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POLICY ISSUE
(Notation Vote)

July 17, 1990

SECY-90-253

For: The Commissioners

From: Harold R. Denton, Director
Office of Governmental and
Public Affairs

Subject: PROPOSED AMENDMENT NUMBER ONE TO THE AGREEMENT
BETWEEN THE STATE OF ILLINOIS AND U.S.
NUCLEAR REGULATORY COMMISSION PURSUANT TO
SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954,
AS AMENDED

Purpose: To request Commission approval of the
proposed Amendment Number One of the
Agreement with Illinois (Attachment 1).

Summary: By letter dated April 11, 1989 Governor
James R. Thompson of Illinois requested that the
Commission amend its Section 274b Agreement with the
State to enable the State to assume regulatory
authority over Section 11e.(2) byproduct material
(mill tailings). Federal Register (FR) Notices of
the NRC staff's assessment of Illinois' proposed
radiation control program to implement the proposed
Amendment Number One to the Agreement were published
as required by Section 274e of the Atomic Energy Act
of 1954, as amended (the Act). The comment period
ended April 27, 1990.

In response to the FR Notice, Kerr-McGee Chemical
Corporation requested a hearing. The Commission must
act on this request prior to acting on the
recommendation in this paper to approve Amendment
Number One to the Section 274b Agreement with
Illinois.

One NRC license covering 11e.(2) byproduct material
would be transferred to Illinois under the amended
Agreement. This license is currently the subject of
NRC adjudicatory proceedings (Docket No. 40-2061-ML
[ASLAP No. 83-495-01-ML]) and adjudicatory
proceedings in the State of Illinois, Kerr-McGee
Chemical Corp. v. City of West Chicago, No. 90-C-1319
(N.D. Ill.). An appeal of the court decision is now

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pending before the Seventh Circuit, Kerr-McGee Chemical Corporation v. City of West Chicago, No. 90-1622 (7th Circuit). These proceedings relate to the Kerr-McGee West Chicago Rare Earths Facility. Under the terms of a Section 274b Agreement, NRC relinquishes and the State asserts its authority over licenses affected by the amended Agreement. Accordingly, one of the parties to the ASLAP proceeding would likely request termination of the proceeding upon approval of the proposed Amendment Number One to the Agreement.

Discussion:

On April 11, 1989 Governor James R. Thompson requested that the Section 274b Agreement between NRC and Illinois be amended. The proposed Amendment Number One would add to the Agreement the category of 11e.(2) byproduct material and the activities that produce 11e.(2) byproduct material. No effective date for the Amendment Number One to the Agreement was proposed but the NRC staff has been informally advised by the Illinois Department of Nuclear Safety (IDNS), which will administer the amended program, that the State would agree to an effective date of the day following the Governor signing the Amendment Number One. In his letter, the Governor certified that the State of Illinois has a program for control of radiation hazards which is adequate to protect public health and safety with respect to the materials within the State covered by the Amendment Number One to the Agreement, and that the State of Illinois desires to assume regulatory responsibility for such additional materials. The text of the proposed Amendment Number One to the Agreement is shown in Attachment 1.

The proposed Amendment Number One to the Agreement and staff assessment of the proposed amended Illinois radiation protection program were published in the FR (Attachment 2) for public comment for four consecutive weeks as required by Section 274e of the Atomic Energy Act, as amended. The staff's

assessment of the proposed Amendment Number One to the Agreement and the radiation protection program proposed by Illinois to implement the amendment identified some criteria in the Illinois regulations that the staff considered more stringent than the similar criteria in NRC's regulations. More stringent State regulations are authorized by Section 274o(2) of the Act. Also, in 1983 the following section was added to the end of Section 274o:

... the State may adopt alternatives (including, where appropriate, site-specific alternatives) to the requirements adopted and enforced by the Commission for the same purpose if, after notice and opportunity for public hearing, the Commission determines that the alternative standards will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Environmental Protection Agency in accordance with Section 275.

Kerr-McGee Chemical Corporation requested that such a hearing be held. As noted above, the Commission must resolve the hearing request prior to acting on the recommendations of this paper.

In response to the FR Notice, the NRC received 167 letters with two commenters (Kerr-McGee and the State of Illinois) submitting supplemental comments. The

commenters included local residents (9708 total number of signatures), businesses (20), community leaders (9), the U.S. Environmental Protection Agency, the Illinois Department of Nuclear Safety, the Illinois Senate, and Kerr-McGee Chemical Corporation (the only licensee in the State affected by this amendment). Of the letters received, all except Kerr-McGee's were in support of the amendment and transfer of regulatory authority for 11e.(2) byproduct material to the State of Illinois. Kerr-McGee opposed the granting of the amendment and requested that a hearing be held. Kerr-McGee requested oral argument before the Commission prior to the Commission deciding on the Illinois request. A list of all commenters is attached (Attachment 3). An analysis of the major comments was prepared by the staff and is attached (Attachment 4). Kerr-McGee submitted by letter dated June 25, 1990 a special counsel's report, "Report of Special Counsel to the Illinois Senate Executive Committee on Siting a Low-Level Radioactive Waste Facility" dated May 17, 1990. The staff evaluated this report and the staff's conclusions are included as Comment 14 in Attachment 4.

