

November 13, 1989

The Honorable Philip R. Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am responding to your letter of October 31, 1989, to Chairman Carr. You requested the Commission's comments on Congressman Hastert's proposed amendment to the Commission's authorization bill. Because of the pending formal administrative proceeding on the Rare Earths Facility, it would be inappropriate for the Commission to comment on the proposed legislation. As an independent regulatory agency charged with protecting the public health and safety and the common defense and security, the Commission generally prefers that Congress not enact plant-specific legislation relating to pending regulatory matters.

The issue of decommissioning the Rare Earths Facility located in West Chicago, Illinois, is currently before an Atomic Safety and Licensing Board (ASLB). The main issue is the disposition of the § 11e(2) byproduct material, as defined in the Atomic Energy Act, that is located on the site. On April 11, 1989, Illinois submitted a formal request that its § 274(b) State Agreement with the Nuclear Regulatory Commission be amended to allow Illinois to regulate § 11e(2) byproduct material. Both the ASLB proceeding and the staff review of Illinois' application are proceeding concurrently. Soon after the request was received from the State of Illinois, the staff made a motion before the ASLB to hold the proceeding in abeyance until it was known whether the Commission would relinquish authority to Illinois. The ASLB ruled that "the mere possibility that jurisdiction over the subject matter of the proceeding might be transferred provides no justification to hold it in abeyance. Basic fairness requires that it be resolved expeditiously." A copy of the ASLB Memorandum and Order is enclosed.

I trust this reply responds to your request.

Sincerely,
Original Signed By
James M. Taylor
Acting Executive Director
for Operations

Enclosure:
ASLB Memorandum and Order
dated June 22, 1989

cc: Representative Carlos J. Moorhead *See Previous Concurrence
Distribution w/o encl w/incoming: EDO 4878

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PAPER NUMBER: CRC-89-1187 LOGGING DATE: Nov 1 89
ACTION OFFICE: EDO
AUTHOR: Rep. Philip R. Sharp
AFFILIATION: U.S. HOUSE OF REPRESENTATIVES
LETTER DATE: Oct 31 89 FILE CODE:
SUBJECT: Requests comments on Hastert amendment to NRC's
 authorization bill regarding decommissioning
 proceeding for West Chicago rare earths site
ACTION: Direct Reply
DISTRIBUTION: RF, OGC, DOC
SPECIAL HANDLING: OCA to Ack.
NOTES: Ex Parte -- Served and to PDR
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