

November 13, 1989

The Honorable Morris K. Udall, Chairman  
Committee on Interior and Insular Affairs  
United States House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I am responding to your letter of October 27, 1989, to Chairman Carr. Because of the pending formal administrative proceeding on the Rare Earths Facility, it would be inappropriate for the Commission to comment on Congressman Hastert's proposed legislation which is specific to the proceeding. 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.

You requested a status report on the decommissioning proceeding and the Illinois amendment request. Soon after the State of Illinois requested an amendment to its Agreement with the NRC to regulate the § 11e(2) byproduct material as defined in the Atomic Energy Act, the staff made a motion before the Atomic Safety and Licensing Board (ASLB) suggesting that the West Chicago hearing proceeding be held in abeyance until it was known whether the Commission would relinquish regulatory authority to Illinois. The ASLB ruled; however, 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 provided as Enclosure 1.

In the ASLB proceeding, both Kerr-McGee and the State of Illinois have filed motions for summary disposition of the admitted contentions. The motions are pending before the ASLB; the schedule for the hearing has been suspended until the ASLB rules on the cross motions for summary disposition. Once the ASLB rules, a status conference will be scheduled, and dates will be set for completion of depositions and for the commencement of the hearing. A copy of the ASLB Memorandum and Order is provided as Enclosure 2. On October 27, 1989, Kerr-McGee filed a motion before the ASLB requesting that the ASLB issue an order directing the State of Illinois to withhold submission of a final application to assume regulatory authority over materials that are subject to the Board's jurisdiction until a final decision is reached in the ASLB proceeding. The ASLB has not ruled on this motion. Responses from Illinois and the staff are to be filed by November 13, 1989. A favorable ruling on Kerr-McGee's request would serve a function exactly opposite that of Congressman Hastert's proposed bill.

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PDR ADOCK 04002061  
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Regarding the Illinois amendment request, on April 11, 1989, the Governor of the State of Illinois submitted a formal request that the Agreement be amended to relinquish authority over § 11e(2) byproduct material to Illinois. The U.S. Nuclear Regulatory Commission (NRC) staff's comments on the request were provided to Dr. Terry Lash of the Illinois Department of Nuclear Safety on August 23, 1989. Currently, the staff is waiting for a response on these comments and the State's final regulations. Once an acceptable package is received from the State, the staff will prepare an assessment, which will be published in the Federal Register. A minimum of 90 days is required to process an agreement request from the time of receipt until the effective date of the agreement, assuming that all problems identified by the NRC staff have been resolved with the State and all materials in the submittal have been previously reviewed and approved by the NRC staff. Additional time may be necessary to resolve public comments on the request or other unforeseen problems. No further action will be taken on Illinois' application until the staff receives the State's response. Because the State's response has not yet been received, the forecast of signing of the amended Agreement in March 1990 is optimistic.

I trust this reply responds to your request.

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

Enclosures:

- 1. ASLB Memorandum and Order dated June 22, 1989
- 2. ASLB Memorandum and Order dated September 5, 1989

cc: Representative James V. Hansen

Distribution w/o encls w/incoming: EDO 4870

<b>Docket 40-2061</b>	PDR	LPDR	NRC File Center
NMSS R/F	IMUF R/F	IMSB R/F	VLTharpe
JJSwift	Region III	MHorn	JScinto, OGC
IMNS Central File	GSjoblom	NMSS Office R/F	DMorris, EDO
EDO R/F	CEstep	CJenkins	LCRouse
JTaylor, EDO	HDenton, GPA	HTompson, EDO	JBlaha, EDO
BDavis, RIII	RScroggins, OC	GPA	

BCalure : 11/03/89

\*See Previous Concurrence

OFF:IMUF*:	IMUF*:	IMAF:	IMSB*:	OGC:	DD/IMNS:
NAME:MHorn:mlh:fbVLTharpe:	JJSwift:	LCRouse:	GSjoblom:		
DATE:11/8/89	11/7/89	11/ /89	11/7/89	11/ /89	11/ /89

OFF:D/IMNS*	GPA*:	DD/NMSS*:	D/NMSS*:	EDO:	EDO:	<i>OCA</i>
NAME:RCunningham:	GArlotto:	RBernero:	HThompson:	JTaylor:		<i>EFM</i>
DATE:11/8/89	11/8/89	11/8/89	11/8/89	11/ /89	11/ /89	11/13/89

Rev 11-9



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

**ACTION**

EDO Principal Correspondence Control

FROM:

DUE: 11/08/89

EDO CONTROL: 0004870

DOC DT: 10/27/89

FINAL REPLY:

REP. MORRIS K. UDALL

TO:

CHAIRMAN CARE

FOR SIGNATURE OF:

\*\* PRI \*\*

CRC NO: 89-1176

EXECUTIVE DIRECTOR

DESC:

ROUTING:

REQUEST COMMENTS ON REP. HASTERT AMENDMENT TO THE  
AUTHORIZATION BILL WHICH WOULD PROHIBIT THE  
COMMISSION FROM CONTINUING ITS DECOMMISSIONING  
PROCEEDING FOR THE WEST CHICAGO RARE EARTHS SITE

TAYLOR  
THOMPSON  
BLAHA  
SCROGGINS, DC  
DAVIS, RIII  
SCINTO, OGC

DATE: 10/30/89

ASSIGNED TO:

CONTACT:

NMSS

BERNERO

SPECIAL INSTRUCTIONS OR REMARKS:

EX PARTE MATTER. STATE POSITION AS STAFF VIEWS.  
JOE RUTBERG IS OGC CONTACT.