The staff has prepared a brief status summary of the ongoing litigation which may influence or be influenced by the proposed amendment to the Illinois Agreement (Attachment 5). The cases are as follows:

1. Kerr-McGee Chemical Corp. v. NRC, Nos. 87-1254 and 881636 (D.C. Cir.).
2. Kerr-McGee Chemical Corp. v. IDNS, No. 90 MR 49 (Ill. Cir. Ct., Sangamon Cty).
3. Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility), ASLAP No. 83-495-01-ML, Docket No. 40-2061-ML.
4. Kerr-McGee Chemical Corp. v. City of West Chicago, No. 90 C 1319 (N.D. Ill.); Kerr-McGee Chemical Corp. v. City of West Chicago, No. 90 C 1622 (7th Cir.).

5. Illinois v. Kerr-McGee Chemical Corp., No. 90 CH 220 (Ill. Cir. Ct., DuPage Cty); Kerr-McGee Chemical Corp. v. Illinois, No. 2-90-0577 (Ill. App. Ct.).
6. State v. Kerr-McGee Chemical Corp., No. 80 CH 298 (Ill. Cir. Ct., DuPage Cty).

In an amicus curiae brief in the case before the Appeal Board, EPA Region V raised several significant technical issues which need to be technically resolved in order to settle, from a technical standpoint, the long pending issue of the adequacy of the design of the proposed cell. The presiding Appeal Board set a date of August 10, 1990 for the NRC staff to file their response on the technical issues. Entering into the amended Agreement will have the likely effect of making the ongoing NRC licensing proceeding moot, and if executed prior to August 10, 1990 would leave important outstanding technical issues unresolved. The NRC staff believes it would reflect poorly on NRC to transfer the license before the agency has the opportunity to resolve these belated but important technical issues. Accordingly, the NRC staff recommends that the amended Agreement not be executed prior to August 10, 1990.

GPA has found that the Illinois program for the regulation of Section 11e.(2) byproduct material is in accordance with the requirements of Sections 274d and 274e, is in all other respects compatible with the Commission's program for regulating such materials, and is adequate to protect the public health and safety. This finding is based on the assessment in Attachment 2 and the Staff analysis of comments on the assessment in Attachment 4. Thus, GPA has concluded that the State has met the requirements of Section 274 of the Act and, therefore, recommends the Commission approve the amended Agreement.

Coordination:

The Executive Director for Operations concurred in the assessment and the Office of General Counsel had no legal objection to it. The Executive Director for Operations concurs with the recommendation. The Office of General Counsel has no legal objection to the recommendation.

Recommendation:

That the Commission approve the Amendment Number One to the Section 274b Agreement with the State of Illinois to be executed after August 10, 1990.

Note:

1. Kerr-McGee requested oral argument and a hearing before the Commission on the Illinois amendment request. These requests will be addressed by separate Memorandum and Order.
2. The Governor will be informed by letter of the Commission's decision (Attachment 6).
3. Congressional Committees will be informed of the Commission's decision (Attachment 7).
4. The Office of Public Affairs will issue a press release (Attachment 8).
5. The staff has been informed that the Governor does not desire a public signing ceremony. Therefore, GPA will coordinate the signing by mail.
6. The effective date for the Amendment will be the day following the signing of the Agreement.
7. Notice of the amended Agreement will be published in the FR. A draft FR Notice is attached (Attachment 9).



Harold R. Denton, Director
Office of Governmental and
Public Affairs

Attachments:

1. Proposed Amendment
2. Federal Register Notice with Staff Assessment
3. List of Public Commenters
4. Staff Analysis of Public Comments
5. Status Summary of Litigation Pertaining to the amended Agreement with the State of Illinois
6. Draft Letter to Governor
7. Draft Letter to Congressional Committees
8. Draft Press Release
9. Draft Federal Register Notice

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Wednesday, August 1, 1990.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Wednesday, July 25, 1990, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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AMENDMENT NUMBER ONE TO THE AGREEMENT
BETWEEN
THE UNITED STATES NUCLEAR REGULATORY COMMISSION
AND THE
STATE OF ILLINOIS
FOR
DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY
AND
RESPONSIBILITY WITHIN THE STATE PURSUANT TO
SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

