

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 10/31/00

SERVED 10/31/00

Before Administrative Judges:

Alan S. Rosenthal, Presiding Officer
Dr. Richard F. Cole, Special Assistant

In the Matter of

CABOT PERFORMANCE MATERIALS
(Reading, Pennsylvania)

Docket No. 40-9027-MLA

ASLBP No. 99-757-01-MLA

October 31, 2000

MEMORANDUM AND ORDER
(Granting Motion to Withdraw Hearing Request
and Terminating Proceeding)

Before me is the October 26, 2000 joint motion of the City of Reading, Pennsylvania, and the Redevelopment Authority of that City (Petitioners) for leave to withdraw without prejudice their joint request for a hearing on the application of Cabot Performance Materials (Licensee) for an amendment to a source material license held by it. That license authorizes the possession of contaminated material (uranium and thorium) on two sites in the Commonwealth of Pennsylvania, one of those sites being located in the City of Reading. The proposed amendment would allow the decommissioning of the Reading site in accordance with a plan that the Licensee has submitted to the Commission's staff for its consideration.

The withdrawal motion recites that Petitioners and the Licensee have settled the matters in dispute between them with respect to the submitted site decommissioning plan. It further recites that, should they later consider there to have been a material breach of the obligations assumed by the Licensee under the settlement agreement, Petitioners might elect to file a new

hearing request with the Commission. Under the terms of the agreement, the Licensee would not be free to contest the new request as being untimely but could raise other legal objections to its acceptance, such as lack of standing or the failure to have provided a sufficient identification of areas of concern as required by the Commission's Rules of Practice.

While plainly the Petitioners have an absolute right to withdraw their hearing request, upon its examination of the motion the NRC Staff apparently had some uncertainty with regard to whether such a withdrawal without prejudice would have the effect of leaving the proceeding open. On October 27, upon being advised of that uncertainty and at the request of the parties, I conducted a telephone conference to address the matter. The participants in the conference included counsel for the Petitioners, the Licensee, and the NRC Staff.

At the conclusion of the conference, there was agreement among all participants that, notwithstanding that it was without prejudice to the possible submission of a new hearing request, the withdrawal of the Petitioners' current request would have the necessary effect of terminating the proceeding at hand. (On May 16, 2000, in LBP-00-13, 51 NRC 284, the separate hearing request filed by Jobert, Inc. and Metals Trucking, Inc. had been dismissed for lack of standing, leaving these Petitioners' request as the only one still under active consideration.) It was further understood by counsel for the Petitioners that any new hearing request would have to meet all existing requirements imposed by the Commission's Rules of Practice and that the commitment of the Licensee not to object to the request on timeliness grounds would not prevent either the NRC Staff from raising such an issue or the Presiding Officer from passing judgment on it independently.

On the basis of that clarification, NRC Staff counsel stated that she had no objection to the motion. Accordingly, it is hereby granted. The Petitioners' joint hearing request is considered withdrawn without prejudice and the proceeding is terminated.

It is so ORDERED.

BY THE PRESIDING OFFICER*

/RA/

Alan S. Rosenthal
ADMINISTRATIVE JUDGE

Rockville, Maryland

October 31, 2000

*Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for the Licensee, Petitioners, and the NRC staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
CABOT PERFORMANCE MATERIALS) Docket No. 40-9027-MLA
)
(Request for Materials License)
Amendment))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (GRANTING MOTION TO WITHDRAW HEARING REQUEST AND TERMINATING PROCEEDING) (LBP-00-29) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 40-9027-MLA
LB MEMORANDUM AND ORDER
(GRANTING MOTION TO WITHDRAW
HEARING REQUEST AND
TERMINATING PROCEEDING)
(LBP-00-29)

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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 31st day of October 2000