

Cause No. 18,005

WASTE CONTROL
SPECIALISTS, LLC

Plaintiff,

V.

ADAM GREENWOOD, et al.

Defendants.

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IN THE DISTRICT COURT OF

ANDREWS COUNTY, TEXAS

109TH JUDICIAL DISTRICT

Affidavit of Glenn Lewis

STATE OF TEXAS

COUNTY OF TRAVIS

Before me, the undersigned notary, on this day personally appeared Glenn Lewis, a person whose identity has been made known to me. After I administered an oath to him, and upon his oath, he declared:

1. "My name is Glenn Lewis. I am over 18 years of age, of sound mind. I have never been convicted of a felony or crime involving moral turpitude, and I am otherwise competent to make this affidavit. All facts in this affidavit are within my personal knowledge and are true and correct.
2. I currently reside at 9405 San Diego Road, Austin, Texas 78737.
3. I graduated from the University of Houston in 1975 with a degree in journalism.
4. I worked as a reporter for *The Houston Post* from 1975 until 1990. I left the *Post* to join *The Austin-American Statesman*, where I worked for approximately 18 months. I left the *Statesman* after being asked to rewrite a story I had submitted about that was deemed to be too critical of a mayoral candidate. I viewed this request as improper because it asked me to compromise my journalistic integrity, so I resigned from the *Statesman*.
5. I joined the Texas Commission on Environmental Quality, or TCEQ, in the early 1990s, probably 1991 or 1992 (I am not sure of the precise date, but the precise date is not important for this affidavit). I worked as a spokesman and public affairs officer at TCEQ, and in that capacity spoke, wrote, and published on behalf of the agency. I started as Manager of Media Relations, and then transferred to field operations as a director of leadership training. I did this for about twelve years. I then was a policy analyst and a member of the advisory team to the commissioners on strategic planning, where we analyzed various

environmental issues and advised the commissioners. I then worked on the WCS application.

6. An example of the work I did is the article, "From the Trees to the Forest," which was published in the Spring 1999 issue of the Texas Natural Resource Conservation Commission's press releases. It can be found, *inter alia*, on an official State of Texas website for the TCEQ, and is available at http://www.tceq.state.tx.us/assets/public/comm_exec/pubs/pd/020/99-02/forest.pdf A true copy is attached as **Lewis Exhibit 1**.
7. During the period of my employment with TCEQ, I was responsible for issuing press releases, drafting internal memoranda, and otherwise converting the TCEQ's scientific and technical nomenclature and terms into plain-English language that most lay people could understand.
8. During my tenure at the TCEQ, I worked closely with geologists, engineers, and scientists responsible for formulating environmental policies, investigating environmental disputes, and determining matters that affected environmental in the State of Texas, including water quality.
9. The purpose of disposing of radioactive waste by burial is to prevent the contamination of the environment, including water. The ideal underground storage site for radioactive material would be dry and stable (*i.e.*, no earthquakes). The presence of groundwater in a proposed storage site for radioactive material is important because the radionuclides can travel with the water and leak outside of their storage container.
10. I came to be the technical editor on the team responsible for reviewing the application for a low-level radioactive waste license filed by Waste Control Specialists, LLP, or WCS. Among the team members were Peter Lodde, Bruce Calder, Abel Porras, and Roger Dockery. Peter Lodde and Abel Porras are engineers, and Bruce Calder and Roger Dockery are geologists. These were the team members who evaluated the geology of the site, although there were others on the team. The team spent four years reviewing the WCS application for a low-level radioactive waste storage facility. A separate team reviewed WCS's application for a byproducts license.
11. The team was unanimously disappointed with the content and organization of the application submitted by WCS. As the application grew, through numerous revisions, to more than 10,000 pages, many critical issues, including site geology remained unresolved.
12. The proposed disposal site is required to sequester radioactive materials with half-lives as long as 50,000 years. It is a tenet of federal and state law, rules and guidance that intrusions of water into buried radioactive waste be avoided. The intrusion of water greatly enhances the likelihood that radioactive isotopes will escape confinement and pose an exposure risk to the environment.

