to the Texas / New Mexico border north of Texas Highway 176. The playa locations and associated coordinates are shown on Figure 1, and a topographic map of the area is shown on Figure 2 (attached).

Dr. Loren Smith, Kleberg Professor of Wildlife Ecology at Texas Tech University, has conducted an assessment of the North and South playas and made observations of the East playa within the WCS facility (Figure 1). Dr. Smith has concluded that the North and South playas are isolated waters; neither is physically adjacent to or has a surface water connection to a water that is navigable in fact or a tributary of such a water. Accordingly, Dr. Smith has stated that, based on his experience, neither of these two playas (the North and South) should be considered subject to USACE jurisdiction under Section 404 of the Clean Water Act in light of the 2001 decision of the U.S. Supreme Court in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*. Dr. Smith's complete written assessment is included as Attachment 1 to this letter. Based on the assessment of the North and South playas and the observations made of the East playa, the East playa's characteristics are the same and those for the North and South playas with regard to proximity to surface waters. The East playa is not physically adjacent to or has a connection to a water that is navigable in fact or a tributary of such a water.

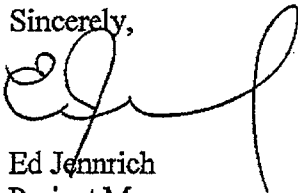
These conclusions are consistent with the guidance recently issued by the USACE Fort Worth District regarding the application of the Significant Nexus Test in accordance with the U.S. Supreme Court's June 2006 decision in *Rapanos v. United States* and *Carabell v. USACE*. The

Fort Worth District guidance suggests that a wetland is isolated if there is no movement of surface water between (to and from) navigable waters of the U.S. and that wetland (e.g., a playa lake). No surface water connection exists between the playas on the WCS facility site and any navigable water, thereby making the playas non-jurisdictional under the Significant Nexus Test.

A potential exception to this non-jurisdictional determination could occur if the playas were within a mapped 100-year floodplain. The US Federal Emergency Management Agency does not have flood plain maps for the WCS facility site. Attachment 1 (provided on compact disk) is a flood plain study conducted by Frederick H. Haas, P.E. for WCS showing the 100- and 500-year floodplain areas. Figure 3 (attached) includes the excerpted floodplain map from this study and shows that the playas shown in Figures 1 and 2 fall outside the limits of the 100-yr floodplain for the area. In addition it also shows that the playas are outside of the limits of the 500-year and PMP floodplains. Therefore, the non-jurisdictional determination under the Significant Nexus Test should apply to all three of the subject playas.

Based upon the location and physical characteristics of the playas, together with the results of the assessment provided by Dr. Smith (Attachment 2), we request that a non-jurisdictional determination be made for these playas by the U.S. Army Corps of Engineers with respect to Section 404 of the Clean Water Act. Please contact me at 801-904-4113 if you have any questions or require additional information concerning this request.

Sincerely,



Ed Jennrich
Project Manager

Enclosures:

Figure 1 – Playa Locations

Figure 2 – Topographic Map of Project Area

Figure 3 – Localized Floodplain Map

Attachment 1 – Flood Plain Study (Appendix 2.4.1 to WCS LLRW License Application)

Attachment 2 – Playa Assessment by Dr. Loren Smith

Enclosure 2

**Description of Waste Control Specialists LLC
Andrews County, TX
Resource Conservation And Recovery Act
Permitted Area**

**Description of Waste Control Specialists LLC
Resource Conservation and Recovery Act Permitted Area
Andrews County, TX**

Site Location

The WCS land disposal facility is located approximately 31 miles west of the City of Andrews, Texas, and six miles east of the City of Eunice, New Mexico. The proposed land disposal facilities are located approximately one-half mile east of the Texas-New Mexico State boundary and one mile north of Texas Highway 176.

Figure 1 shows the 1338-acre WCS site covered by the RCRA permit that includes the proposed low-level waste facilities, the existing RCRA landfill, and the existing RCRA storage and processing facilities.

Land Use

The majority of the land within five miles of the site is used for grazing and ranching activities. Other businesses in proximity to the WCS property include Wallach Quarry, Sundance, Inc., and DD Landfarm located about one mile northwest and west of the WCS Site. The Lea County Landfill (New Mexico) occupies approximately 40 acres and is located just southwest of the WCS Site. Oil and gas wells are located to the west in New Mexico. The National Enrichment Facility is currently being constructed approximately 1 mile west of the WCS Site. The remaining land in the vicinity of the proposed Site is used for livestock grazing or is unused land.

Hydrology

The WCS Site is located in a semi-arid region. There are no perennial streams flowing through or adjacent to the site. Several surface water bodies, both ephemeral and perennial, have been identified within five miles of the facility area (Figure 2). The ephemeral water bodies include the playas shown in Figures 1 and 2, which hold surface water for short periods of time following heavy or sustained rainfall events. The playas generally retain surface water for less than two weeks. The perennial water bodies in the vicinity of the WCS Site are man-made features that retain water continuously, with the possible exception of periods of long-term drought conditions. These include stock ponds, Baker Spring Pond (a large man-made depression east of the WCS Site), and a large man-made pond ("fish pond") at the Wallach Gravel Pit. These ponds are shown in Figure 2. The fish pond at the Wallach Gravel Pit and stock ponds are artificially recharged by pumping groundwater, as encountered, from quarry excavations or other areas.