WHEREAS, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

WHEREAS, the Governor of the State of Illinois is authorized under Illinois Revised Statutes, 1987, ch. 111 $\frac{1}{2}$, par. 216b and ch. 111 $\frac{1}{2}$; par. 241-19 to enter into this Agreement with the Commission; and,

WHEREAS, on June 1, 1987, an Agreement between the Commission and the State of Illinois became effective which provided for State assumption under State law regulatory authority over byproduct material as defined in Section 11e(1) of the Act, source materials, special nuclear materials in quantities not sufficient to form a critical mass, and the land disposal of source, byproduct, and special nuclear material received from other persons; and,

WHEREAS, Article III of that Agreement provides that the Agreement may be amended upon application by the State and approval by the Commission, to include the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material; and,

WHEREAS, the Governor of the State of Illinois certified on _____ that the State of Illinois (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and that the State of Illinois desires to assume regulatory responsibility for such materials; and,

WHEREAS, the Commission found on _____ that the program of the State for the regulation of the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and,

WHEREAS, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and where necessary compatible; and,

WHEREAS, the Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to Amendment Number One to the Agreement; and,

WHEREAS, Amendment Number One to the Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

NOW, THEREFORE, IT IS HEREBY AGREED between the Commission and the Governor of the State, acting in behalf of the State, as follows:

- 1) Article I of the Agreement is hereby amended to expand the scope of the Agreement to include the extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in Section 11e.(2) of the Act. As amended, Article I now reads as follows:

ARTICLE I

Subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following:

- A. Byproduct material as defined in Section 11e.(1) of the Act;

- B. Source materials;
- C. Special nuclear materials in quantities not sufficient to form a critical mass; and,
- D. The land disposal of source, byproduct, and special nuclear material received from other persons.

Pursuant to Article III, and subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Amendment Number One to this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following:

- E. The extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in Section 11e.(2) of the Act.
- 2) Article II of the Agreement is hereby amended by inserting "A." before "This Agreement," by redesignating paragraphs A. through D. as subparagraph 1. through 4., by deleting paragraph E., relating to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and by adding a new paragraph B., relating to authorities that will be retained by the Commission. As amended, Article II now reads as follows:

ARTICLE II

- A. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:
 - 1. The construction and operation of any production or utilization facility;
 - 2. The export from or import into the United States of byproduct, source, or special nuclear material, or utilization facility;
 - 3. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission; and,

4. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.
- B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct materials as defined in Section 11e.(2) of the Atomic Energy Act:
1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.
 2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material. Such reserved authority includes:
 - a. The authority to established terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;
 - b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

- c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger the public health, safety, welfare, or the environment;
 - d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or a State;
 - e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety, and other actions as the Commission deems necessary; and,
 - f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian tribe or land owned by an Indian tribe and subject to a restriction against alienation imposed by the United States.
- 3) Article IX of the Agreement is hereby amended by redesignating it Article X and by inserting a new Article IX. As amended Articles IX and X now read as follows:

ARTICLE IX

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity which results in production of such material, the State shall comply with the provisions of Section 274o of the Act. If in such licensing and regulation, the State requires financial surety arrangements for the reclamation or long-term surveillance and maintenance of such material,

- A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and,
- B. Such State surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

ARTICLE X

This Agreement shall become effective on June 1, 1987, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

- 4) The Agreement effective June 1, 1987 remains in effect except as modified by amendments contained in Paragraphs 1), 2), and 3) of this Amendment Number One.

- 5) This Amendment Number One to the June 1, 1987 Agreement shall become effective on _____, and shall remain in effect until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland, in triplicate, this ____ day of _____.

For the United States Nuclear Regulatory Commission.

Chairman

Done at Springfield, Illinois, in triplicate, this ____ day of _____.

For the State of Illinois

Governor

State of Illinois: Staff Assessment of Proposed Amendment Number One to the Agreement Between the Nuclear Regulatory Commission and the State of Illinois

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Proposed Amended Agreement with State of Illinois.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is publishing for public comment the NRC staff assessment of a proposed amendment to the existing section 274b agreement between the NRC and the State of Illinois which became effective June 1, 1987. The request dated April 11, 1989 from Governor James R. Thompson of the State of Illinois, if approved, would permit Illinois to regulate byproduct materials as defined in section 11e.(2) of the Atomic Energy Act, as amended, (uranium or thorium mill tailings) in conformance with the requirements of section 274O of the Atomic Energy Act of 1954, as amended (the Act).

