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October 24, 1989

John H. Frye III, Esq.
ASLB, USNRC
4350 East West Highway
Bethesda, MD 20814

Re: In re Kerr-McGee Chemical Corp.
Docket No. 40-2061-ML
ASLBP No. 83-495-01-ML

Dear Judge Frye:

It has come to our attention that NRC Staff has advised you of federal court proceedings in the Northern District of Illinois regarding the disposition of newly-discovered off-site "hot spots" in the West Chicago area. NRC Staff forwarded some material, including a letter from Harold R. Denton to Terry Lash, dated September 25, 1989. NRC Staff did not forward, however, Terry Lash's response, dated September 26, 1989.

We would like to bring this letter to your attention and ask that it be included in your consideration of the matters NRC Staff brought to your attention.

Thank you in advance for your cooperation in this regard.

Very truly yours,

Christine S. Bucko

CHRISTINE S. BUCKO
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TERRY R. LASH
DIRECTOR

September 26, 1989

Mr. Harold R. Denton, Director
Office of Governmental and Public Affairs
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 50852

Dear Mr. Denton:

This letter is in response to your letter of September 25, 1989, informing me that the U.S. Nuclear Regulatory Commission (NRC) intends to take no action in response to the recent activities of the Kerr-McGee Chemical Corporation in West Chicago, Illinois. On September 1, 1989, Kerr-McGee sent a letter to Leland Rouse, Chief, Uranium Fuel Licensing Branch, informing him of plans to relocate uranium mill tailings from off-site residential locations to the West Chicago Rare Earth's Facility. Kerr-McGee proposed to perform these activities under authorization granted to it by its 11e.(2) byproduct material license, which was issued by NRC. According to your letter, however, NRC has concluded that because NRC believes the tailings to be source material, Kerr-McGee's proposal does not fall within NRC's jurisdiction and, therefore, NRC is not required to take any regulatory action. The State of Illinois finds this posture undesirable and unacceptable.

The characterization of the material in West Chicago as source material is incorrect. As you know, litigation appealing the Commission's determination of the tailings as source material is currently pending before the United States Court of Appeals for the District of Columbia Circuit. Both the State of Illinois and Kerr-McGee contend that the material is byproduct material as defined in Section 11e.(2) of the Atomic Energy Act. Since Illinois does not acknowledge that the tailings are source material, any regulatory action by the Department of Nuclear Safety with respect to the tailings would fall outside the jurisdiction that was transferred to the State by execution of the Section 274(b) Agreement with NRC. Therefore, for the State to attempt regulation of the tailings before conclusion of the litigation would seriously undermine the State's position that the tailings are 11e.(2) byproduct material and undoubtedly would be challenged by Kerr-McGee in court.

The State of Illinois is doing everything within its authority to assure that the uranium mill tailings located in and near West Chicago are managed properly and in a manner that poses the least threat to public health and

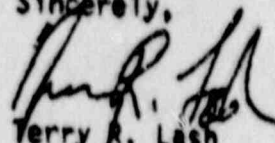
Harold R. Denton
Page 2
September 26, 1989

safety. For this reason, the State has consistently objected to Kerr-McGee's proposal for disposal of tailings at the Rare Earth's Facility. While the State is encouraged by Kerr-McGee's initiative to undertake cleanup activities at off-site areas, any material that is collected as a result of these activities should be properly disposed of at a facility that can safely accept such wastes for disposal. The Rare Earth's Facility is not suitable for disposal of this off-site material.

The Department would emphasize that, regardless of whether the off-site materials are characterized as source material or byproduct material, the contamination of the residential properties occurred during a time when NRC was the sole regulatory authority over the West Chicago Rare Earth's Facility. NRC's refusal to address a problem that was created when it had sole regulatory jurisdiction is unacceptable. It is my hope that this most recent controversy involving the Rare Earth's Facility will encourage NRC to cooperate with the State's efforts to assure that all of the tailings are disposed of properly. Furthermore, NRC can resolve the jurisdictional issue by granting Illinois' formal application to amend the Section 274(b) agreement to cover 11e.(2) byproduct material, since execution of such an amendment would render the jurisdiction issue moot.

In the meantime, the State will do everything within its power to protect the health and safety of people of West Chicago. The Illinois Department of Nuclear Safety will continue to monitor Kerr-McGee's off-site cleanup activities to assure that they are performed in accordance with Kerr-McGee's license and the plan that was submitted to NRC on September 1, 1989. The State will also continue its activities to ensure safe disposal of the mill tailings.

Sincerely,


Terry A. Lash
Director

cc: Mr. A. Bert Davis
Administrator, Region III
U.S. Nuclear Regulatory Commission
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