The principal surface water drainage feature on the WCS Site consists of a draw that crosses the southern portion of the Site. This draw, referred to as the ranch house drainage, crosses the WCS property about ½-mile south of the proposed facilities (see Figure 1). Most of the surface water caught by ranch house drainage is lost to infiltration in the sand dunes which encroach on the drainage in the southwest part of the Site. The ranch house drainage crosses under the access road to the southwest of the proposed facilities, then crosses under State Highway 176 (see Figure 2). After crossing the highway the drainage continues southwest towards Monument Draw in New Mexico.

Most of the storm water drainage that leaves the WCS Site flows to the south and then west in the draw described above. A small portion of the storm water that drains from the Site in the northwestern and western areas flows to the west. Drainage from a large area of the northern portion of the Site flows into the north playa (Figure 1) and does not discharge via a surface route. Figure 3 presents the drainage area map for the WCS Site and immediate vicinity. This map was used for the flood plain analysis. Figure 3 of Enclosure 1 to the April 30, 2007 letter shows that the flood plain from a 100-year storm does not encroach on the areas for the proposed facilities. Thus, the proposed facilities will not be located in a 100-year flood plain.

Ecology and Vegetation

Aquatic ecology studies have not been conducted in the Site area because there are no permanent sources of surface water. There are only occasional ephemeral sources of surface water available on or in the vicinity of the WCS Site (see Figures 1 and 2). These areas are insufficient to support aquatic species. As shown in the National Wetlands Inventory Map developed for the area by the U.S. Department of Interior, there are no perennial water bodies or wetlands present on the WCS Site, adjacent to the WCS Site, or in the vicinity of the proposed Site. Figure 4 shows the wetland locations identified on the WCS Site based on the 1990 National Wetlands Inventory Map. The locations identified on Figure 4 are identical to the north and east playas shown Figures 1 and 2.

The terrain is gently rolling and is characterized by shallow washes, some of which are bordered by trees. Soil texture ranges from clay loam to fine sand. Natural vegetation in the region consists primarily of low desert grassland with scattered shrubs and cacti. With few exceptions, the flora and fauna on and in the vicinity of the Site consists of species that occur widely throughout the region. Most of the area shows signs of current or past grazing activities. Cattle and other livestock have grazed the region in the past, when the area was primarily rangeland. The vegetation cover on the WCS Site is predominantly arid grassland with scattered shrub cover. Areas of pristine habitat do not exist on or near the WCS Site. As in other areas of desert grassland, overgrazing has reduced the importance of many native grasses and increased shrub cover. Yucca and snakeweed, which are overgrazing indicator species, are present over much of the area, as are invasive exotic weeds. Prickly pear and yucca plants were found at several locations, scattered among the sparse grasses and mesquite.

Deflation basins, or playas, are scattered throughout the region. The playas typically have an open grassy area surrounded by shrubs and forbs that are more abundant and larger but identical in kind to the plant species of the surrounding plains. The playas on the WCS Site had a denser cover of grasses and shrubs. Vegetation surveys confirmed that the WCS Site vegetation was similar in species composition and growth form to similar habitat throughout the region.

Past disturbances (e.g., grazing) and ongoing development of roads and facilities has fragmented the regional habitat and allowed invasive weed species to become established in some areas. In spite of these changes, the habitat still supports a variety of mammal, bird, and reptile species. No endangered or protected vegetation types were not identified during the 1997, 2004, or 2006 surveys conducted on the WCS Site, and none are expected to occur on Site.