A staff assessment of the State's proposed radiation control program to implement the amended agreement is set forth below as supplementary information of this notice. A copy of the complete program description submitted by Illinois, including a program statement prepared by the State

describing the State's proposed program for control over byproduct materials as defined in section 11e.(2) of the Act, State legislation, and Illinois regulations, is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW, Washington, DC, the Commission's Region III Office at 7500 Roosevelt Road, Building No. 4, Glen Ellyn, Illinois, and the Illinois Department of Nuclear Safety at 1835 Outer Park Drive, Springfield, Illinois. Exemptions from and reservations of the Commission's regulatory authority, which would implement this proposed amendment to the existing 274b agreement, have been published in the Federal Register and codified as Part 150 of the Commission's regulations in Title 10 of the Code of Federal Regulations.

DATES: Comments must be received on or before April 27, 1990.

ADDRESSES: Submit written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch. Comments may also be delivered to 11555 Rockville Pike, Rockville, Maryland from 7:45 a.m. to 4:15 p.m. Monday through Friday. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vandy L. Miller, Assistant Director for State Agreements Program, U.S. Nuclear Regulatory Commission, Washington, DC. Telephone: 301-482-0626.

SUPPLEMENTARY INFORMATION: Assessment of proposed amended Illinois Program to regulate certain radioactive materials pursuant to section 274 of the Atomic Energy Act of 1954, as amended (the Act).

The Commission has received a proposal from the Governor of Illinois for the State to amend its agreement with the NRC whereby the NRC would relinquish and the State would assume regulatory authority for byproduct material, as defined in section 11e.(2) of the Act, pursuant to section 274 of the Act.

Section 274e of the Act requires that the terms of the proposed agreement be published for public comment once each week for four consecutive weeks. Accordingly, this notice will be published four times in the Federal Register.

I. Background

A. Section 274 of the Act provides a mechanism whereby the NRC may transfer to the State certain regulatory

authority over agreement materials¹ when a State desires to assume this authority and the Governor certifies that the State has an adequate regulatory program, and when the Commission finds that the State's program is compatible with that of the NRC and is adequate to protect the public health and safety. Section 274g directs the Commission to cooperate with the States in the formulation of standards for protection against radiation hazards to assure that State and Commission programs for radiation protection will be coordinated and compatible. Further, section 274j provides that the Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

The Uranium Mill Tailings Radiation Control Act of 1978 amended the requirements of section 274 of the Atomic Energy Act, by adding section 274c which imposed certain requirements that must be met by Agreement States in order to regulate uranium and thorium mill tailings after November 8, 1981.

B. On May 18, 1987, the Governor of Illinois signed an agreement with the NRC for the assumption of regulatory authority for byproduct material as defined in section 11e.(1) of the Act, source material, special nuclear material in quantities not sufficient to form a critical mass, and the land disposal of source, byproduct, and special nuclear material received from other persons. This agreement became effective on June 1, 1987. In a letter dated April 11, 1988, Governor James R. Thompson of the State of Illinois requested that the Commission enter into an amended agreement with the State pursuant to section 274 of the Act under which the State would assume responsibility for regulating uranium and thorium mill tailings (11e.(2) byproduct material) and the operations that generate such material. The Governor certified that the State of Illinois has a program for control of radiation hazards which is adequate to protect the public health and safety with respect to the materials within the State covered by the proposed amendment to the agreement, and that the State of Illinois desires to assume regulatory responsibility for such materials. The text of the proposed amendment to the agreement is shown in Appendix A.

¹ A. Byproduct materials as defined in 11e.(1).

B. Byproduct materials as defined in 11e.(2).

C. Source materials, and

D. Special nuclear materials in quantities not sufficient to form a critical mass.

The specific authority requested is for source material recovery activities including the uranium and thorium mill tailings (byproduct material as defined in section 11e.(2) of the Act). The proposed amendment to the agreement covers the following areas:

1. Amending Article I of the Agreement of May 18, 1987 to add the extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in section 11e.(2) of the Act to the list of materials covered by the agreement.

2. Amending Article II of the Agreement of May 18, 1987 by inserting "A." before "This Agreement," by redesignating paragraphs A. through D. as subparagraphs 1. through 4., by deleting paragraph E. relating to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and by adding a new paragraph B. relating to authorities pertaining to byproduct as defined in section 11e.(2) of the Act that will be retained by the Commission.

3. Amending Article IX by redesignating it Article X and by inserting a new Article IX which requires compliance with 274c of the Act and specifies certain financial surety requirements in subparagraphs A. and B.

4. States that the Agreement of May 18, 1987 remains in effect except as modified by the above amendments.

5. Specifies the effective date of Amendment Number One.

The State has no active uranium or thorium mills processing ore for its source material content. However, one facility exists under an NRC license at West Chicago, Illinois. This mill began operation in 1931 to process ore containing thorium and rare earth metals.