13. At the time WCS submitted its original application, the company claimed that ground water was protected by hundreds of feet of intervening impermeable clay.
14. At the time of the submission of the WCS application, the TCEQ team of which I was a member was aware, through Texas Water Development Board maps and geological records on file with TCEQ and the Texas Water Development Board that the Ogallala Aquifer was one of several aquifers in the immediate vicinity, if not directly underneath, the proposed WCS disposal site in Andrews County. The Ogallala Aquifer is the largest aquifer in the United States. The TCEQ team noted throughout its review that WCS, as applicant, refused to reference the proximity of the Ogallala Aquifer. Instead it referred an aquifer called the OAG. The "O" in OAG means Ogallala.
15. Glenn Shankle was the executive director of the TCEQ throughout the review of WCS's application.
16. Susan Jablonski became the director of the Radioactive Materials Division during the WCS application process. Prior to that time, Ms. Jablonski was a technical advisor to the TCEQ review team. It is my understanding Ms. Jablonski helped draft the legislation that made WCS the only company that met the qualifications to submit an application to import and bury radioactive waste in Texas.
17. It was known by the TCEQ team of which I was a member that WCS was a major political contributor to Governor Perry and President Bush and there was an expectation among TCEQ's management, and WCS, that a license ultimately would be issued. This expectation was continually made evident to me and other members of this TCEQ reviewing team even though this TCEQ team was concurrently told that a recommendation for either issuance or denial of the license was expected.
18. The decision to issue a license or grant an application is made by a three-member TCEQ commission. The commission hears from all interested parties, including the staff. The executive director makes the recommendation on behalf of the staff, but he is not obligated to follow his staff's advice. Normally, the three-member commission will rely heavily upon the executive director's recommendation.
19. Federal and state law requires that a potential radioactive waste storage site be characterized and characterizable. Most license applicants characterize their sites prior to applying for a license. In this case, WCS had purchased the land before it applied for the license, and is still attempting to adequately characterize the site.
20. My TCEQ team relied upon data submitted by WCS. The TCEQ team of which I was a member also relied upon analyses performed by the Texas Bureau of Economic Geology, which were frequently critical of data submitted by WCS in its application.

21. One of the defects in the initial application was that WCS had not accurately determined how close the groundwater was to their proposed disposal facility. There were always water tables in the vicinity of their proposed waste storage facility. The issue was immediacy. How close to the site were the water tables? WCS claimed that there were hundreds of feet of impenetrable red bed clay between the site and the nearest groundwater. The TCEQ team of which I was a member requested that WCS provide additional information to determine the exact boundaries of these water tables. As the information kept coming in, the water table boundary kept creeping closer and closer to the proposed storage site. Eventually, the TCEQ team of which I was a member concluded that a mere 14 feet separated the water table from the proposed storage facility. This TCEQ team concluded that 14 feet was too close for a facility that must contain waste for 50,000 years.
22. One of the aquifers impinging on the WCS site is the OAG formation, which includes the Ogallala. The TCEQ team (of which I was a member) found groundwater from the OAG and Dockum water tables impinging on WCS's site.
23. After discovering that two water tables threatened the integrity of the proposed facility, the TCEQ team of which I was a member unanimously concluded that WCS's license should not be issued because the geology of the site was incompatible with protecting the environment from radiation exposure.
24. My team scheduled a meeting with Dan Eden, who was a TCEQ deputy director at that time, and Stephanie Bergeron Perdue, who was the TCEQ's general counsel, to share our concerns. Several members of the TCEQ team of which I was a member spoke at this meeting, which lasted about one hour, and voiced the opinion that the geology of the site was unsuitable for the storage of radioactive materials. One reason was a very real probability of ground water intruding into the facility. I specifically remember TCEQ team member Peter Lodde saying that, if one were to stand on the floor of the proposed facility, a "wall of water" would come from three directions toward you. At the conclusion of this meeting, I overheard Dan Eden tell Stephanie Bergeron that TCEQ had to find a way to issue this license. I was stunned, as we had just spent an hour explaining why this site simply would not work.
25. The critical piece in the puzzle is the geology of the site. Other defects with the application, such as liner specifications, or monitoring protocols, potentially can be addressed through special license conditions, but the geology of the site cannot be altered. Suitable geology is the key to safe isolation of radioactivity for tens of thousands of years. The TCEQ team of which I was a member communicated this very clearly to TCEQ management.
26. On August 14, 2007, after receiving reports from my fellow TCEQ team members who shared responsibility for reviewing the geology of the proposed WCS site, I prepared a memorandum to Susan Jablonski, through Devane Clarke, Manager, RML Team. A true copy is attached as **Lewis Exhibit 2**. This memo formally