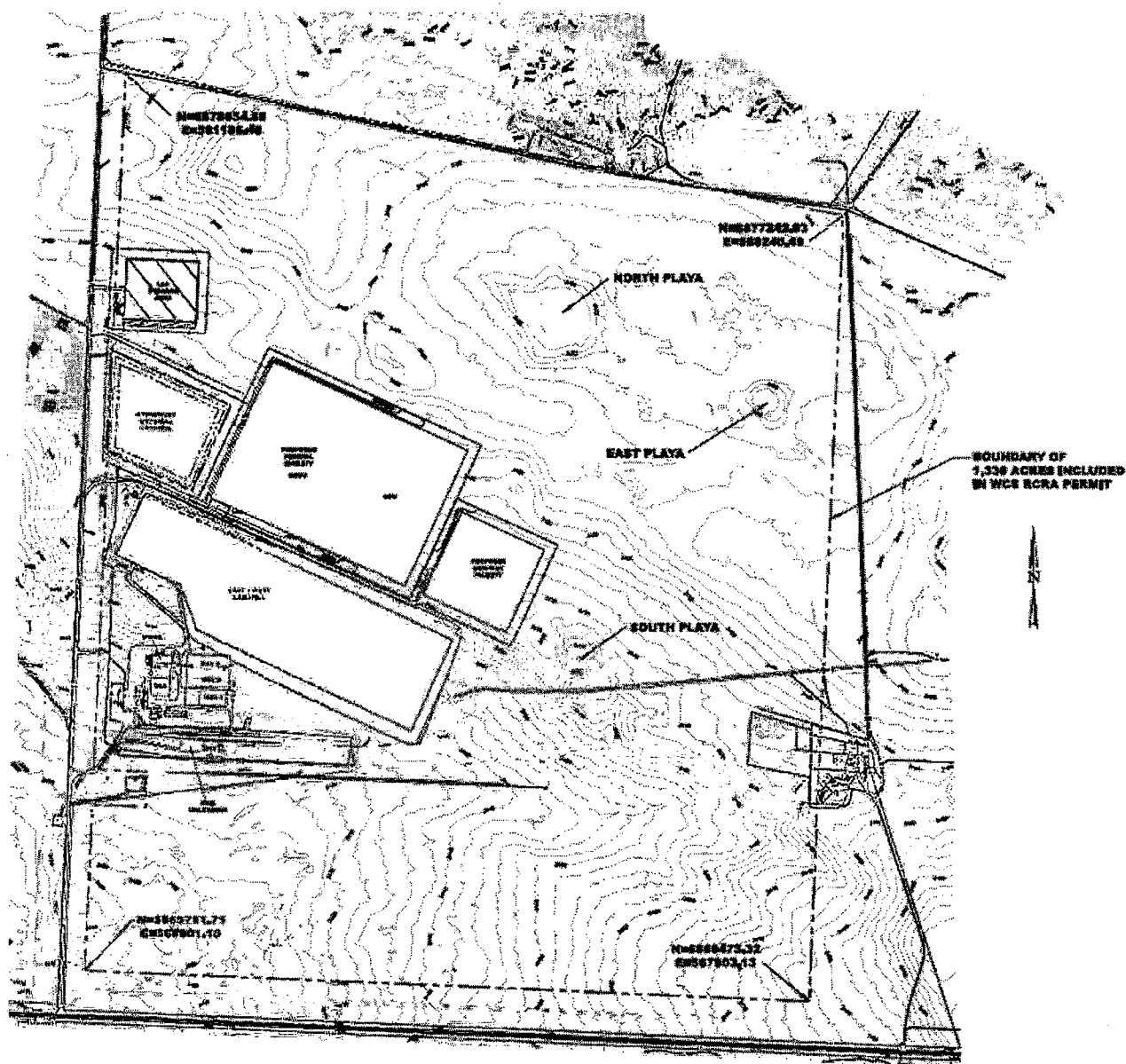
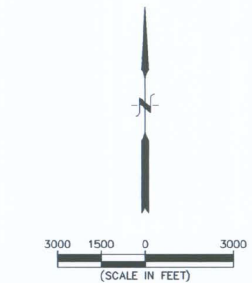
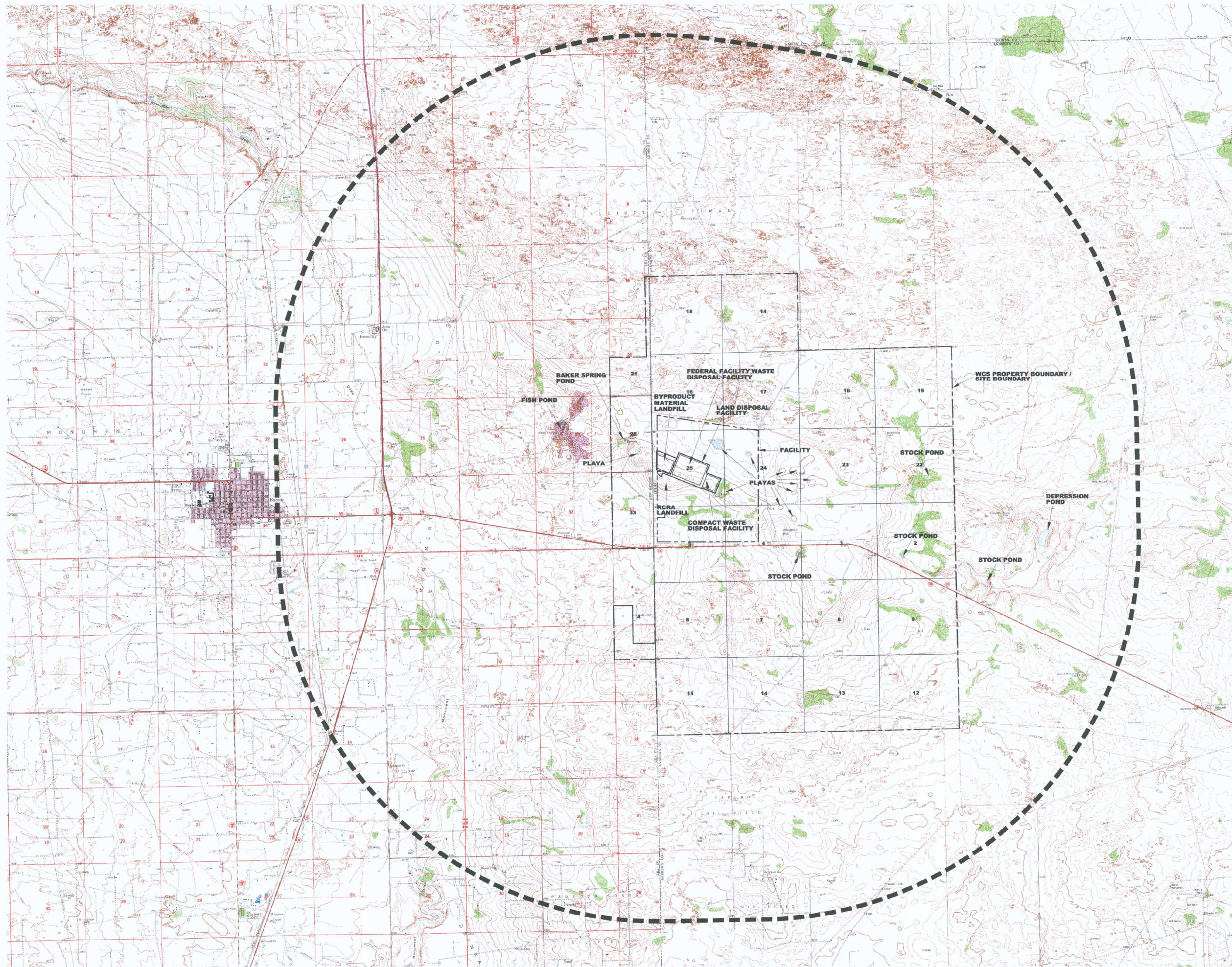


