



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

July 17, 1980

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In the Matter of
Nuclear Engineering Company, Inc.
(Sheffield, Illinois Low-Level
Radioactive Waste Disposal Site)
Docket No. 27-39

This letter is in response to the directive of the Board at the Prehearing Conference on June 26, 1980 which requested each party to submit issues for litigation in this proceeding. Subsequent to the receipt of such submittals, the Board stated that it intends to issue a prehearing conference order delimiting both the issues for hearing and a schedule for discovery.

The first issue for hearing is that issue which the Commission directed this Board to "consider and decide."^{1/} That issue is:

Whether NECO can unilaterally terminate License No. 13-10042-01 for activities at Sheffield without affirmative action by the Commission.^{2/}

In light of the mandatory language contained in the Commission's Notice of Hearing, the Staff does not believe that this Board should or can deviate from that issue as framed by the Commission. Accordingly, the Staff cannot endorse the first issue as submitted by NECO on July 8, 1980. NECO's submittal phrases the liability issue as follows:

1. Whether the Nuclear Regulatory Commission ("NRC") has any jurisdiction to continue a license or otherwise to impose conditions on the basis that Nuclear Engineering Company ("NECO") "possesses" source, byproduct or special nuclear material finally disposed of by burial in the soil in full compliance with the requirements of the license issued by the Commission pursuant to 10 C.F.R. §20.302 and terminated by NECO on March 8, 1978.

^{1/} "Notice of Hearing," Nuclear Engineering Company, Inc. (Sheffield, Illinois Low Level Radioactive Waste Disposal Site), p. 1, (June 8, 1979). See also, the utilization of this precise language in the Commission's "Memorandum and Order," CLI-80-1, 11 NRC 1 (January 23, 1980).

^{2/} Id.

The Board should frame the issue as directed by the Commission and not as requested by NECO. Moreover, inherent in the NECO-framed issue are assumptions of validity of many of NECO's proffered legal defenses to its actions. For example, the NECO-framed issue assumes that the materials at Sheffield are "finally disposed of by burial." The Staff understands that to be NECO's "possession" defense to the Show Cause Order. But the question of jurisdiction is not necessarily tied solely to possession as NECO contends, but also bears on NECO's responsibilities as a licensee. Again, the NECO-framed liability issue assumes NECO "terminated" its license on March 8, 1978 by its abandonment of the site. That is the very question which the Commission directed this Board to consider, i.e., whether NECO could terminate its license on March 8, 1978 by merely abandoning the site. Accordingly, the Staff urges the Board to adopt the liability issue as framed in the Commission's Notice of Hearing.^{3/}

The second issue to be addressed at the hearing necessarily follows the first issue. That issue is:

If NECO cannot unilaterally terminate its license without affirmative action by the Commission, what conditions are appropriate to impose in order to protect the public health and safety as well as the environment.^{4/}

As requested by the Board, the Staff has attached hereto as Appendix A those conditions which it currently believes are appropriate to impose in order to protect the public health and safety, and the environment. These conditions are basically consistent with those previously submitted to the Board by Staff counsel on April 10, 1979. As this proceeding progresses, the Board has granted the Staff the opportunity to modify these conditions for good cause shown (Tr. 140-141).

Finally, the Staff does not believe that NECO's proffered issue three (3) is appropriate.^{5/} The validity of the Staff's show cause order of March 20, 1979

^{3/} There are additional inherent shortcomings and biases with the NECO-framed issue, by the use, for example, of the phrases "possessor" and "in full compliance with the requirements of the license."

^{4/} To put it another way, what conditions are appropriate to impose in order to assure that the Sheffield site does not and will not give rise to impermissible environmental and radiological public health and safety consequences.