advised TCEQ management of fatal flaws in the application (*i.e.*, the geology) that were deemed by the TCEQ team to be uncorrectable by special license conditions. Preparation of this memorandum fell within the course and scope of my employment at TCEQ on the team reviewing the WCS license application.

27. This memorandum stated that, "Groundwater is likely to intrude into the proposed disposal units and contact the waste from either or both of two water tables near the proposed facility. WCS "has failed to successfully use numerical modeling to predict the future location of one water table that is expected to intrude into radioactive waste." Therefore, the memorandum concluded that WCS "has not demonstrated that the site is suitable for near-surface disposal of radioactive waste." Because of the likelihood that groundwater would intrude into the proposed disposal units, there was an increased risk that the public would be exposed to radioactive material in their drinking and agricultural water. For these reasons, "technical staff recommends denial of license issuance." I have reviewed **Lewis Exhibit 2**, the litigation document Bates-labeled GREENWOOD 002571 – 72, and it is a true and correct copy of that memorandum. I can also identify the handwriting on the front page as the initials of Devane Clark, Peter Lodde, Bruce Calder, Abel Porras, and Roger Dockery. Each of the four TCEQ team members initialed the memorandum next to his name. I believed every word in this memorandum when I wrote it, and I still believe these statements to be true today.
28. Shortly after delivering the August 14, 2007 memorandum, **Lewis Exhibit 2**, Dan Eden and Susan Jablonski officially informed the team that Executive Director Glenn Shankle had decided to support issuance of a license to WCS. Acting as spokesman for the TCEQ team of which I was a part, all of whose members were present at that meeting, I informed Mr. Eden that the team unanimously opposed issuance of a license to WCS. I also reminded Mr. Eden that no license condition could correct the geologic flaws of the proposed site. In response, Mr. Eden and Ms. Jablonski informed the team that WCS executives were inpatient to receive a draft license for its review and that it required a public comment period during the up-coming Christmas holiday so that public attention might be diverted away from examination and comment about the proposed WCS license. The meeting culminated in the instruction to begin drafting the license immediately. The team worked overtime for two straight days to draft the license, without my assistance. I declined to work on the draft license because I knew that it was unjustified. Susan Jablonski tendered the draft license to WCS on a Saturday, which is highly unusual in my experience, for their review.
29. I resigned rather than continue working on this project. Two other TCEQ employees, Patricia Bobeck and Encarnacion "Chon" Serna, had previously resigned. Patricia Bobeck reviewed WCS's application for a proposed radioactive byproducts waste facility license immediately adjacent to the site of WCS's low level disposal facility site. Mr. Serna worked on the low level waste facility license with me. They resigned rather than continuing to work on the projects.