Figure 1. Boundary of WCS RCRA Permitted Area



- LEGEND**
- LAND DISPOSAL FACILITY
 - - - FACILITY
 - - - SITE BOUNDARY
 - 5 MILE RADIUS
 - 25 SECTION NUMBERS

- NOTES**
1. SITE IS EQUIVALENT TO LAND DISPOSAL FACILITIES.
 2. FACILITY IS DEFINED AT 30 TAC § 305.2(14).
 3. ALL PLAYAS OUTSIDE THE FACILITY BOUNDARY ARE NOT IDENTIFIED.

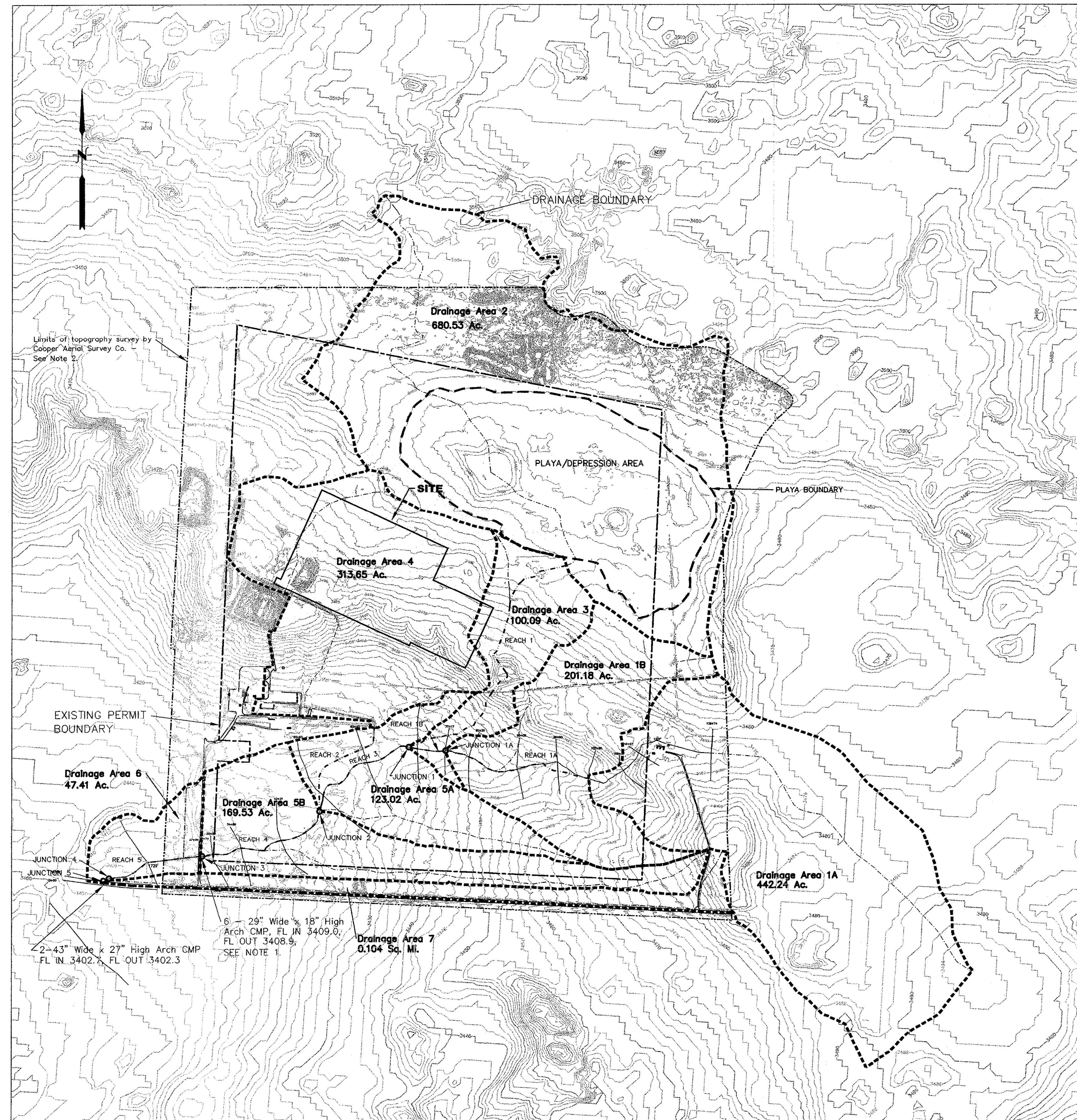
May 15, 2007 WCS Letter to USACOE
Enclosure 2 Figure 2



THIS DRAWING IS ISSUED FOR PERMITTING PURPOSES ONLY. IT IS NOT INTENDED FOR BIDDING OR CONSTRUCTION.

