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preliminary notification constitutes EARLY notice of events of POSSIBLE safety or public interest significance. The information is as initially received without verification or evaluation, and is basically all that is known by the Region III staff on this date.

Facility: State of Illinois
(Agreement State)

Licensee Emergency Classification:
 Notification of an Unusual Event
 Alert
 Site Area Emergency
 General Emergency
 Not Applicable

Subject: STATE SEEKS RESPONSIBILITY FOR 11.E.2 BYPRODUCT MATERIAL

Region III (Chicago) has been informed by the State of Illinois that Illinois Governor James Thompson will sign a bill into law that enables the Illinois Department of Nuclear Safety (IDNS) to regulate byproduct material, as defined by Section 11.E.2 of the Atomic Energy Act of 1954, as amended. (This material is composed of tailings or waste produced by the extraction of uranium or thorium from ore processed primarily for its source material content.)

The enabling legislation would give IDNS total regulatory control over the thorium contaminated materials at the old Kerr-McGee Chemical facility in West Chicago, Illinois. The former thorium processing plant was shut down in 1973. The cleanup of the facility has been the subject of controversy, local concern, and NRC activity since 1976, when the contamination problem first surfaced.

Once the enabling legislation is approved by Governor Thompson, the State still cannot assume responsibility for 11.E.2 material until the NRC approves the State's application under the Agreement States Program. (Illinois is an NRC Agreement State).

Governor Thompson has scheduled a bill-signing ceremony at 10 a.m. (CDT), August 5, 1988, in West Chicago. The mayor of West Chicago, the Director of IDNS, other dignitaries and local media are expected to be present.

Region III first learned of the bill-signing ceremony at 2 p.m. (CDT), August 3, 1988.

This information is current as of 11:30 a.m. (CDT), August 4, 1988.

CONTACT: R. Lickus
FTS 388-5666

W. Adam
FTS 388-5624

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OCT 13, 88 Adjudicatory Issues (Info) Secy-88-238
Litigation report from. Edwin E. Rupp, Jr. to Commissioner

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the Department concerning the advisability of seeking re-hearing by the Court.

Contact:
Marvin Itzkowitz
x 21566

Dennis Dambly
x21550

2. Commonwealth of Pennsylvania v. NRC, No. 88-3582 (3d Cir. September 7, 1988)

On September 7, 1988, the Commonwealth of Pennsylvania filed a petition requesting reversal of NRC's issuance of immediately effective operating licensing amendments for the Peach Bottom Atomic Power Station. The operating license amendments were issued on June 22, 1988 upon a determination that there are no significant hazards considerations involved. On September 26, we filed a motion to dismiss the petition on the ground that it was filed 77 days after issuance of the final order amending the operating license, rather than within the 60 days specified by law.

Contact:
Susan Fonner
x 21632

3. Kerr-McGee Chemical Corp. v. NRC, No. 88-1636 (D.C. Cir.); People of the State of Illinois v. NRC, No. 88-_____ (D.C. Cir.)

The 1987 section 274 Agreement with Illinois gives the State regulatory authority over "source material" but not "11e(2) byproduct material". Last year, Kerr-McGee, which owns the West Chicago Rare Earths Facility, petitioned the Court of Appeals for the D.C. Circuit for review of the Agreement, arguing that the Agreement illegally transferred to Illinois authority over certain materials associated with the West Chicago site. Kerr-McGee Chemical Corp. v. NRC, No. 87-1254 (D.C. Cir.). In fact, however, the Agreement had not mentioned the disputed materials. The Commission therefore instituted a special proceeding to determine whether the disputed materials were source material and therefore under the State's authority. The litigation was held in abeyance pending the Commission's final decision in the

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Kerr-McGee

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special proceeding. On August 5, 1988, the Commission issued its Decision in the special proceeding. The Commission held that some of the disputed materials were indeed source material.

Kerr-McGee has now sued us over this Decision, again in the Court of Appeals for the D.C. Circuit. Kerr-McGee Chemical Corp. v. NRC, No. 88-1636 (D.C. Cir.). Kerr-McGee asserts that the none of the disputed materials is source material and that even if they are, there are legal and other impediments to transfer of the materials to Illinois' jurisdiction.

Illinois is also suing us, in the same Court, over the same Decision. People of the State of Illinois v. NRC, No. 88-- --- (D.C. Cir.). Oddly enough, Illinois too is asserting, against its own jurisdiction, that none of the disputed materials is source material. It is not clear what Illinois wants. There are now three Federal Court cases involving these disputed materials (the cases will no doubt be consolidated), and Illinois is involved in all three in different, even contradictory, ways: In the first case, brought by Kerr-McGee over the section 274 Agreement, Illinois has intervened in defense of the asserted transfer of jurisdiction to Illinois; in the second, brought by Kerr-McGee over the Commission's Decision in the special proceeding, Illinois has intervened in defense of the Commission's holding that there is no legal or other bar to the transfer of source material to Illinois' jurisdiction; and in the third case, Illinois itself has sued in opposition to the transfer of the disputed materials. To add to the confusion, Illinois is also actively seeking an amendment of the section 274 Agreement to give Illinois authority over § 11e(2) byproduct material also, and thus, in effect, to give Illinois authority over the disputed materials no matter what they are called.

Contact:
Steve Crockett
x21600

4. Florida Power & Light, et al., v. NRC,
No. 88-1583 (D.C. Cir.)

Pending completion of the revision of the fee rules in 10 CFR Parts 170 and 171, the NRC issued an