

PDR



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

JUN 04 1979

FCPF:WAN  
40-2061

Mr. Harold J. Spelman  
Attorney for the City of  
West Chicago  
475 Main Street  
West Chicago, Illinois 60185

Dear Mr. Spelman:

This is in response to your letters of March 5, 1979 and April 18, 1979. First, in regard to the requests and comments contained in the March 5 letter, we would like to inform you that:

1. The City of West Chicago, Illinois has been placed on a mailing list and will receive copies of correspondence and notices related to the NRC licensed Kerr-McGee facilities in West Chicago, Illinois.
2. It is doubtful that we have authority under the Atomic Energy Act to require Kerr-McGee to undertake any action in regard to off-site contamination because we have no information indicating that Kerr-McGee itself was responsible for unauthorized movement of the material to off-site locations. Any Kerr-McGee responsibility could only be as a successor to the liabilities of a prior owner and operator of the site. Further, we have no information that fixes the responsibility for the off-site contamination on a prior licensed owner in contrast to some individual who might have removed the material independently. Because of the foregoing, we think it is more appropriate for the City of West Chicago to discuss the problem of off-site contamination directly with Kerr-McGee if the city believes the corporation has responsibility. We are interested, however, in knowing your basis for believing that Kerr-McGee has the responsibility and would welcome receiving whatever information you have in order to assess whether it would furnish an adequate legal basis for Kerr-McGee responsibility under the Atomic Energy Act.

If for any reason of your own you wish to request a proceeding before this agency regarding the off-site contamination the proper procedure to be followed is contained in 10 CFR Part 2, § 2.206.

524 328

7908080 616 C

3. We will give advance notice to the City of West Chicago officials of any press releases to be issued by our agency concerning the Kerr-McGee West Chicago site. We suggest the city extend a similar courtesy to this agency.
4. An implementation schedule will be a required part of the Kerr-McGee decommissioning plan. The schedule will depend on the details of the plan.
5. Dedication of the property involved to the city may not be possible if the tailings are disposed on the site, unless the city is willing to be subject to NRC regulation with respect to the property.

The material on-site contains tailings from the milling of ore primarily for its source material (thorium) that are defined as "byproduct material" under the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604, November 8, 1978, which amended Section 11e. of the Atomic Energy Act of 1954. Under the new Act, a new Section 83, effective November 8, 1981, was also added to the Atomic Energy Act of 1954 which requires, in Section 83(a), that prior to termination of a license in effect on the enactment date (November 8, 1978) authorizing activities that resulted in production of byproduct material, ownership of the byproduct material shall be transferred either to the United States or to the State in which the activity occurred. If the State opts to own the byproduct material, Section 83(b) requires that ownership of the land used for disposal of byproduct material must also be, prior to termination of the license, transferred to the State. Section 83(d)(4) gives NRC discretionary authority to require transfer of the disposal site to the United States if the State refuses and if the license is still in effect on November 8, 1981. There appears to be no option for transfer of the land to the city except as a successor to the Kerr-McGee license.

Before November 9, 1981, these special ownership arrangements might not need to be implemented. However, possession of the byproduct material is still subject to licensing by NRC under Section 81 of the Atomic Energy Act. Thorium, if in excess of 0.05%, would be licensed under § 62.

6. If, after decommissioning, the property remains in the ownership of Kerr-McGee under an NRC license, a maintenance plan will be required. If, after decommissioning, the property is transferred to either the United States or the State, Section 83(b) of the Atomic Energy Act of 1954 (as amended by Public Law 95-604) will require

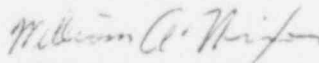
that the Federal agency or State having title to the property shall maintain the material and land in such manner as will protect the public health and safety and the environment. If the land and Kerr-McGee license are transferred to the city, NRC will view the city, as licensee, as responsible for maintenance.

7. A maintenance plan developed for the material and the site, and included in a license, is enforceable under the provisions of 10 CFR Part 2 and the Atomic Energy Act of 1954 as amended. Possible enforcement actions include court proceedings.
8. In regard to compensation to the City of West Chicago, the Nuclear Regulatory Commission does not pay costs or attorney's fees for intervenors in license proceedings.

With respect to your letter of April 18, 1979, we wish to make the following comments:

1. We recognize your request to be included in meetings between NRC and Kerr-McGee. While there is no requirement of law or policy that we include you in the meetings, we will inform you of the time and place of such future meetings and you may, if you wish, attend and/or send a representative to observe;
2. The NRC has not been the source of any reports that the citizens of the City of West Chicago are in great danger from the material present on the Kerr-McGee site or located off-site. We have no authority to limit the statements of other Federal agencies or of any State or local officials or any member of the public.

Sincerely,



William A. Nixon  
Uranium Fuel Fabrication Section  
Fuel Processing & Fabrication Branch  
Division of Fuel Cycle and  
Material Safety

cc: Attached List

524 330

Docket No. 40-2061

Kerr-McGee Chemical Corporation  
West Chicago, Illinois

MAILING LIST

Kerr-McGee Chemical Corp.  
Attn: Mr. J. L. Rainer, Jr.  
President  
Kerr-McGee Center  
Oklahoma City, Oklahoma 73125

Illinois State Geological Survey  
Attn: Mr. Keros Cartwright  
Natural Resources Bldg.  
Urbana, Illinois 61801

City of West Chicago  
Attn: Mr. E. R. Rennels, Mayor  
475 Main Street  
West Chicago, Illinois 60185

U.S. Environmental Protection Agency  
Attn: Mr. Charles T. Grigalauski  
Region V Office  
230 South Dearborne Street  
Chicago, Illinois 60604

City of West Chicago  
Attn: Mr. Harold J. Spelman  
Attorney for the City  
475 Main Street  
West Chicago, Illinois 60185

U.S. Environmental Protection Agency  
Attn: Mr. Pete Tedeschi  
Region V Office  
230 South Dearborne Street  
Chicago, Illinois 60604

Environmental Control Division  
Attn: Mr. David G. Lichtenstein  
Assistant Attorney General  
188 West Randolph Street  
Suite 2315  
Chicago, Illinois 60601

Illinois Department of Public Health  
Attn: Mr. Gary Wright  
Div. of Nuclear Safety  
535 West Jefferson  
Springfield, Illinois 62761

Illinois Environmental Protection Agency  
Attn: Mr. John S. Moor  
Manager, Division of Land/Noise  
Pollution Control  
2200 Churchill Road  
Springfield, Illinois 62706

U.S. Environmental Protection Agency  
Attn: Mr. Karl J. Klepitsch, Jr.  
Chief, Waste Management Branch  
Region V Office  
230 South Dearborne Street  
Chicago, Illinois 60604

Argonne National Laboratory  
Attn: Mr. Louis Saguinsin  
Building 11  
Argonne, Illinois 60439

Kerr-McGee Chemical Corporation  
Attn: Mr. Robert Vreeland  
Kerr-McGee Center  
Oklahoma City, Oklahoma 73125

524 331

Mailing List, cont'd.

- 2 -

Shaw, Pittman, Potts & Trowbridge  
Attn: Mr. Gerald Charnoff, Esquire  
1800 M Street, N. W.  
Washington, D. C.

524 332