Kerr-McGee Chemical Corporation (Kerr-McGee) acquired the facility in 1967 and operated it until closing the plant in 1973. In 1979 Kerr-McGee submitted a plan to the NRC for decommissioning the West Chicago site and stabilizing the accumulated waste and tailings. The plan was modified and the most recent version submitted to NRC in 1988. Besides onsite wastes and ore residuals, wastes are known to exist offsite as well. On August 5, 1988, the Commission issued a decision on the regulatory aspects of the radiologically contaminated material on and offsite. The Commission held: (1) The radiologically contaminated material on and along Kress Creek and the West

Branch of the DuPage River and 11e.(2) byproduct material and, therefore, not within the scope of the section 274b agreement into which the Commission entered with Illinois in 1987, and remained within the regulatory authority of the Commission; and (2) the radiologically contaminated material in Reed-Keppler Park and certain residential areas of DuPage County, and the radiologically contaminated material returned from the West Chicago Sewage Treatment Plant and residential areas within the City of West Chicago to the West Chicago Rare Earths Facility Site, was source material that is within the scope of the agreement and was, therefore, under the regulatory authority of the State of Illinois.

In rendering this decision, the Commission upheld the position that the thorium-contaminated materials described in (2) above should be classified as source material. It further held that the thorium-contaminated material in Kress Creek should be classified as 11e.(2) byproduct material. Consequently, in order for the State of Illinois to regulate the latter, the State of Illinois would need to have its existing Agreement amended to demonstrate compliance with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. Details relating to the Rare Earths Facility are contained in the Final Environmental Statement (NUREG-0904, 1983) and the Supplement to the Final Environmental Statement (NUREG-0904, Supplement No. 1, 1989) related to the decommissioning of the Rare Earths Facility, West Chicago, Illinois.

On February 13, 1990, the Atomic Safety and Licensing Board (Licensing Board) issued a decision directing the staff to issue a license amendment authorizing Kerr-McGee to dispose of the 11e.(2) byproduct material as proposed by Kerr-McGee in its application. The staff issued the amendment on February 23, 1990. The State of Illinois and the City of West Chicago each filed a Notice of Appeal before the Atomic Safety and Licensing Appeal Board (Appeal Board). The State of Illinois and the City of West Chicago also requested the Appeal Board to stay the Licensing Board's decision. The Appeal Board issued an Order on March 13, 1990 denying the State's and the City's requests for a stay.

C. Ill. Rev. Stat. 1985, ch. 127, par. 63b17, the enabling statute for the Illinois Department of Nuclear Safety (IDNS) and Ill. Rev. Stat. 1987, ch. 111 1/2, par. 211-229, the Illinois Radiation Protection Act authorize the Department to issue licenses to, and perform

inspections of, users of radioactive materials under the Agreement and otherwise carry out a total radiation control. Illinois regulations for radiation protection were adopted on September 25, 1986 under authority of the enabling statute and provide standards, licensing, inspection, enforcement and administrative procedures for agreement and non-agreement materials. These standards and procedures became effective on June 1, 1987, the effective date of the Agreement. As amended by P.A. 85-1180, effective August 5, 1988, the Illinois Radiation Protection Act authorizes the IDNS to regulate byproduct material as defined in section 11e.(2) of the Act. To provide for licensing of 11e.(2) byproduct material and source material recovery facilities which generate 11e.(2) byproduct material, a new Part 332 has been added to the Illinois Administrative Code (82 Ill. Adm. Code 332). These regulations were finalized on January 4, 1990 and will become effective when the Amendment Number One becomes effective. On February 6, 1990, Kerr-McGee sought judicial review of the final regulations in the Illinois courts (Kerr-McGee Chemical Corp. v. IDNS, No. 90MR49; Ill. Cir. Ct., Sangmon County). This proceeding is still pending.

On January 10, 1990, the Illinois General Assembly Joint Committee on Administrative Rules (JCAR) met and issued 12 objections to the final regulations for source material recovery and 1e.(2) byproduct material (82 Ill. Adm. Code 332). These objections were published in the Illinois Register on February 2, 1990. In accordance with Section 7.07 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1987, ch. 127, par. 1007.07), IDNS has 60 days to respond to the objections and, if IDNS does not respond within 60 days, the lack of response will constitute a refusal to amend or repeal this rule. Unless the JCAR drafts and introduces legislation requiring IDNS to implement the recommendations, no further actions are required of IDNS.

D. On June 1, 1987, Illinois assumed regulatory authority for (1) byproduct material as defined in section 11e.(1) of the Act, (2) source material, (3) special nuclear material in quantities not sufficient to form a critical mass, and (4) permanent disposal of low-level radioactive waste containing one or more of the foregoing materials but not containing uranium and thorium mill tailings (byproduct material as defined in section 11e.(a) of the Act). The program audits conducted since that time have resulted in NRC findings that the Illinois radiation control program is

compatible with that of the NRC and is adequate to protect public health and safety.