30. I understand from press reports that, in January 2009, six months after stepping down as the executive director of the Texas Commission on Environmental Quality, Glenn Shankle became a lobbyist for WCS. When Mr. Shankle left TCEQ in June 2008, the agency was readying, per his orders, two licenses authorizing WCS to bury millions of cubic feet of radioactive waste.
31. Since resigning from the TCEQ, I have spoken to numerous news agencies and media outlets to express my concerns about the danger to the public posed by the WCS facility in Andrews County and testified before the legislature. I have stated on numerous occasions that my team unanimously concluded that the site of WCS's facility in Andrews County is unsuitable for the disposal of low-level radioactive waste and that there is a continuing and serious risk of groundwater contamination. I have reviewed the following statements attributed to me and I now confirm their accuracy:
- "All of our time has been wasted. We've all been played for suckers, we've all been pointless impediments to a process that resulted in issuing this license from the first day." A true copy, produced in litigation as GREENWOOD 000019, appears as **Lewis Exhibit 3**.
 - "While WCS claims that hundreds of feet of red clay as well as man-made barriers sit between the dump and the water, Lewis maintains that the groundwater may in fact be as close as 14 feet from the bottom of the proposed dump." This language appears in the litigation document marked GREENWOOD 000019. A true copy appears as **Lewis Exhibit 3**.
 - "Glenn Lewis, 61, a former technical writer with the Texas Commission on Environmental Quality, said geologists studying the site had recommended Waste Control not be licensed to dispose of the low-level radioactive waste after discovering problems with the clay, including holes and fissures of various widths. The 'geology is awful. It leaks,' said Lewis, who compiled the geologists' findings. He called the site 'irredeemably inadequate' for radioactive waste." This language appears in the litigation document marked GREENWOOD 000036. A true copy, produced in litigation as GREENWOOD 000036, appears as **Lewis Exhibit 4**.
 - "Another aquifer, the Santa Rosa, is near the site. People don't drink the Santa Rosa's brackish water, but it is used to water livestock, which could transfer PCBs to the human food chain in the event of a leak, Lewis said." This language appears in the litigation document marked GREENWOOD 000036. *See Lewis Exhibit 4*.
 - "One of those whistleblowers, Glenn Lewis, testified at the hearing. 'The reason I urge support for this bill is not out of an abundance of caution but for mitigation of a shocking lack of caution so far,' said Lewis. 'I say that because I was on the team that unanimously rejected the issuance of a

license for this facility. It was not even close. Those people who spent four years of their lives looking at an application that came to be 35 three-inch-wide volumes ... they said the site was not suitable.... The [Waste Control disposal] license was issued with more than 90 license conditions,' said Lewis. 'Not one license condition can change the geology of that site... They can't change the one thing that sequesters the radioactive waste for up to 50,000 years – that's the dirt that's on the site. They can't build anything; they can't make it out of titanium; they can't do anything to make it better than it is right now in terms of safely containing those wastes. We are talking about wastes that although they are called low-level, they are in no sense low radioactivity, many of them. Many of these wastes will take tens of thousands of years to attenuate.... We're not talking about shop rags. It does seem to me given the thousands of years to render these wastes safe that any decision about what waste and who will supply those wastes to that facility ought to be taken with extreme caution." This language appears in the litigation document marked GREENWOOD 000072. A true copy, produced in litigation as GREENWOOD 000072, appears as **Lewis Exhibit 5**.

- "The issue of groundwater contamination appears cut and dry to Glenn Lewis as he fields questions from a rocking chair in his Austin home. 'That is simply not a good site. Everybody on the team knows it's not. Management has been repeatedly advised that it's not and I have no idea what the good folks of Andrews County have been told about it,' Lewis said.... 'We were all assembled in a room with the Assistant Executive Director and the Division Director. They said it had been decided by the Executive Director Glenn Shankle,' Lewis said. 'On behalf of the team I told them how disappointed we were to hear it officially even though we knew it was inevitable and I thought the agency would expose itself to ridicule if they continued.... Is it really worth taking a chance on the water that is there forever?' Lewis asked. 'So a company can make money now and hire maybe ten or fifteen people?'" This language appears in the litigation document marked GREENWOOD 000106-111. A true copy, produced in litigation as GREENWOOD 000106-07, appears as **Lewis Exhibit 6**.
- " 'It's not like modeling clay that it will contain water if you make a bowl out of it [referring to the red bed clay at the site]. It's dry... and you can crush it with your hands,' Glenn Lewis said." This language appears in the litigation document marked GREENWOOD 000108. See GREENWOOD 000108-109 in **Lewis Exhibit 6**
- "The one thing that can not be addressed by a license condition is geology,' Lewis told News West 9." This language appears in the litigation document marked GREENWOOD 000108-09. See **Lewis Exhibit 6**.