IMNS Action  
Due to NMSS Director's Office  
By 11/6/89 (Noon)  
mid 10/31/89

MORRIS K. UDALL, ARIZONA, CHAIRMAN

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U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON, DC 20515

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ROY JOHNS  
ASSOCIATE STAFF DIRECTOR  
AND COUNSEL

LEE McELVAIN  
GENERAL COUNSEL

RICHARD AGNEW  
CHIEF MINORITY COUNSEL

October 27, 1989

The Honorable Kenneth M. Carr  
 Chairman  
 U.S. Nuclear Regulatory Commission  
 Washington, D.C. 20555

Dear Mr. Chairman:

Congressman Hastert has announced he plans to offer the enclosed amendment to the Commission's authorization bill. The amendment would prohibit the Commission from continuing its decommissioning proceeding for the West Chicago rare earths site.

I would greatly appreciate the Commission's views on Mr. Hastert's amendment and a status report on both the decommissioning proceeding and the State of Illinois' application to assume jurisdiction over byproduct material.

Thank you for your help.

Sincerely,

Morris K. Udall  
Chairman

8911060404(3pp)

**J. DENNIS HASTERT**

14TH DISTRICT, ILLINOIS

COMMITTEE ON PUBLIC WORKS  
AND TRANSPORTATION

COMMITTEE ON GOVERNMENT  
OPERATIONS

SUBCOMMITTEE ON COMMERCE,  
CONSUMER AND MONETARY AFFAIRS  
RANKING MINORITY MEMBER

EXECUTIVE COMMITTEE ON  
COMMITTEES

SELECT COMMITTEE ON  
CHILDREN, YOUTH AND FAMILIES

HUMAN RIGHTS CAUCUS



**Congress of the United States**

**House of Representatives**

**Washington, DC 20515**

October 24, 1989

OCT 25 1989

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WASHINGTON, DC 20515  
(202) 225-2970

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BATAVIA, IL 60510  
(312) 408-1114

100 LAFAYETTE STREET  
OTTAWA, IL 61350  
(815) 434-6666

14 E. CHICAGO STREET  
ELGIN, IL 60120  
(312) 897-8622

The Honorable Morris K. Udall

U.S. Congressman

235 CHOB

Washington, D.C. 20515

Dear Mo:

The second largest low-level radioactive waste site in the nation is located in West Chicago, Illinois, within my congressional district (IL-14). Radioactive thorium and byproducts were produced by a series of milling and manufacturing facilities which operated at the site until 1973, when the current owner closed the plant.

As a result of years of operation with radioactive materials, the equipment and buildings at the site were contaminated. Additionally, some of the thorium "tailings" had been mixed with fill dirt and distributed around the town of West Chicago (pop. approx. 12,000). This thorium-contaminated material was later collected and deposited back at the manufacturing site. As a result, the disposal site now contains millions of cubic feet of low-level radioactive waste material.

The State of Illinois has applied to the Nuclear Regulatory Commission for jurisdiction of the byproduct material (Illinois currently has jurisdiction over the source material) at the site. The granting of that request, which is expected in March 1990, will allow Illinois to formulate a comprehensive plan for the disposal/containment of this material. More than half of the states now have such an agreement and it is expected that the NRC will grant similar authority to Illinois.

At the same time in which the NRC is reviewing the Illinois application for regulatory control over the site, the NRC is also involved in the administration of decommissioning proceedings for the West Chicago site as part of its current regulatory responsibility. These proceedings will be halted at the time in which responsibility for the site is transferred to Illinois.

It is my intention, should the opportunity avail itself, to offer an amendment to the Nuclear Regulatory Commission Authorization which will avoid this unnecessary and expensive procedure, pending the outcome of the Illinois application for regulatory control of the site. My amendment will read:

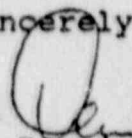
The NRC shall not spend any further monies on administrative proceedings pertaining to the decommissioning of the rare

The Honorable Morris K. Udall -- Page 2

earths facility at Ann and Factory Streets in West Chicago, Illinois, until the NRC has denied Illinois' application to assume regulatory jurisdiction over byproduct material as defined in Section 11e.(2) of the Atomic Energy Act and any and all judicial appeals related to that application have become final.

I ask for your support of this amendment in the interest of avoiding unnecessary administrative cost to the NRC. It is important that Congress allow for flexibility in the regulatory process when to do otherwise would be illogical.

Sincerely,

  
J. Dennis Hastert  
Member of Congress

JDH:pv