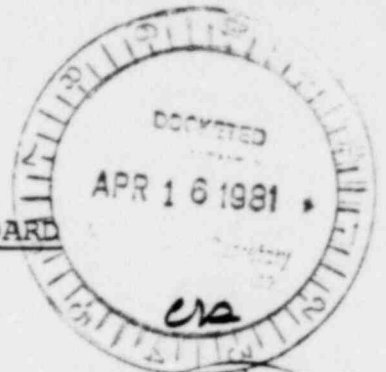


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

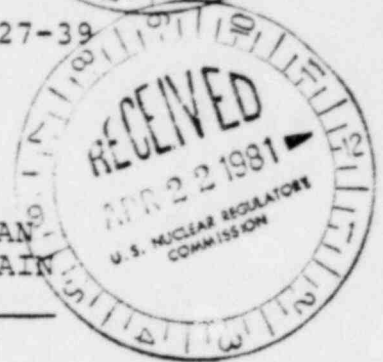
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)
US Ecology, Inc.)
(Sheffield, Illinois Low-Level)
Radioactive Waste Disposal Site))

Docket No. 27-39

4/15/81



ANSWER BY US ECOLOGY TO SECOND NRC MOTION FOR AN
ORDER COMPELLING US ECOLOGY TO RESPOND TO CERTAIN
INTERROGATORIES AND REQUESTS FOR DOCUMENTS

Background

Notwithstanding US Ecology's pledge throughout this entire proceeding to make its files available to the NRC Staff ("Staff") and all other parties, ^{1/} except for proprietary and privileged documents, and the fact that it has done so, the Staff has filed yet another Motion to Compel against US Ecology. The Staff's abuse of discovery procedures, in the face of US Ecology's willingness to open up its files and cooperate in full discovery, constitutes a clear example of harrassment and the continued efforts of Nuclear Material Safety & Safeguards to avoid resolution of this matter. For its part, US Ecology has fully complied with the letter and spirit of the Order entered by the Atomic Safety and Licensing Board ("Licensing Board") on February 25, 1981, following the pre-hearing conference.

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1/ See, e.g., letter dated February 25, 1981 from Troy B. Conner, Jr. to Atomic Safety and Licensing Board; Prehearing Conference of February 13, 1981 (tr. 93, 203, 207, 227-28); Answer of NECO to NRC Motion to Compel at 5 (December 1, 1980).

ADD: Tamba Hedding
DEL/STE: REG F/ES

On March 24, 1981, attorneys representing the NRC Staff and the State of Illinois reviewed all documents made available for inspection and copying at the Sheffield site. At that time, four representatives of US Ecology were present to answer any questions from the Staff or State attorneys. All documents were placed in several boxes, designating both the Staff and State interrogatories to which they pertained. During this inspection, no apparent difficulty arose. No indication was given by the Staff or the State that further assistance was needed, or that US Ecology's production was deemed incomplete or otherwise unsatisfactory.^{2/}

Moreover, US Ecology has also agreed to arrangements by which the Staff and State attorneys may conduct a further search of its files at its office in Louisville, Kentucky on April 20, 1981 and continuing thereafter. US Ecology has therefore fully discharged its responsibilities regarding discovery under the Licensing Board's Order of February 25, 1981. While it has sought clarification with regard to certain privileged documents, US Ecology continues to cooperate in every possible way with regard to the production of documents ordered by the Board. The instant motion to compel is therefore without merit and should be denied.

Argument

The gist of the Staff's motion is that US Ecology has failed to identify documents which are a part of the record of this proceeding. To the extent we can determine its intent from the

^{2/} Of course, no proprietary documents were given over, as that matter is pending on US Ecology's motion. See Motion by US Ecology for Clarification of Prehearing Conference Order (March 10, 1981).

latest motion, the Staff appears to wish US Ecology to make it a list of the documents in the files it has or will examine which are already in the NRC record. The Staff wholly ignores the fact that the Board's Order left US Ecology the option of identifying documents in the record or making its documents fully available for inspection by the Staff at its offices. Since US Ecology has opened its files for inspection, and is continuing to do so, it need not "identify" each document responsive to the Staff's interrogatories that is already a part of the record.

As US Ecology has stated before and as the Licensing Board obviously recognized in providing the alternative means of production under its Order, the discovery rules cannot be twisted so as to require one party to sift through the administrative record at the behest of another party, thereby performing the discovery party's function of trial preparation. See generally 4A Moore's Federal Practice ¶26.59 at 26-224 n.14 (2d ed. 1980); Securities & Exchange Commission v. Samuel H. Sloan & Co., 369 F. Supp. 994, 995 (S.D.N.Y. 1973); Struthers Scientific & International Corp. v. General Foods Corp., 45 F.R.D. 375, 380 (S.D. Tex. 1968); Parmelee Transportation Co. v. Keeshin, 25 Fed. R. Serv. 535, 536 (N.D. Ill. 1977).

