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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
1989

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'89 DEC -1 P2:24

In the Matter of)	
KERR-McGEE CHEMICAL CORPORATION)	Docket No. 40-2061-ML
(West Chicago Rare Earths Facility))	ASLBP No. 83-495-01-ML

MOTION TO STRIKE KERR-McGEE
TESTIMONY DATED NOVEMBER 28, 1989

Illinois requests the Board to strike testimony submitted by Kerr-McGee, dated November 28, 1989. Illinois makes this request based on the following:

1. Requirements of fundamental fairness are incorporated at 10 CFR §2.743(a) which states in part:

"Every party to a proceeding shall have the right to...conduct such cross-examination as may be required for full and true disclosure of the facts." (Emphasis added)

2. Testimony submitted by Kerr-McGee dated November 28, 1989, is in narrative form. Said testimony is presented in a composite form, allegedly the product of three (3) separate witnesses, each of whom has a differing area of expertise.

3. The sole purpose of presenting said testimony in such a manner is calculated to protect each witness from a meaningful cross-examination so as to produce a full and true disclosure of the facts and thereby violating fundamental fairness in that:

a. Fundamental fairness and the right to cross-examine requires specific opinion evidence be attributable to a specific witness. Kerr-McGee has insulated its

witnesses from any testimony in a composite, narrative form. As a result, no meaningful cross-examination can be conducted much less one that can bring to light a full and true disclosure of the facts.

- b. Fundamental fairness and the right to cross-examine require an opinion be given by a qualified witness. At no point in its 49 page document has Kerr-McGee vaguely attempted to demonstrate that any portion has been actually produced by a qualified individual.
- c. Fundamental fairness and the right to cross-examine dictate that an opinion be based on facts and expertise, not mere conjecture. Kerr-McGee has failed to provide this minimal basis.

4. Said testimony further includes new evidence in the form of testimony and Table 2 and 3 and Appendix 4 (Testimony 9-11; Tables 2, 3; Appendix 4) which contain new analyses of various contaminants, not found in any other documentation. No basis or date for this analysis is given and, as such, is inadmissible.

Moreover, Illinois has been surprised by the addition of said new evidence and prejudiced on the eve of depositions and hearing. Depositions of the Kerr-McGee witnesses have been scheduled for December 5, 1989. There is insufficient time to adequately prepare to rebut this new evidence under the extremely short time schedule announced by the Board in its November 14, 1989, Memorandum and Order.

5. Said testimony also includes manipulation of data under the guise of "typographical errors" 11 years after tests were conducted. As alleged in Paragraph 4, Illinois is surprised

by such new evidence on the eve of hearing and is prejudiced by being unable to reasonably respond within the time schedule.

For the above reasons, Illinois requests this Board:

A. Strike Kerr-McGee's testimony of witnesses dated November 28, 1989;

B. Strike those portions of testimony and exhibits relating to new evidence, i.e., Tables 2 and 3 and Appendix 4;

C. Require Kerr-McGee to produce a statement of individual responsibility prior to scheduled depositions on December 5, 1989;

D. Grant an Extension of Time and reset hearing and deposition schedules to allow Illinois to adequately prepare for the new evidence produced in Tables 2 and 3 and Appendix 4 in the event the Board does not strike said portions of Kerr-McGee's testimony;

E. Grant any further relief this Board deems equitable and just.

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(West Chicago Rare Earths) ASLBP No. 83-495-01-ML
Facility))

CERTIFICATE OF SERVICE

I, CHRISTINE BUCKO an attorney in this case, do certify that I on this 30th day of November, 1989, I caused to be served the foregoing Motion To Strike Kerr-McGee Testimony Dated November 28, 1989 upon the persons listed on the Attached Service List by First Class Mail, in postage prepaid envelopes or Express Mail as denoted by *.

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