



**Department of Energy**

Washington, DC 20585

January 30, 1998

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Merilyn B. Reeves, Chair  
Hanford Advisory Board  
Technical Resources International, Inc.  
723 The Parkway, Suite 200  
Richland, WA 99352

Dear Ms. Reeves:

Secretary Peña asked me to respond to the concerns you raised in your letter of November 7, 1997, regarding the *Waste Control Specialists* litigation. The Department of Energy (DOE) shares your concern that the preliminary injunction entered in this litigation inappropriately interferes with DOE's ability to work with States and others to determine whether the Department should regulate commercial disposal facilities. In addition, the injunction threatens to delay the cleanup of radioactively contaminated sites throughout the nation.

The Department of Energy and the Department of Justice believe that the district court that entered this injunction erred in its interpretation of the laws governing the Department's procurement and policy-making processes. In order to address the threats posed by the injunction to the cleanup of radioactive contamination and DOE's ability to make informed policy decisions, the Department of Justice filed an appeal of the court's decision on November 26, 1997. On December 19, 1997, the government filed its opening brief with the Court of Appeals for the Fifth Circuit and asked that court to expedite its hearing and disposition of DOE's appeal of the preliminary injunction. The Fifth Circuit granted the government's motion to expedite the appeal and ordered the parties to file their remaining briefs with the court by February 3, 1998.

A decision by DOE to regulate commercial disposal facilities would represent a significant change in its policy, one that the Department would not undertake unless and until it had fully analyzed all aspects of such a policy and determined that DOE could regulate such facilities in a manner acceptable to the States and the public. The Department has not made a proposal to regulate commercial sites; Waste Control Specialists has and the Department is considering it. If DOE decides to pursue this proposal, the Department would certainly solicit comments from all interested parties before making a decision, probably as part of an analysis under the National Environmental Policy Act.



Let me assure you that the Department takes these issues very seriously and will not make a decision without sufficient analysis as to whether the Department should regulate commercial disposal facilities.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized initial 'E' followed by a series of loops and a long horizontal stroke extending to the right.

Eric J. Fygi  
Acting General Counsel