BASE MAP SOURCE: WWW.GEOCOMM.COM
USGS 7.5 MIN. TOPOGRAPHIC QUADRANGLE:
EUNICE NE, 1969, PHOTOREVISED 1979
FRANKLIN CITY SW, 1971
JUNIOR HILL, 1971
ERINSON RANCH, 1971
HOBBES SW, 1969, PHOTOREVISED 1979
HOBBES SW, 1969, PHOTOREVISED 1979
EUNICE, 1969, PHOTOREVISED 1979
RATTLESNARE CANYON, 1969, PHOTOREVISED 1979
EUNICE SE, 1969, PHOTOREVISED 1979

1	3/07	ADDED BYPRODUCT LANDFILL	SDB	
REV.	DATE	DESCRIPTION	DR BY	APP BY
				
COOK-JOYCE INC. ENGINEERING AND CONSULTING 612 WEST ELEVENTH AUSTIN, TEXAS 78701				
PROJECT: WASTE CONTROL SPECIALISTS LLC ANDREWS COUNTY, TEXAS				
SHEET TITLE: SURFACE WATER BODIES				
DES BY	SDB	SCALE: SEE BAR SCALE		
DR BY	SDB	PROJECT NO. 03047.05		
CHK BY	DHG	CJI NO. 03047138R12a		
APP BY	DHG	SHEETS 2 OF 2 SHEETS		
DATE ISSUED: 11-30-2005		FIGURE NO.	2.2.1-2	



LEGEND

- PLAYA AREA BOUNDARY
- DRAINAGE AREA BOUNDARY
- LIMITS OF TOPOGRAPHIC SURVEY BY COOPER AERIAL SURVEY CO.
- EXISTING PERMIT BOUNDARY
- REACH LENGTH
- TRAVEL TIME FLOW PATH
- JUNCTION

May 15, 2007 WCS Letter to USACOE
Enclosure 2 Figure 3

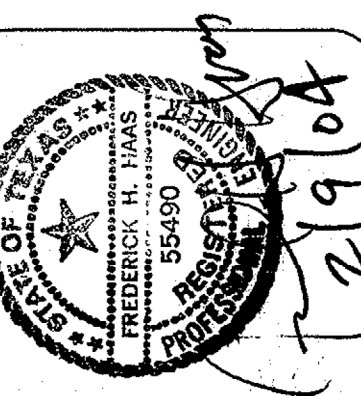


Diana S. Dvorak
10/14/04
Sealed for evidence of
addition of site
boundary.

NOTES:

- Existing pipe sizes taken from field observation. Pipe flowlines taken from Survey by West Texas Consultants, Inc., 305 NW Ave. C, Andrews, TX 79714, (915) 523-2181, Fax: (915) 524-2346, dated 10/07/96.
- Existing topographic information within the limits shown is provided by Cooper Aerial Survey Co., 11402 N. Cave Creek Road, Phoenix, AZ 85020, (602) 678-5111 Fax: (602) 678-5228, 1-800-229-2279.
- Existing topographic information outside the limits shown is based on a digital elevation model (DEM) provided by The Texas Natural Resources Information System (TNRIS).
- Permit boundary and facility information provided by Waste Control Specialists LLC.

Drainage Area Map
SCALE: 1" = 100'



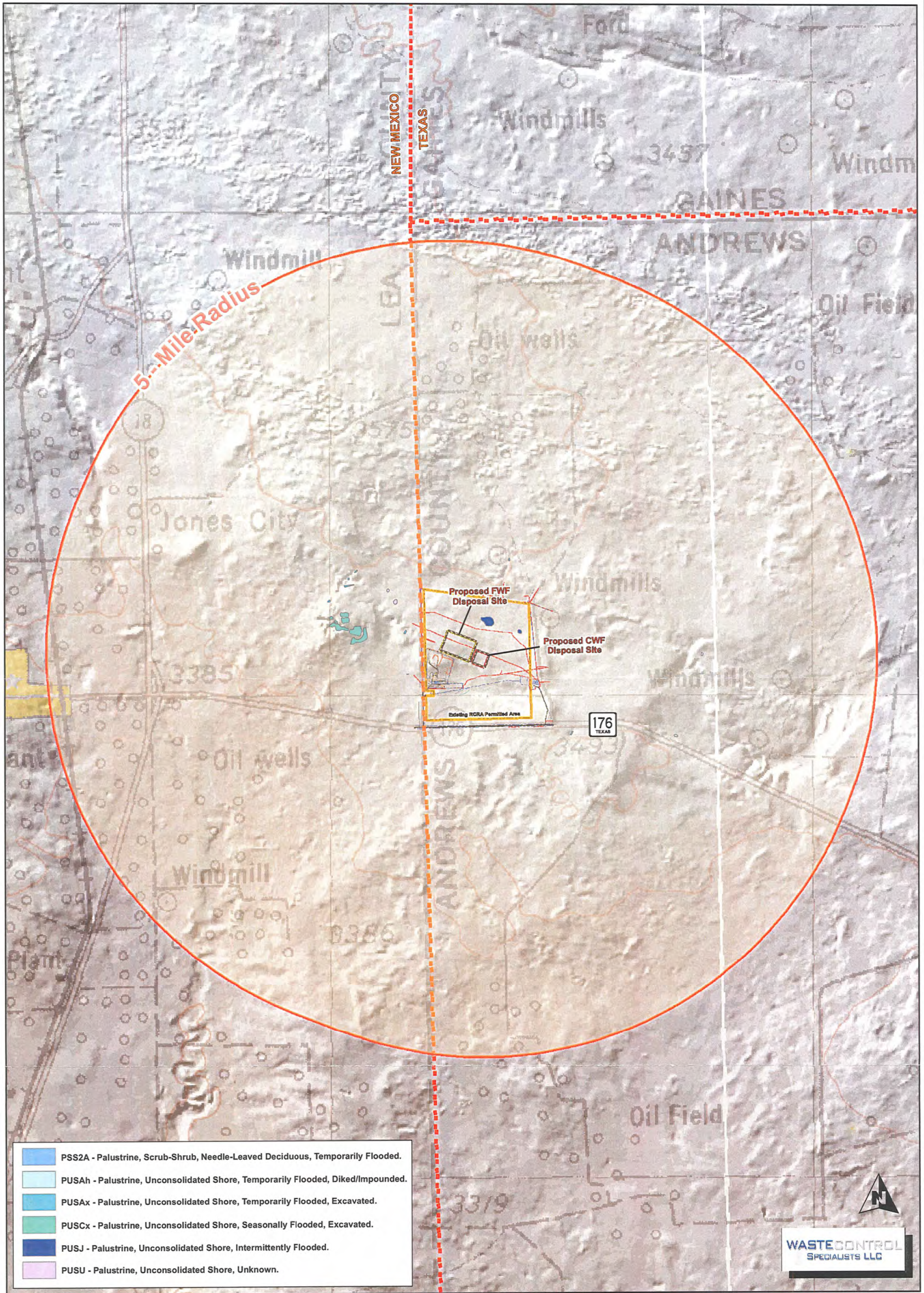
FREDERICK H. HAAS, P.E.
CONSULTING ENGINEER
52-478-8880
988 A SUMMIT BEND
AUSTIN, TEXAS 78756
FAX 512-478-8883