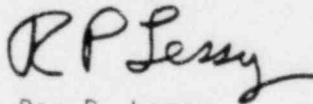
^{5/} "3. Whether the order issued by the Staff dated March 20, 1979 was (1) void ab initio by reason of the fact that it had no jurisdiction to issue an order to anybody who no longer 'possessed' source, byproduct or special nuclear material pursuant to the Atomic Energy Act of 1954, as amended, or (2) otherwise invalid because no violation of law or license conditions had been committed by NECO."

has been twice upheld by the Commission.^{6/}

The Board also indicated that in its prehearing conference order, it would set schedules for discovery. In so doing, the Staff wishes to underscore its belief that the issues raised in this proceeding (particularly the claim that a licensee can abandon a facility when it alone decides to) are of the greatest significance in the licensing and regulatory program. For this reason, the Staff believes that the parties should be afforded a reasonable opportunity to engage in both documentary and deposition discovery, after examination of relevant documents. Moreover, during the discovery period, factual stipulations, and other relevant discussions could be pursued. Realizing that documents first need to be requested, next selected, then copied, mailed and reviewed, prior to the start of depositions, and that the Commission's Rules of Practice specify time frames for both the filing of responses and objections, as well as appropriate motions, the Staff recommends the following schedule to the Board:

Documentary Discovery Begins:	July 28, 1980
Depositions Begin:	October 28, 1980
Discovery Ends:	December 10, 1980
Final Prehearing Conference Summary Disposition All Stipulations Due:	January 15, 1981
Exchange of Prehearing Briefs Witness and Documents Lists Evidentiary Hearing	Spring 1981

Sincerely,



Roy P. Lessy
Counsel for NRC Staff

cc: See Page 4

^{5/} "Memorandum and Order," Nuclear Engineering Company, Inc., (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-79-6, 9 NRC 673 (1979); Id. CLI-80-1, 11 NRC 1 (1980).

Attachment: Appendix A

cc: (w/Attachment)
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APPENDIX A

SITE STABILIZATION AND CLOSURE CONDITIONS

Sheffield LLW Disposal Facility Sheffield, Illinois

1. That all waste is buried in accordance with requirements of the Commission and the license.
2. That all structures, equipment and materials not to be transferred to the custodial agency have been dismantled, decontaminated, if necessary and disposed of.
3. That institutional arrangements have been made for long-term custodial care by the State of Illinois; that there will be an orderly transition to Illinois; and that organizational and funding mechanisms are in place.
4. That gamma radiation from buried wastes does not increase background radiation on the site.
5. That the rate of release of radionuclides through ground and surface water pathways are at or below the levels set forth in 10 C.F.R. Part 20, Appendix B at the site boundary, at or below EPA drinking water limits at the nearest water supply, and a small fraction of the levels set forth in 10 C.F.R. Part 20, Appendix B through air pathways; and that studies have been conducted and techniques have been employed to ensure maintenance of these rates for the period of custodial care by the State of Illinois.
6. That trench bottom elevations are above water table levels, taking into account the complete history of seasonal water table fluctuations, and that conditions will be created to prevent contact between groundwater and the buried waste.
7. That all conditions that caused positive environmental samples in the past, including any evidence of unusual or unexpected rates or levels of radionuclide migration in or with groundwater, are analyzed and corrected.
8. That the trenches are stabilized such that settlement of the trenches is reduced to minimal rates. That arrangements are made with the State of Illinois to ensure proper stabilization when anticipated future settlement occurs.
9. That conditions for erosion, water infiltration into trenches, loss of site or trench integrity due to such factors as groundwater, surface water, and wind, are eliminated. This would require the establishment of: (1) proper surface drainage system to remove rain water and snowmelt; (2) grading of site to prevent slope failure and minimize infiltration; and (3) stabilization of surface by short rooted vegetative ground cover or riprap to prevent erosion; (4) or other similar and acceptable methods.

10. That the integrity of the radioactive waste disposal site is not degraded by the chemical wastes and, if necessary, positive controls are instituted to assure this.
11. That trench markers identifying the size and exact location of each trench and the materials buried therein, are in place, stable, and clearly and permanently marked.
12. That complete records of site maintenance and stabilization activities, trench elevations and locations, trench inventories and monitoring data for use during custodial care are compiled and transferred to the agency assuming custodial care.
13. That a buffer zone surrounding the site to provide sufficient space to stabilize slopes, incorporate surface water management features, and provide working space for unexpected mitigating measures in the future, is established and transferred to the custodial agency. The buffer zone shall be sufficient to ensure that use of adjoining areas, including disposal of chemical waste will not compromise trench or site integrity.
14. That provision is made for a secure passive site security system.
15. That a surveillance program, to assure the objectives of the decommissioning plan have been met, is established. This shall include a groundwater, surface water and air quality monitoring system.