Illinois is one of two States with a cabinet-level agency devoted exclusively to radiation safety and control. Illinois' role in radiation safety is traceable to 1955 when the Illinois General Assembly created the Atomic Power Investigating Commission. The Illinois Department of Nuclear Safety Program provides a comprehensive program encompassing radiation protection regulations for radioactive materials and machine produced radiation, license, low-level radioactive waste management, surveillance of transportation of radioactive materials and environmental radiation, coordination of State government functions concerning nuclear power and emergency preparedness.

E. The proposed amendment to the Illinois agreement will cover the regulation of source material extraction from ores processed primarily for their source material content and the management and disposal of the resulting tailings and other wastes (byproduct material as defined in section 11e.(2) of the Act). The State's proposed program for the regulation of source material extraction and 11e.(2) byproduct material is assessed under Criteria 29 through 36 of the guidelines published by NRC, Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement. These criteria are specifically identified as "Additional Criteria for States Regulating Uranium or Thorium Processors and Wastes Resulting Therefrom After November 8, 1981" and addressed the Statutes, Regulations, Organizational Relationships Within the States, Personnel, Functions To Be Covered, and Instrumentation. Prior evaluation of the Illinois program in accordance with Criteria 1 through 28, was addressed in the staff assessment of the original Illinois proposed agreement published in the Federal Register on January 21, 1987 (52 FR 2309-2324).

H. NRC Staff Assessment of the Proposed Illinois Radiation Control Program for Control of Uranium and Thorium Processors and the Waste Resulting Therefrom

Reference: Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and

Assumption Thereof by States Through Agreement.¹

A. Statutes

29. State statutes or duly promulgated regulations should be enacted, if not already in place, to make clear State authority to carry out the requirements of Public Law 95-604, Uranium Mill Tailings Radiation Control Act, as amended (UMTRCA).

Based on the analysis of the State's revised statutes, regulations, and the State's program statement, the staff concludes that the Illinois Radiation Protection Act and the State's implementing regulations provide adequate authority for Illinois to regulate section 11e(2) byproduct material in accordance with the requirements of the Uranium Mill Tailings Radiation Control Act, as amended. The Radiation Protection Act requires the IDNS to provide, by rule or regulation, standards for the protection of the public health and safety and the environment that are equivalent, to the extent practicable, or more stringent than, the standards adopted and enforced by NRC for 11e(2) byproduct material, including standards issued by the Environmental Protection Agency (EPA). The Illinois Radiation Protection Act also authorizes IDNS to require licensees to provide adequate financial surety to assure that all of the IDNS requirements for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in connection with the generation or disposal of section 11e(2) byproduct material have been met. Authority is also provided to transfer to the Federal government funds which have been collected by the State for long-term surveillance and maintenance of custody of the byproduct material and its disposal site is transferred to the Federal government. Provisions of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, par. 1005) and Illinois regulations (32 Ill. Adm. Code Parts 200 and 332) implement the procedural requirements for the issuance of licenses and rules prescribed in sections 274o(3) (A) and (B) of the Act, and identified in Criterion 29d., e., and g. These requirements relate to such matters as opportunity for written comments, public hearings, cross examination, and judicial review.

Reference: Ill. Rev. Stat. 1985, ch. 127, par. 63b17 and 1005, Ill. Rev. Stat. 1987,

ch. 111 1/2, par. 211-229, as amended by P.A. 85-1160; 32 Ill. Adm. Code Parts 200 and 332.

30. In the enactment of any supporting legislation, the State should take into account the reservations of authority to the Commission UMTRCA as stated in 10 CFR 150.15a.

The staff has reviewed the Illinois Radiation Protection Act, as amended, and has determined that these reservations of authority to the Commission are incorporated in the Illinois statute and are adequately discussed in the program statement.

References: Ill. Rev. Stat. 1987, ch. 111 1/2, par. 211-229, as amended; Illinois Program Statement: Application to Amend the Agreement Between Illinois and the U.S. Nuclear Regulatory Commission.

31. Section 274o(3)(C) of the Act requires that in the licensing and regulation of ores processed primarily for their source material content and for the disposal of the resulting byproduct material, States shall establish procedures which provide a written analysis of the impact on the environment of the licensing activity. This analysis shall be available to the public before commencement of hearings and shall include:

- a. An assessment of the radiological and nonradiological public health impacts;
- b. An assessment of any impact on any body of water or groundwater;
- c. Consideration of alternatives to the licensed activities; and,
- d. Consideration of long-term impacts of licensed activities.

The State's statutes and its implementing regulations provide sufficient authority for the IDNS to comply with the environmental assessment procedures required by UMTRCA. Part 332 of Illinois regulations (section 332.100) addresses the procedural requirements for environmental assessments and defines the scope of assessments and associated administrative procedures. In accordance with Criterion 29f., section 332.100 of the Illinois regulations bans major construction prior to completion of the environmental analysis.

