

60-17

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

FILED

UNITED STATES DISTRICT COURT  
SANTA FE, NEW MEXICO

JUL 17 1980

*J. Williams* CLERK

BY \_\_\_\_\_ DEP. CLERK

KERR-McGEE NUCLEAR CORPORATION, )  
UNITED NUCLEAR-HOMESTAKE PARTNERS, )  
GULF OIL CORPORATION, )  
ANACONDA COPPER COMPANY (a )  
division of The Anaconda Company) )  
UNION CARBIDE CORPORATION, and )  
WESTERN NUCLEAR, INC. )

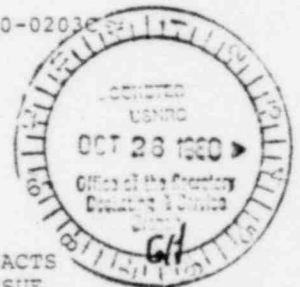
Plaintiffs )

vs. )

UNITED STATES ENVIRONMENTAL )  
PROTECTION AGENCY, and )  
DOUGLAS M. COSTLE )

Defendants )

CIV 80-02030



PLAINTIFFS' STATEMENT OF MATERIAL FACTS  
AS TO WHICH THERE IS NO GENUINE ISSUE

In compliance with Local Rule 9(j)(2), plaintiffs in conjunction with their Motion for Partial Summary Judgment filed herewith, submit this statement of material facts as to which there is no genuine issue.

1. Plaintiffs Kerr-McGee Nuclear Corporation, United Nuclear-Homestake Partners, Union Carbide Corporation, and Western Nuclear, Inc., own and operate facilities for the milling of uranium ore in various states, including New Mexico, Texas, Wyoming, Colorado and Washington. Plaintiff Anaconda Copper Company operates a uranium mill in New Mexico. Plaintiff Gulf Oil Corporation intends to construct and thereafter to operate a uranium mill in New Mexico.

2. Reorganization Plan No. 3 of 1970, 84 Stat. 2086, became effective on December 2, 1970.

3. Acting to carry out responsibilities purportedly transferred to the Administrator of the Environmental Protection Agency (EPA Administrator) under

Reorganization Plan No. 3 of 1970, the Environmental Protection Agency (EPA) prepared draft proposed regulations, entitled "Environmental Radiation Protection Standards for Normal Operations of Activities in the Uranium Fuel Cycle." These draft proposed regulations are attached hereto as Exhibit A. The EPA also prepared a document entitled "Environmental Radiation Protection Requirements for Normal Operations of Activities in the Uranium Fuel Cycle -- Notice of Proposed Rulemaking" dated September 11, 1973 to accompany the draft proposed regulations. This document is attached hereto as Exhibit B.

4. EPA's proposed draft regulations set forth in Exhibit A and described in Exhibit B provided for less stringer limitations on permissible exposure from certain operations such as uranium milling in comparison to other operations within the uranium fuel cycle.

5. The Atomic Energy Commission (AEC) disputed the authority of the EPA and EPA Administrator under Reorganization Plan No. 3 to issue proposed regulations in the form set forth in Exhibit A or described in Exhibit B.

6. The dispute between EPA and AEC concerning EPA's authority to issue radiation standards pursuant to the transfer of authority set forth in Reorganization Plan No. 3 was submitted to the President for resolution. AEC stated its position in a Memorandum dated October 19, 1973 from Dixy Lee Ray to the President. (A copy of this Memorandum is attached hereto as Exhibit C.) EPA stated its position in a Memorandum dated October 19, 1973 from Russell E. Train to the President. (A copy of this Memorandum is attached hereto as Exhibit D.)

7. In a Memorandum dated December 7, 1973, a copy of which is attached hereto as Exhibit E, Roy L. Ash (Director of the Office of Management and Budget) advised AEC and EPA on behalf of the President

"that EPA should discontinue its preparation for issuing, now or in the future, any standards for types of functions; and that EPA should continue, under its current authority, to have responsibility for setting standards for the total amount of radiation in the general environment from all facilities combined in the uranium fuel cycle, i.e., an ambient standard which would have to reflect AEC's findings as to the practicability of emission controls."

