

CFO



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555-0001

December 14, 1993

The Honorable Paul Simon
United States Senate
Washington, DC 20510

Dear Senator Simon:

The March 8, 1991, letter from Kenneth M. Carr, then Chairman of the Nuclear Regulatory Commission (NRC), committed to provide you a copy of the Agency's final decision on the Kerr-McGee Chemical Corporation (Kerr-McGee) site in West Chicago, Illinois. Enclosed for your information is the final NRC action regarding the Kerr-McGee site.

If you have any questions regarding this information please do not hesitate to call me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dennis K. Rathbun".

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As Stated

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PDR ORG NRCCO
PDR

CC271

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of)
)
KERR-McGEE CHEMICAL CORPORATION)
)
(West Chicago Rare Earths)
Facility))
)

Docket No. 40-2061-ML

SERVED DEC 10 1993

ORDER

This proceeding is before the Commission on a petition for review of ALAB-944 filed by Kerr-McGee Chemical Corporation on March 20, 1991. The period within which the Commission may act on the petition or otherwise take review of ALAB-944 has been held in abeyance through December 10, 1993, at the joint request of Kerr-McGee, the State of Illinois, and the City of West Chicago, to allow a negotiated settlement of their differences. Kerr-McGee has informed the Commission in a status report filed on December 9, 1993 that the negotiations have been unsuccessful. Kerr-McGee also filed a motion on December 9, 1993, indicating that it wishes to withdraw its application for on-site disposal,¹ and requesting that the Commission terminate this proceeding and vacate as moot the following prior adjudicatory decisions in this proceeding: ALAB-944, 33 NRC 81 (1991), LBP-90-9, 31 NRC 150 (1990), and LBP-89-35, 30 NRC 677 (1989).

¹ Withdrawal is subject to the permission of the Commission. 10 C.F.R. § 2.107(a); see Sequoyah Fuels Corp., CLI-93-7, 37 NRC 175, 179 (1993).

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Any response to Kerr-McGee's filing from parties other than the NRC staff shall be filed by January 5, 1994. Any response by the NRC staff shall be filed by January 10, 1994.

The period within which the Commission may review ALAB-944 or take other action as may be appropriate in this docket is hereby extended pending further order.



For the Commission

Andrew J. Bates

for Samuel J. Chilk
Secretary of the Commission

Dated at ~~Rockville~~, Maryland,
this 10 day of December 1993.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
KERR-MCGEE CHEMICAL CORPORATION
(West Chicago Rare Earths Facility)

Docket No.(s) 40-2061-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION ORDER DTD 12/10/93 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Jerry R. Kline
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
James H. Carpenter
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Ann Hodgdon, Esq.
Counsel for NRC Staff
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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City of West Chicago
100 Main Street
West Chicago, IL 60185

Joseph V. Karaganis, Esq.
Karaganis & White Ltd.
414 North Orleans Street, Suite 810
Chicago, IL 60610

Joseph A. Young, Jr., Esq.
Kerr-McGee Chemical Corporation
123 Robert S. Kerr Avenue
Oklahoma City, OK 73125

Docket No. (s)40-2061-ML
COMMISSION ORDER DTD 12/10/9.

Stephen J. England, Esq.
Department of Nuclear Safety
1035 Outer Park Drive
Springfield, IL 62704

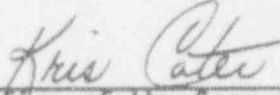
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Chicago, IL 60601

Jeffrey B. Renton, Esquire
Office of the General Counsel
U.S. EPA
LE-132A
401 M Street, S.W.
Washington, DC, 20460

Dated at Rockville, Md. this
10 day of December 1993


Office of the Secretary of the Commission



CHAIRMAN

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

March 8, 1991

The Honorable Paul Simon
United States Senate
Washington, D.C. 20510

Dear Senator Simon:

I am responding to your letter of January 23, 1991, concerning issues associated with byproduct material waste located at the Kerr-McGee Chemical Corporation (Kerr-McGee) site in West Chicago, Illinois. As you may be aware, the waste material in question has been stored at the site since Kerr-McGee discontinued operations there in 1972. The specific issue currently under debate is a proposal by Kerr-McGee to permanently dispose of the material on site in an engineered earthen cell.