References: Illinois Program Statement, Application to Amend the Agreement Between Illinois and the U.S. Nuclear Regulatory Commission; Ill. Rev. Stat. 1987, ch. 111 1/2, par. 211-229, as amended by P.A. 85-1160; 32 Ill. Adm. Code Part 332.

B. Regulations

32. State regulations should be reviewed for regulatory requirements, and where necessary incorporate

regulatory language which is equivalent, to the extent practicable, or more stringent than regulations and standards adopted and enforced by the Commission, as required by section 274o (see 10 CFR 40, Appendix A, and 10 CFR 150.31(b)).

On January 10, 1990 (effective date, January 4, 1990), final Illinois regulations (32 Ill. Adm. Code Part 332) were submitted to NRC completing the Governor's package submitted April 11, 1989. These final regulations establish State regulations that are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements and standards promulgated by the Environmental Protection Agency. It is the staff's opinion that these rules have, to the maximum extent practicable, achieved the same objective as the NRC's Part 40 regulations except that certain parts of the State regulations are more stringent than the NRC regulations and are, therefore, more restrictive than NRC regulations. The staff has identified State requirements which NRC does not address in its regulations that may also be considered to be more stringent than NRC requirements. The sections are identified below. The staff is proposing to find the following sections more stringent and in accord with section 274o of the Act only for the purpose of finding the Illinois program adequate, compatible and in compliance with statutory requirements so that authority may be relinquished lawfully to the State. The staff offers no opinion whether, as applied to any particular site, the findings required by the last paragraph of section 274o can be made.

Criteria which are more stringent than 10 CFR part 40:

1. Part 332—This part of the Illinois regulations is considered more stringent in that it does not contain a specific exemption provision such as 10 CFR 40.14(a.) or a provision for approving alternatives to these regulations such as provided for in the Introduction of appendix A to 10 CFR part 40.

2. Section 332.70—This section is considered more stringent in that the NRC performance standards have been written as technical criteria thereby eliminating the flexibility inherent in NRC regulations.

3. Section 332.170c—This section is considered more stringent in that the annual average total radon release rate of 2 picocurie per square meter per second flux limit is more stringent than the 20 picocurie per meter square per second limit in criterion 6 of appendix A to 10 CFR part 40.

¹ NRC Statement of Policy published in the Federal Register January 23, 1981 (46 FR 7540-7546), a correction was published July 16, 1981 (46 FR 30699) and a revision of Criterion 9 published in the Federal Register July 21, 1983 (48 FR 33376).

4. Subsection 332.210(b)(1)—This subsection banning disposal sites within a distance of 2.5 km of any municipality without the consent of the municipality is more stringent than NRC's performance objective of locating disposal sites in remote areas.

5. Section 332.230(b)(1)—This section is considered more stringent in that it does not allow slopes steeper than 10h:1v.

6. Section 332.240—This section is considered more stringent in that the licensee must defend its design as a 1000 year design. This section does not have the flexibility of criterion 6 of appendix A to 10 CFR part 40 that states following the 1000-year criterion, "to the extent reasonably achievable, and, in any case, for at least 200 years."

7. Section 332.250 (b) and (c)—subsubsection b) is considered more stringent in that it requires chemical treatment of the tailings which is not required in Appendix A to 10 CFR Part 40. Subsubsection c) is considered more stringent in that it requires groundwater restoration to levels consistent with those before operations. NRC Criterion 5B(5)(b) and (c) allows concentration values up to EPA drinking limits.

Criteria which are not in NRC's 10 CFR part 40 regulations:

1. Section 332.20—Definition of Buffer Zone.

2. Section 332.20—Definition of Minor Custodial Activities.

8. Section 332.20—Definition of Postclosure.

4. Section 332.20—Definition of Reclamation. This term is used in 10 CFR Part 40; however, this definition is not in NRC's regulations.

5. Section 332.140—This criterion is not in 10 CFR part 40; however, it is generally consistent with NRC's licensing practice.

6. Section 332.170 (b)—This criterion is not in 10 CFR part 40; however, it is consistent with 10 CFR 20.106(a).

7. Section 332.180—This criterion is not in 10 CFR part 40.

8. Section 332.210—The siting criteria in subparts (b) (1), (2), (3), (6), and (7) are not contained in 10 CFR part 40.

9. Section 332.250 (a)—Such a ban of release of liquids is not in NRC's regulations.

10. Section 332.290 (e)—No annual financial report is required by NRC.

Reference: 32 Ill. Adm. Code part 332.

C. Organizational Relationships Within the State

33. Organizational relationships should be established which will provide for an effective regulatory program for uranium mills and mill tailings. Charts should be developed which show the management

organization and lines of authority. These charts should define the specific lines of supervision from program management within the radiation control group and any other department within the State responsible for contributing to the regulation of source material processing and disposal of the resulting tailings. When other State agencies or regional offices are utilized, the lines of communication and administrative control between other agencies and/or regions and the program director should be clearly drawn.

