

9792

DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

90 FEB -6 P3:49

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

_____ )	
IN THE MATTER OF )	
KERR-McGEE CHEMICAL CORPORATION )	Docket No. 40-2061-ML
(West Chicago Rare Earths Facility) )	ASLBP No. 83-495-01-ML
_____ )	

KERR-McGEE OPPOSITION TO STATE MOTION  
TO HOLD PROCEEDINGS IN ABEYANCE

On January 30, 1990, the State of Illinois ("State") filed a motion urging that these proceedings be held in abeyance. Kerr-McGee Chemical Corporation ("Kerr-McGee") hereby responds and urges the denial of the State's motion.

The foundation for the State's motion is the pendency of a State application for an amendment of its agreement with the NRC. The issuance of the amendment would allow the State to assume jurisdiction over certain of the West Chicago wastes and, the State asserts, would require the termination of this proceeding.

As the State recognizes, the motion is identical to one offered by the staff in April 1989. In ruling on the staff's motion, the Board observed:

[T]he mere possibility that jurisdiction over the subject matter of the proceeding might be transferred provides no justification to hold it in abeyance. Basic fairness requires that it be resolved expeditiously.

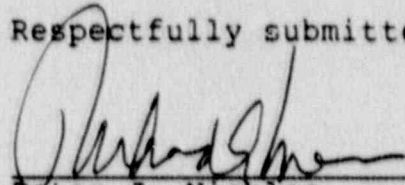
9002080051 900202  
PDR ADDCK 04002061  
C PDR

D503

Memorandum and Order, 19 (June 22, 1989). Exactly the same reasoning applies today.

The State points to the fact that it has now completed its application for the amendment. But, section 274e(1) of the Atomic Energy Act, 42 U.S.C. § 2021(e)(1), requires the Commission to seek public comment on the State's application. As shown by the Kerr-McGee Motion For An Order to Protect the Board's Jurisdiction (Oct. 27, 1989), there are many nettlesome issues that must be resolved by the Commission (and perhaps by the courts) before any transfer of jurisdiction could take place. In short, the transfer of jurisdiction is still only a "mere possibility" and, just as in June 1989, the State's application cannot justify any delay in this proceeding. Indeed, in light of the significant investment by Kerr-McGee, the NRC staff and the Board in addressing the various contentions raised by the State, it would be fundamentally unfair to deprive the parties of a prompt and final resolution of the case.

Respectfully submitted,



---

Peter J. Nickles  
Richard A. Meserve  
Herbert Estreicher  
COVINGTON & BURLING  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 7566  
Washington, D.C. 20044  
(202) 662-6000

Attorneys for Kerr-McGee  
Chemical Corporation

February 2, 1990

DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'90 FEB -6 P3:49

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of )

Kerr-McGee Chemical Corporation )

(West Chicago Rare Earths )  
Facility) )

Docket No. 40-2061-ML  
ASLBP No. 83-495-01-ML

CERTIFICATE OF SERVICE

I hereby certify that I have caused copies of the foregoing Kerr-McGee Opposition to State Motion to Hold Proceedings in Abeyance to be served by express mail (or, as indicated by an asterisk, by first-class mail), postage prepaid, on this 2nd day of February, 1990, as follows:

John H. Frye, III, Chairman  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
4350 East-West Highway  
4th Floor  
Bethesda, MD 20814

Dr. James H. Carpenter  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
4350 East-West Highway  
4th Floor  
Bethesda, MD 20814

Dr. Jerry R. Kline  
Atomic Safety and Licensing Board Panel  
4350 East-West Highway  
4th Floor  
Bethesda, MD 20814

Ann P. Hodgdon, Esq.  
Patricia Jehle, Esq.  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, MD 20851

Steven J. England, Esq.  
Illinois Department of Nuclear Safety  
1035 Outer Park Drive  
Springfield, Illinois 62704

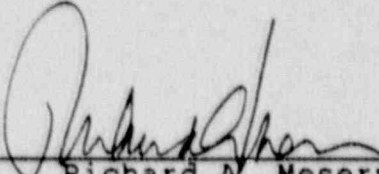
Carla D. Davis  
Douglas Rathe, Esq.  
J. Jerome Sisul  
Assistant Attorney General  
Environmental Control Division  
State of Illinois Building  
100 W. Randolph Street  
12th Floor  
Chicago, Illinois 60601

Robert D. Greenwalt, Esq.  
City of West Chicago  
100 Main Street  
West Chicago, IL 60185

Adjudicatory File (2)\*  
Atomic Safety and Licensing Board Panel Docket  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Docketing & Service Section (3)\*  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Atomic Safety and Licensing Appeal Board Panel\*  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

  
Richard A. Meserve