WASTE CONTROL SPECIALISTS LLC
Andrews County, Texas

DGD	DGD	FHH	WCS
2/09/04			DrainageMap
DRAWN BY:	DESIGNED BY:	CHECKED BY:	DATE:
REVISOR:	JOB NAME:	DRAWING NAME:	

II.F.1



Wetlands Location Map

Figure 2.4.2

May 15, 2007 WCS Letter to USACOE
Enclosure 2 Figure 4



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Austin Ecological Services Field Office

10711 BURNET ROAD, SUITE 200

AUSTIN, TX 78758

PHONE: (512)490-0057 FAX: (512)490-0974

URL: www.fws.gov/southwest/es/AustinTexas/;
www.fws.gov/southwest/es/EndangeredSpecies/lists/

Consultation Code: 02ETAU00-2015-SLI-0219

April 14, 2015

Event Code: 02ETAU00-2015-E-00178

Project Name: WCS

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that *may* occur within the county of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Please note that new information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Also note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of federally listed as threatened or endangered species and to determine whether projects may affect these species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

While a Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment, the Federal Agency must notify the Service in writing of any such designation. The Federal agency shall also independently review and evaluate the scope and content of a biological assessment prepared by their designated non-Federal representative before that document is submitted to the Service.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by a federally funded, permitted or authorized activity, the agency is required to consult with the Service pursuant to 50 CFR 402. The following definitions are provided to assist you in reaching a determination:

- *No effect* – the proposed action will not affect federally listed species or critical habitat. A “no effect” determination does not require section 7 consultation and no coordination or contact with the Service is necessary. However, if the project changes or additional information on the distribution of listed or proposed species becomes available, the project should be reanalyzed for effects not previously considered.
- *May affect, but is not likely to adversely affect* – the project may affect listed species and/or critical habitat; however, the effects are expected to be discountable, insignificant, or completely beneficial. Certain avoidance and minimization measures may need to be implemented in order to reach this level of effect. The Federal agency or the designated non-Federal representative should consult with the Service to seek written concurrence that adverse effects are not likely. Be sure to include all of the information and documentation used to reach your decision with your request for concurrence. The Service must have this documentation before issuing a concurrence.
- *Is likely to adversely affect* – adverse effects to listed species may occur as a direct or indirect result of the proposed action. For this determination, the effect of the action is neither discountable nor insignificant. If the overall effect of the proposed action is beneficial to the listed species but the action is also likely to cause some adverse effects to individuals of that species, then the proposed action “is likely to adversely affect” the listed species. The analysis should consider all interrelated and interdependent actions. An “is likely to adversely affect” determination requires the Federal action agency to initiate formal section 7 consultation with our office.

Regardless of the determination, the Service recommends that the Federal agency maintain a complete record of the evaluation, including steps leading to the determination of effect, the qualified personnel conducting the evaluation, habitat conditions, site photographs, and any other related information. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>.

Migratory Birds

For projects that may affect migratory birds, the Migratory Bird Treaty Act (MBTA) implements various treaties and conventions for the protection of these species. Under the MBTA, taking, killing, or possessing migratory birds is unlawful. Migratory birds may nest in trees, brushy areas, or other areas of suitable habitat. The Service recommends activities requiring vegetation removal or disturbance avoid the peak nesting period of March through August to avoid destruction of individuals, nests, or eggs. If project activities must be conducted during this time, we recommend surveying for nests prior to conducting work. If a nest is found, and if possible, the Service recommends a buffer of vegetation remain around the nest until the young have fledged or the nest is abandoned.

For additional information concerning the MBTA and recommendations to reduce impacts to migratory birds please contact the U.S. Fish and Wildlife Service Migratory Birds Office, 500 Gold Ave. SW, Albuquerque, NM 87102. A list of migratory birds may be viewed at <http://www.fws.gov/migratorybirds/RegulationsPolicies/mbta/mbtintro.html>. Guidance for minimizing impacts to migratory birds for projects including communications towers can be found at: <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm>; and <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html>. Additionally, wind energy projects should follow the wind energy guidelines (<http://www.fws.gov/windenergy/>) for minimizing impacts to migratory birds and bats.