The Staff also contends that US Ecology has failed to produce documents that "relate to" the documents sought. Since US Ecology has completely opened up its files for discovery by the Staff and State, and has even categorized the documents produced, it is difficult to ascertain what the Staff contends. While the reassignment of Staff attorneys in this proceeding may have caused some

confusion or lack of coordination, the Staff's motion simply does not give a fair representation of the documentary discovery that has taken place and is still in progress at the offices of US Ecology.

Without saying as much, it would appear that the Staff is implying that US Ecology has withheld documents responsive to its interrogatories, notwithstanding its statement on the record that all of its files relevant to this proceeding, except for proprietary and privileged information, would be made available. This imputation of bad faith is totally without foundation. The discovery procedures under the NRC's Rules of Practice contemplate that all parties will "be open and candid as to the details of all existing records." The Regents of the University of California (UCLA Research Reactor), Docket No. 50-142 OL, "Order" (December 22, 1980) (slip opinion at 4). The Licensing Board and the parties are entitled to rely upon the representation that all responsive documents have been disclosed. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-275 OL and 50-323 OL, "Order Relative to Intervenors' Motions to Compel Discovery" (August 3, 1978).^{3/}

Despite the fact that US Ecology has fully complied with the Board's discovery orders and has honored its commitment to open its files for inspection, it is very interesting that the Staff regards

^{3/} In this regard, Staff Interrogatory 1aa is another "catch all" request, which US Ecology has fully answered by opening up its files to the Staff and State.

these efforts as insufficient. Apparently, however, the Staff does not regard its own proffer of discovery documents along the same lines to be inadequate. In response to US Ecology's discovery requests and the Board Order of February 25, 1981, the Staff stated:

In accordance with the NRC Staff's agreement to make a "reasonable search of pertinent Commission files and records and ask knowledgeable personnel in the Commission for information responsive to all of US Ecology's requests" (Licensing Board Order of February 25, 1981, at page 2), the Staff has determined that the information sought by US Ecology's requests is located in the Willste Building in files in Room 432, in Room 683 and in Room 396. 4/

Measured by its own standards, it is difficult to understand what further relief the Staff believes it is entitled to.

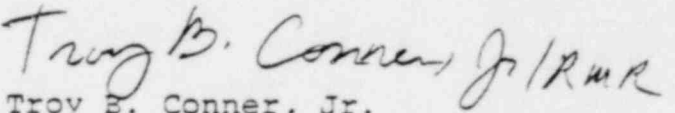
The remaining matters pertain to US Ecology's request for clarification of the Board's Prehearing Conference Order and need not be further addressed here. 5/ At the Prehearing Conference,

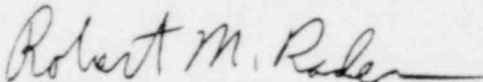
4/ Letter dated March 31, 1981 from Henry J. McGurren to Robert M. Rader (emphasis added). Moreover, as indicated in this letter, the availability of this information was made known to US Ecology only after it specifically pointed out to the Staff that the list of documents previously provided was very incomplete.

5/ As noted, the parties have agreed to a document search at US Ecology's offices in Louisville, Kentucky to commence on April 20, 1981. This renders moot the final request for relief made by the Staff. US Ecology, however, strenuously objects to the misrepresentation by the Staff that it has in any sense "evaded" inspection of the documents at Louisville. Staff counsel was informed that no firm date could be set until the availability of key company personnel could be determined. These officials were present during the inspection of documents at the Sheffield facility on March 24, 1981. No final arrangements were made at that time, in part, because of the unavailability of Staff counsel the week of April 13 to 17, 1981.

the Board indicated its agreement that privileged information need not be produced. US Ecology is confident, based on the reasons and analysis contained in its Motion for Clarification, that the Board will not depart from its rulings at that time.

Respectfully submitted,


Troy B. Conner, Jr.


Robert M. Rader

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April 15, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter)
)
US ECOLOGY) Docket No. 27-39 SC
)
(Sheffield, Illinois Low-Level)
Waste Burial Site))

CERTIFICATE OF SERVICE

I hereby certify that copies of "Answer by US Ecology to Second NRC Motion for An Order Compelling US Ecology to Respond to Certain Interrogatories and Requests for Documents," dated April 15, 1981, in the captioned matter, have been served upon the following by deposit in the United States mail this 15th day of April, 1981:

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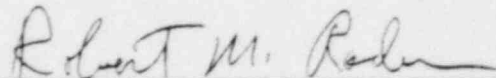
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