

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-11353

WASTE CONTROL SPECIALISTS, LLC,

Plaintiff-Appellee,

versus

UNITED STATES DEPARTMENT OF ENERGY; ALVIN L. ALM,
Assistant Secretary for Environmental Management; MARY
ANN SULLIVAN, Deputy General Counsel for Environment
and Civilian Nuclear Defense Programs; JAMES M.
OWENDOFF, Acting Secretary for Environmental
Management,

Defendants-Appellants.

Appeal from the United States District Court for
the Northern District of Texas, Wichita Falls
(7:97-CV-202)

June 17, 1998

ON PETITION FOR REHEARING

Before REAVLEY, DeMOSS and PARKER, Circuit Judges.

PER CURIAM:*

Waste Control Specialists complains by petition for rehearing that we have decided its due process claims prematurely. To the contrary, we have decided that Waste Control's lawsuit is premature. We have only decided that the Department of Energy has followed the statutes in the policies

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

thus far announced for Fernald contract proposals. Waste Control's suit seeks a declaration that its proposal may not be rejected by DOE because the DOE policy is illegal. We deny that claim without reaching any due process contention about DOE's conduct of the contract procedure in any other respect for cleanup of the Fernald nuclear site.

Amicus Andrews Industrial Foundation complains that our opinion allows the Department of Energy to surrender all regulation of disposal sites to the states or to no one. Our opinion did not address the regulation of disposal sites except to say that the statutes provide for either Nuclear Regulatory Commission or Department of Energy control.

The petition for rehearing is denied.