Finally, please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), and projects affecting these species may require development of an eagle conservation plan (http://www.fws.gov/windenergy/eagle_guidance.html).

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment



United States Department of Interior
Fish and Wildlife Service

Project name: WCS

Official Species List

Provided by:

Austin Ecological Services Field Office

10711 BURNET ROAD, SUITE 200

AUSTIN, TX 78758

(512) 490-0057

<http://www.fws.gov/southwest/es/AustinTexas/>

<http://www.fws.gov/southwest/es/EndangeredSpecies/lists/>

Consultation Code: 02ETAU00-2015-SLI-0219

Event Code: 02ETAU00-2015-E-00178

Project Type: Land - Disposal / Transfer

Project Name: WCS

Project Description: Disposal of low-level radioactive waste

Please Note: The FWS office may have modified the Project Name and/or Project Description, so it may be different from what was submitted in your previous request. If the Consultation Code matches, the FWS considers this to be the same project. Contact the office in the 'Provided by' section of your previous Official Species list if you have any questions or concerns.



United States Department of Interior
Fish and Wildlife Service

Project name: WCS

Project Counties: Andrews, TX



United States Department of Interior
Fish and Wildlife Service

Project name: WCS

Endangered Species Act Species List

There are a total of 5 threatened or endangered species on your species list. Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. Note that 3 of these species should be considered only under certain conditions. Critical habitats listed under the **Has Critical Habitat** column may or may not lie within your project area. See the **Critical habitats within your project area** section further below for critical habitat that lies within your project. Please contact the designated FWS office if you have questions.

Birds	Status	Has Critical Habitat	Condition(s)
Least tern (<i>Sterna antillarum</i>) Population: interior pop.	Endangered		Wind Energy Projects
Lesser prairie-chicken (<i>Tympanuchus pallidicinctus</i>)	Threatened		
northern aplomado falcon (<i>Falco femoralis septentrionalis</i>) Population: Entire, except where listed as an experimental population	Endangered		
Piping Plover (<i>Charadrius melodus</i>) Population: except Great Lakes watershed	Threatened	Final designated	Wind Energy Projects
Red Knot (<i>Calidris canutus rufa</i>)	Threatened		Wind Energy Projects



United States Department of Interior
Fish and Wildlife Service

Project name: WCS

Critical habitats that lie within your project area

There are no critical habitats within your project area.



COX | McLAIN Environmental Consulting

TRANSMITTAL MEMO

Cox | McLain Environmental Consulting, Inc.

6010 Balcones Drive, Suite 210
Austin, TX 78731
www.coxmclain.com
(512) 338-2223

To: Tiffany Osburn, THC

CC: Scott Kirk, WCS

From: Chris Dayton, CMEC

Date: 07/02/15

RE: Draft Report Submittal: *Intensive Archeological Survey of the Proposed Waste Control Specialists Spent Nuclear Fuel Consolidated Interim Storage Facility, Andrews County, Texas* (NRC)

RECEIVED
JUL 02 2015

Dear Ms. Osburn:

Please find enclosed one (1) unbound copy of the draft report *Intensive Archeological Survey of the Proposed Waste Control Specialists Spent Nuclear Fuel Consolidated Interim Storage Facility, Andrews County, Texas*. The work was carried out under Texas Antiquities Permit 7277 and Section 106 of the National Historic Preservation Act, as amended.

The archeological area of potential effects (APE) consists of the 216.6-acre footprint of the proposed facility. The APE was found to be heavily disturbed by recent grading and road construction and also contained ubiquitous evidence of chaining, root-plowing, and/or brush-hogging in the last several decades, likely related to the parcel's previous use for livestock ranching. The survey consisted of pedestrian examination due to the extent of previous disturbance, the lack of alluvial or dune deposits in the APE, and the high visibility of the ground surface. No archeological materials of any kind were observed within the APE, and no further work is recommended within the APE prior to the construction of the proposed storage facility.

Please do not hesitate to call or email if you have any questions or comments.

Sincerely,

Chris Dayton, PhD, RPA
chris@coxmcclain.com
(512) 338-2223





Susana Martinez
Governor

STATE OF NEW MEXICO
DEPARTMENT OF CULTURAL AFFAIRS
HISTORIC PRESERVATION DIVISION

BATAAN MEMORIAL BUILDING
407 GALISTEO STREET, SUITE 236
SANTA FE, NEW MEXICO 87501
PHONE (505) 827-6320 FAX (505) 827-6338

August 12, 2015

Emily Reed
Cox/McLain Environmental Consulting
6010 Balcones Drive New Mexico State Parks Division *Sk 210*
~~1220 South St. Francis Dr.~~ *Austin, TX 78731*
~~Santa Fe, NM 87501~~

RE: Consolidated Interim Spent Fuel Storage Facility (HPD log 101784)

Dear Ms. Reed,

On behalf of the New Mexico State Historic Preservation Officer (NMSHPO) I have completed a review of the information provided by Cox/McLain Environmental Consulting concerning the Consolidated Interim Spent Fuel Storage Facility in Andrews County, Texas. The NMSHPO appreciates your efforts to provide us with this information and to comment on the project's potential to affect historic properties in New Mexico. This letter provides NMSHPO comments for the project.