- “Former staffer in the radioactive materials division of TCEQ, Glenn Lewis, said that he assisted in characterizing the site for four years while the license process went through ‘at least’ 14 revisions. Despite his group’s finding that the site was unsuitable, and the two largest Notice of Deficiencies ever issued by the agency, Lewis said ‘there was the expectation clearly communicated four years ago that these licenses would ultimately be granted. Once it became clear that the geology was deficient ... that the site was so profoundly deficient, we thought somehow that would be the stake through the heart.’” This language appears on pages 000120-21 in the litigation document marked GREENWOOD 000115--26, a true copy of which is identified here as **Lewis Exhibit 7**.
- “The issues are so clear and have been expressed so directly to [the TCEQ] that I can’t think of any scenario that allows me to comment on how they would come to this conclusion, other than there is too much money on the table, there is too much political influence in the air and they can’t say anything but yes,’ former TCEQ staff member Glenn Lewis said. Lewis says team members at TCEQ expected the license to move through despite their concerns.” This language appears on page 000128 in the litigation document marked GREENWOOD 000127-130, a true copy of which is identified here as **Lewis Exhibit 8**.
- “The move [to issue WCS the licenses] so upset [Shankle’s] staff that three of them quit in protest. One of them, Glenn Lewis, who coordinated one of the license review teams, reacted with disgust and anger when told yesterday that Shankle was lobbying for Waste Control. ‘Even the Mafia was more circumspect than this,’ Lewis said. ‘To find out now that Mr. Shankle – who was in constant communication with WCS throughout this ordeal – now is on retainer for [WCS] is shocking in that it is so brazen and such an insult to everybody who worked on that application. It just shows that any objective appraisal by the TCEQ was from its inception a fantasy and that big money and a lot of political power won once again.... They should have just issued the license the day after it was received and saved everybody a lot of trouble.’” This language appears in the litigation document marked GREENWOOD 000132--36, at pages 000134-35, a true copy of which is identified here as **Lewis Exhibit 9**.
- “It was obvious from the beginning that the enabling legislation was written for the benefit of, and largely by, this applicant,’ Lewis said. ‘That raised immediate concerns about how objective a review of the application could possibly be.’” This language appears in the litigation document marked GREENWOOD 000188-194, at 000192, a true copy of which is identified here as **Lewis Exhibit 10**.
- “In September, the two TCEQ teams working on Waste Control’s applications gathered to rehearse a presentation they would be giving to Executive Director Shankle later that day. ‘The entire gist was to

communicate the impossibility of licensing either facility,' said Lewis, who resigned in December. 'As we were adjourning, [Deputy Director] Dan Eden remarked to [TCEQ attorney Stephanie Bergeron Perdue], "We have to find a way to issue a byproduct license." This was after an hour-long presentation on why it would be unwise to issue a license for either the byproduct or the low-level application.'" This language appears in the litigation document marked **Lewis Exhibit 10** at GREENWOOD 000194.)

- "In late October, Susan Jablonski acknowledged in writing to senior management in the agency that faulty site conditions exist and that they cannot be corrected through license conditions,' said Lewis, the former staffer. 'What is baffling is that Ms. Jablonski – at the same time acknowledging the inherent impossibility of correcting a bad application – still pledged to support whatever nonsensical recommendation her boss may decide to pursue.'" This language appears in the litigation document marked **Lewis Exhibit 10** at GREENWOOD 000194.

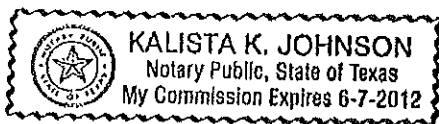
32. I reaffirm the truth of these statements.
33. I believe that Adam Greenwood has every reason to be concerned about the potential for contamination of the Ogallala Aquifer. I and my team are concerned that the WCS facility threatens to contaminate groundwater and that the geology of the site is unsuitable for long-term disposal of low-level radioactive waste.
34. Bruce Calder informed me that the Texas Water Development Board changed its map during the WCS application process and that the more recent map does not show the Ogallala Aquifer to be underneath the WCS facility. Bruce told me that he was unable to discover any justification for that change after inquiring of several geologists and other staff at the TWDB. I believe that Bruce now works at the Water Development Board.

Further affiant sayeth naught.

Glenn Lewis

Glenn Lewis

Subscribed and sworn to before me, the undersigned notary, on this 9th day of February, 2010



Kalista K. Johnson

Notary Public, State of Texas