With respect to the responsibilities of the Nuclear Regulatory Commission (NRC) regarding the Kerr-McGee facility, the Commission on November 1, 1990, discontinued its authority for regulating byproduct material under Section 11e.(2) of the Atomic Energy Act in the State of Illinois. However, in assuming regulatory authority, the State of Illinois established a requirement in its regulations that holders of NRC licenses for source material milling or 11e.(2) byproduct material disposal areas in effect on the date of transfer of regulatory authority shall be deemed to possess a like license under the Illinois regulations. The regulations also state that such a license will expire 90 days after receipt from the Illinois Department of Nuclear Safety (IDNS) of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier. The IDNS, on December 5, 1990, notified Kerr-McGee that their license for the West Chicago facility would expire in 90 days. Kerr-McGee may apply for a new State license or allow the current license to expire, which would mean, as explained in the notification, that under Illinois' regulations Kerr-McGee would be required to maintain all material in a safe condition and provide a plan for final decommissioning of the site and proper disposal of all licensed materials.

Under Section 274 of the Atomic Energy Act, as amended, the NRC has a responsibility to periodically review the State's regulatory program and to notice and provide an opportunity for a hearing when a State implements alternative requirements to those adopted by the NRC for 11e.(2) byproduct material. These responsibilities will be carried out as necessary.

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You also requested that the NRC license issued for the West Chicago factory site be vacated. At the time the Commission discontinued its regulatory authority over 11e.(2) byproduct material in the State of Illinois, an appeal of the approval of an amendment to the NRC license for the Kerr-McGee facility was pending before the Commission's Atomic Safety and Licensing Appeal Board. After considering extensive arguments and pleadings from the parties, the Appeal Board, on February 28, 1991, vacated the Licensing Board's decision approving the permanent disposal of tailings at the West Chicago site; directed that the staff approval of on-site disposal be revoked; and terminated the proceedings. In the Appeal Board's view, consideration of Kerr McGee's proposal for on-site disposal should begin again by the State of Illinois.

Pursuant to the Commission's regulations in 10 CFR Section 2.786, the decisions of the Appeal Board in this case are subject to review by the Commission on its own motion or in response to a petition for review filed by a party. Since aspects of this matter may come before the Commission in its adjudicatory capacity, it would be inappropriate for me to comment on your request outside the context of the adjudicatory proceeding. However, your letter will become part of the official record of the proceeding. Copies have been served on the presiding Board and the parties to the proceeding. Copies have also been placed in the NRC's Public Document Room. We will be pleased to provide you a copy of the Agency's final decision in this proceeding when it is available.

Sincerely,

original signed by:
Kenneth M. Carr

Kenneth M. Carr

Handwritten notes:
 10
 CA
 3/8/91
 App Date

Originating Office: GPA/SP
 Ref: CR-91-030
 (Commission Correspondence)

OFFICE	SECY	GPA/CA	OCM	OCM		
SURNAME	DMossburg	OK	pm	OK		
DATE	3/7/91	3-7	3/7/91	3-8-91		

United States Senate

WASHINGTON, DC 20510-1302

January 23, 1991

Kenneth Carr, Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Chairman Carr:

I am writing once again to share my concern about the nuclear waste storage debate taking place between Kerr-McGee Chemical Corporation and West Chicago in Illinois.

It is my understanding Kerr-McGee wishes to store radioactive mill tailings on a site it owns in West Chicago. I do not believe this is wise. There are six schools in this residential area that could potentially be exposed to the hazardous waste. With all due respect to Kerr-McGee's expertise in storing hazardous waste, I believe this is an unnecessary risk for the children and residents.

The Nuclear Regulatory Commission has been without jurisdiction over this factory site since it transferred authority to the State of Illinois in November 1990. I am requesting that any licenses tentatively issued with regard to the factory site be vacated. I believe this is just and reasonable.

I look forward to hearing from you soon.

My best wishes.

Sincerely,



Paul Simon
U.S. Senator

PS/kht

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CONGRESSIONAL CORRESPONDENCE SYSTEM
DOCUMENT PREPARATION CHECKLIST

This checklist is to be submitted with each document (or group of Qs/As) sent for filing into the CCS.

1. BRIEF DESCRIPTION OF DOCUMENT(S) Ltr. to Sen Simon
2. TYPE OF DOCUMENT Correspondence Hearings (Qs/As)
3. DOCUMENT CONTROL Sensitive (NRC Only) Non-Sensitive
4. CONGRESSIONAL COMMITTEE and SUBCOMMITTEES (if applicable)
- _____ Congressional Committee
- _____ Subcommittee
5. SUBJECT CODES
- (a) _____
- (b) _____
- (c) _____
6. SOURCE OF DOCUMENTS
- (a) _____ 5520 (document name _____)
- (b) Scan- (c) _____ Attachments
- (d) _____ Rekey (e) _____ Other _____
7. SYSTEM LOG DATES
- (a) 1/25/94 Date OCA sent document to CCS
- (b) _____ Date CCS receives document
- (c) _____ Date returned to OCA for additional information
- (d) _____ Date resubmitted by OCA to CCS
- (e) _____ Date entered into CCS by _____
- (f) _____ Date OCA notified that document is in CCS
8. COMMENTS
- _____