The SHPO concurs that no additional cultural resources identification efforts are needed for this undertaking with the condition that all new ground-disturbing and construction activities are confined to Texas. If, however, any construction related ground- disturbances such as staging areas, equipment or materials storage yards, or access roads are needed in New Mexico, then a cultural resource survey will be required to identify and evaluate historic properties in the area of potential effects.

If you have any questions or comments, please feel free to call me directly at (505) 827-4225 or email me bob.estes@state.nm.us.

Sincerely,

Bob Estes Ph.D.
HPD Staff Archaeologist



May 5, 2015

FORBES
Sarah Birtchet
Texas Historical Commission
History Division
P.O. Box 12276
Austin, TX 78711

NO HISTORIC
PROPERTIES AFFECTED
PROJECT MAY PROCEED

by 
for Mark Wolfe
State Historic Preservation Officer
Date 6/1/15

MAY 06 2015

**Re: Project Review under Section 106 for a Proposed Consolidated Interim Spent Fuel Storage Facility
in Andrews County, Texas**

FORBES
Dear Ms. Birtchet:

Waste Control Specialists LLC (WCS) intends to file an application for a license for the independent storage of spent nuclear fuel and reactor-related, greater-than-Class C wastes at a site in western Andrews County, Texas (see **Figure 1**, attached). These activities are regulated by the U.S. Nuclear Regulatory Commission (NRC); the project is therefore subject to Section 106 of the National Historic Preservation Act. This letter addresses historic resources; archeological resources are being coordinated under separate cover. The site is in the northwestern-most corner of Andrews County and is immediately adjacent to the Texas/New Mexico state line; this project is also being shared with the New Mexico State Historic Preservation Office (SHPO).

A previous license for disposal of low-level radioactive waste on the WCS complex was coordinated with the Texas Historical Commission (THC) and the New Mexico SHPO in 2006. The THC and New Mexico SHPO concurred that there would be no historic properties affected on July 20, 2006, and July 21, 2006 respectively.

Project Description

WCS is requesting authorization from the NRC to construct and operate a Consolidated Interim Spent Fuel (CISF) storage facility for spent nuclear fuel on approximately 100 acres of land within the approximately 14,000-acre complex owned by WCS (see **Figure 2**). The project is located in a remote area approximately five miles east of Eunice, New Mexico and north of Highway 176 (also named Highway 87). The area is surrounded by a high density of oil wells to the west and some oil wells to the north; there is little development to the south and east, excluding portions of the existing WCS facility. Operations at the WCS facility began in 1994; none of the development is historic-age.

The proposed facility would house a dry cask storage system. WCS is exploring several different options for the system. One option would be an above-ground system utilizing several low-rise buildings (see **Figure 3**), while another option would store the casks underground. Both the above-ground and below-ground design options are assumed to require the presence of a crane approximately 60 feet in height during the operating license timeframe.

Historic Resources Area of Potential Effect

The Area of Potential Effect (APE) for direct impacts is proposed as the project footprint (see **Figure 4**). Taking into consideration the height of the crane that would be required, the height of the potential above-ground facility, and the relatively flat surrounding terrain, the APE for indirect/visual impacts is



proposed as a one-mile radius from the proposed project footprint (see **Figure 4**). WCS anticipates that the NRC will issue a Final Environmental Impact Statement and License by April 1, 2019. Therefore, a historic-age date of 1974 (45 years prior to 2019) is proposed.

According to a search of the digital Sites Atlas maintained by the THC, no known historic cemeteries, Official State Historical Markers (OSHM), State Antiquities Landmarks (SALs), or properties or districts listed on the National Register of Historic Places (NRHP) are located within the APE for direct or indirect impacts. The nearest previously identified resource is the OSHM for Andrews County, located approximately 17 miles southeast of the project area.

Adjacent to the WCS facility to the west is a large uranium enrichment plant called the National Enrichment Facility, operated by Urenco. This facility was developed within the past 15 years. The proposed project area is located in a very remote area of Texas with little development aside from the non-historic age WCS and Urenco facilities. The proposed project would not result in a direct effect to any historic resources. There do not appear to be any historic resources 45 years or older (dating to 1974 or earlier) within the one-mile indirect effects APE.

The nearest developed area is Eunice, New Mexico, which is located approximately five miles west of the proposed site. There are two large visual obstructions between viewers in Eunice and the proposed crane at the site: red soil mounds approximately 100 feet in height on WCS property, and the Urenco facility (see **Figure 5**). Based on information from WCS, the soil mounds will be in place indefinitely or potentially utilized as fill. As illustrated in **Photos 3-5** in the attached photo sheets, the red soil mounds and the Urenco facility are visible from the outskirts of Eunice but tend to dissolve visually into the horizon. Excluding the crane, the CISF storage facility would be approximately 30 feet above the surface and less visible from Eunice than existing features and structures.

Request for Concurrence

It is the professional opinion of CMEC cultural resources personnel that further historic resources investigations are not warranted prior to construction. We ask for your concurrence with this finding.

Should you have any questions, please contact me at EmilyR@coxmcclain.com or 512-338-2223.

Sincerely,

Emily Reed, Architectural Historian
Cox|McLain Environmental Consulting, Inc.

Attachments

- Figure 1: General Project Location Map
- Figure 2: Detail Facility Map
- Figure 3: Potential CISF Storage Facility Site Design Renderings
- Figure 4: Proposed APE for Historic Resources
- Figure 5: Viewshed Analysis
- Contextual Photographs