8. EPA prepared draft proposed radiation standards designed to "satisfy ... the constraints of the memorandum from Mr. Ash of December 7, 1973." See "Environmental Radiation Standards for Uranium Fuel Cycle - Action Memorandum" from Roger Strelow to the EPA Administrator, dated December 18, 1974 and approved by EPA Administrator Russell Train on January 10, 1975. (A copy of this Memorandum is attached as Exhibit F.) These regulations referenced were subsequently published as proposed regulations on May 24, 1975. 40 Fed. Reg. 23420. The proposed regulations were designed to conform to the interpretation of EPA's authority imposed by Mr. Ash.

9. The NRC filed comments with the EPA concerning the EPA's proposed regulations as published on May 24, 1975. The NRC advised EPA that "no data base actually exists" to determine whether operating uranium mills could comply with EPA's proposed standards. NRC accordingly suggested

"that it would be appropriate that implementation of the standard for uranium mills be deferred for some period of time or that these facilities be exempted until an adequate data base is available for confirmation of the practicability of control measures and for the development of a program for assuring compliance with the standard."

See Letter from Robert B. Minogue (NRC) to Alvin A. Alm (EPA) dated October 1, 1976 (attached hereto as Exhibit G) at pp. 2 and 3. The NRC had earlier advised EPA that the "proposed EPA standard has been established too near or beyond the projected capabilities of the uranium fuel cycle technology" in certain specific areas. One of the specific areas was "the inclusion of the blowing of tailings piles near operating uranium mills." Letter from Lee V. Gossick (NRC) to Russell Train (EPA) dated February 25, 1975, attached hereto as Exhibit H.

11. The proposed regulations published on May 24, 1975 were promulgated as final regulations, with certain modifications noted in the preamble to the final regulations, on January 13, 1977. 42 Fed. Reg. 2861.

12. The AEC or its successor, the NRC, has entered into Agreements with the following states for discontinuance of certain federal regulatory authority and responsibility within the states which are parties to such Agreements pursuant to Section 274 of the Atomic Energy Act of 1954, 42 U.S.C.

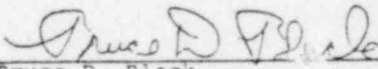
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Alabama	--	31 Fed. Reg. 10644 (August 10, 1966)
Arizona	--	32 Fed. Reg. 6103 (April 18, 1967)
Arkansas	--	28 Fed. Reg. 5316 (May 29, 1963)
California	--	27 Fed. Reg. 3864 (April 21, 1962)
Colorado	--	33 Fed. Reg. 2400 (Jan. 31, 1968)
Florida	--	29 Fed. Reg. 9463 (July 10, 1969)
Georgia	--	34 Fed. Reg. 20225 (Dec. 24, 1969)
Idaho	--	33 Fed. Reg. 12341 (Aug. 31, 1968)
Kansas	--	29 Fed. Reg. 15585 (Nov. 20, 1969)
Kentucky	--	27 Fed. Reg. 1373 (Feb. 14, 1962)
Louisiana	--	32 Fed. Reg. 6306 (May 3, 1967)
Maryland	--	35 Fed. Reg. 20020 (Dec. 31, 1970)

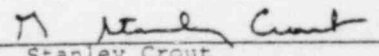
Mississippi	--	27 Fed. Reg. 5206 (June 2, 1962)
Nebraska	--	31 Fed. Reg. 11048 (Sept. 10, 1966)
Nevada	--	37 Fed. Reg. 11597 (June 9, 1972)
New Hampshire	--	31 Fed. Reg. 7090 (May 13, 1966)
New Mexico	--	39 Fed. Reg. 15743 (April 26, 1974)
New York	--	27 Fed. Reg. 10419 (Oct. 27, 1962)
North Carolina	--	29 Fed. Reg. 10619 (July 30, 1964)
North Dakota	--	34 Fed. Reg. 13950 (August 30, 1969)
Oregon	--	30 Fed. Reg. 9020 (July 17, 1965)
Rhode Island	--	45 Fed. Reg. 104 (Jan. 2, 1980)
South Carolina	--	34 Fed. Reg. 15315 (Oct. 1, 1969)
Tennessee	--	30 Fed. Reg. 10918-19 (Aug. 21, 1965)
Texas	--	28 Fed. Reg. 531 (January 29, 1963)
Washington	--	31 Fed. Reg. 16375 (Dec. 22, 1966)

For the convenience of the Court, a copy of the New Mexico Agreement is attached hereto as Exhibit I.

Respectfully submitted,

  
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I CERTIFY THAT I MAILED A COPY  
OF THE FOREGOING PLEADING TO  
OPPOSING COUNSEL OF RECORD

ON July 16, 1980

*E. J. Hocking*