

January 30, 2008

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
CROW BUTTE RESOURCES, INC.	)	Docket No. 40-8943
In-Situ Leach Facility, Crawford, Nebraska	)	
	)	ASLBP No. 07-859-03-MLA-BD01
(License Amendment for the North Trend	)	
Expansion Project)	)	

NRC STAFF'S STATEMENT CONCERNING NOTICE REQUIREMENTS  
FOR MATERIALS LICENSE AMENDMENTS AND TRANSFERS

Pursuant to the Board's Order of January 24, 2008, the NRC Staff hereby provides the following authority regarding requirements for notice of an opportunity for a hearing in materials license amendment and transfer proceedings.

I. License Amendments

When an application is subject to a mandatory hearing under the Atomic Energy Act ("AEA") or the Commission's regulations, the Commission is required to publish a notice of hearing in the *Federal Register*. 10 C.F.R. § 2.104(a). However, mandatory hearings apply only in limited situations, such as those involving applications for construction permits for facilities under Section 103 or 104(b) of the AEA, or applications for uranium enrichment facilities under Section 193 of the AEA. See 42 U.S.C. §§ 2239(a)(1)(A), 2243(b). Neither the AEA nor the Commission's regulations mandate a hearing with respect to applications for source material licenses or amendments.<sup>1</sup> See 42 U.S.C. §§ 2091-2098; 10 C.F.R. Part 40.

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<sup>1</sup> The Atomic Energy Act ("AEA") offers the opportunity for a hearing in any license amendment or (continued. . .)

For situations where hearings are not mandatory and the Commission has not found that a hearing is in the public interest, it will, prior to acting thereon, publish in the *Federal Register* a notice of proposed action with respect to certain types of applications. See 10 C.F.R.

§ 2.105(a). The types of applications for which a *Federal Register* notice is required are specified in 10 C.F.R. § 2.105(a). *Id.* Because materials license amendments are not one of the actions listed in 10 C.F.R. § 2.105(a), they do not require a *Federal Register* notice. *Id.*; *Kerr-McGee Corp.* (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232, 245-46 (1982), *aff'd sub nom. City of West Chicago v. U.S. Nuclear Regulatory Commission*, 701 F.2d 632 (7th Cir. 1983). The AEA does not require the Commission to publish a *Federal Register* notice of such an opportunity “with respect to each of the thousands of material licensing applications it receives annually.”<sup>2</sup> Informal Hearing Procedures for Materials Licensing Adjudications, 54 Fed. Reg. 8,269, 8,270-71 (Feb. 28, 1989).

## II. License Transfers

A materials license may not be transferred without Commission review and written consent. 10 C.F.R. § 40.46. The Commission publishes notice of receipt of a license transfer

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(. . .continued)

transfer proceeding “upon request of a person whose interest may be affected.” 42 U.S.C. § 2239(a)(1)(A). The AEA, however, does not require a hearing with respect to these matters. See *Kerr-McGee Corp.* (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232, 246 (1982), *aff'd sub nom. City of West Chicago v. U.S. Nuclear Regulatory Commission*, 701 F.2d 632 (7th Cir. 1983).

<sup>2</sup> In certain cases, for which *Federal Register* notice is not required by law, the Commission has directed the staff to publish notices of receipt of applications and opportunities to request hearings on the NRC web site. See Changes to the Adjudicatory Process, 69 Fed. Reg. 2,182, 2,199 (Jan. 14, 2004). This procedure was followed in the instant case. See <http://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing-license-applications.html#2>.

application in the *Federal Register* if the license in question is a reactor license issued under 10 C.F.R. Part 50 or Part 52, or a major fuel cycle facility license issued under Part 70 or Part 72. 10 C.F.R. § 2.1301(b). Thus, for cases such as this one, which is governed by 10 C.F.R. Part 40, the Commission's regulations do not require *Federal Register* notice. However, the Commission provides public notice of receipt of each application for transfer of a specific NRC license by placing a copy of the application on the NRC web site. 10 C.F.R. § 2.1301(a). Therefore, had a license transfer application been received in the instant case, notice would have been posted on the NRC web site.

Respectfully submitted,

***/RA by Marcia J. Simon/***

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Andrea Z. Jones  
Marcia J. Simon  
Counsel for NRC Staff

Signed at Rockville, Maryland  
this 30<sup>th</sup> day of January, 2008

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S STATEMENT CONCERNING NOTICE REQUIREMENTS FOR MATERIALS LICENSE AMENDMENTS AND TRANSFERS" in the above-captioned proceeding have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (\*), and by electronic mail as indicated by a double asterisk (\*\*) on this 30th day of January, 2008:

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