Organizational charts outlining the IDNS structure have been included in the application. From these organizational charts, it has been determined that the IDNS has a structure capable of regulating all phases of source material milling activities including the preparation of environmental assessments. This conclusion is based on the following findings: (1) The Office of Radiation Safety has been designated as the lead office within IDNS for regulating uranium and thorium processing and the resulting 11e(2) byproduct material; and (2) the administrative, technical, legal and emergency support functions will be provided from other offices within IDNS, i.e., Office of Legal Counsel, Office of Environmental Safety, Office of Nuclear Facility Safety, and Office of Administrative Services.

Internal responsibilities have been described by the IDNS to be as follows: (1) overall program management will be implemented by the Director; (2) the Office of Radiation Safety is responsible for the licensing of radioactive materials and will be the lead office for processing all license applications and preparation of environmental assessments; (3) the Office of Environmental Safety is to assist in the evaluation of environmental impacts and to provide support for all laboratory analysis and environmental monitoring; (4) the Office of Nuclear Facility Safety will assist in the evaluation of potential radiological accidents; (5) the Office of Legal Counsel will provide assistance in all legal matters; and (6) the Office of Administrative Services will assist in budgeting and personnel management. IDNS has further stated that for those areas of environmental assessments that IDNS believes consultation to be appropriate, other State agencies or private consultants will be contracted to help in the environmental assessment. IDNS has indicated that assistance from the Illinois Department of Energy and Natural Resources and the State Water Survey Division may be sought for hydrologic assessments. NRC staff notes

that the IDNS did not provide any formal agreements, such as MOUs with any of these other organizations that, if put in place, would assure their availability in a timely manner. However, IDNS has previously executed contracts with other State agencies. As an example, IDNS has executed an MOU with the Illinois Environmental Protection Agency regarding the disposal of water treatment wastes. Although the program statement did not specifically identify the source or amount of funds, it did state that IDNS will provide for funding if consultants are deemed necessary and the Office of Administrative Services will assist in contract preparation and fiscal management. For those situations where consultants are used, IDNS stated that they will seek assistance from their legal counsel to avoid conflicts of interest. IDNS has not provided any specific information about the budget or proposed budget for the portion of the radiation control program allocated to the regulation of uranium and thorium mills and 11e(2) byproduct material. However, the IDNS has committed to the allocation of sufficient staff time to handle the uranium and thorium mills and 11e(2) byproduct material currently in the State.

The program statement reveals that IDNS has not identified any specific medical consultants that would be available for medical questions that may be encountered with the uranium or thorium milling industry and its 11e(2) byproduct material. The program statement states that, should medical assistance be needed, IDNS will seek assistance from a national laboratory such as Argonne National Laboratory. Such assistance has been requested and provided in the past.

Experience has shown that a scoping document is a valuable tool for bringing an environmental assessment to a satisfactory conclusion. IDNS indicated that if assistance is requested through contracts or MOUs adequate guidance such as a scoping document will be prepared by the IDNS. This document will delineate areas and scope of work to be performed within a given time constraint by each participating agency or contractor.

Reference: Illinois Program Statement, Section III.

D. Personnel

34. Personnel needed in the processing of the licensee application can be identified or grouped according to the following skills: Technical, Administrative, and Support.

In order to meet the requirements of UMTRCA, it is estimated that on the order of 2 to 2.75 total professional person-years' effort is necessary to process and evaluate a new conventional mill license, in-situ license, or major license renewal. A complete review of in-plant safety, completion of an environmental assessment, and use of consultants in these assessments are primary considerations in the total professional effort for each licensing case. With respect to clerical support, one secretary is usually required to process two conventional milling applications. Legal support is also an essential element of the mill program, and the effort is believed to be a minimum of one-half staff year. In addition, consideration must be given to such post-licensing activities as issuance of minor amendments, mill inspection, and environmental monitoring. Professional staff effort for these activities is estimated at 0.5 to 1.0 person-years for each year of post-licensing activities.

Currently there are no active uranium or thorium mills processing ore for its source material content in the State of Illinois. However, as identified in the introduction, one facility located at West Chicago has been identified as a closed facility which has associated with it radiologically contaminated material on and offsite. As stated earlier, the radiologically contaminated material in and along Kress Creek and the West Branch of the DuPage River is 11e(2) byproduct material in addition to the material on the West Chicago site. This material would come under the regulatory authority of the IDNS upon consummation of Illinois request for an amended agreement. The regulatory activities assumed by the IDNS upon execution of the amended agreement would center mainly around decommissioning and reclamation of the West Chicago site and its associated wastes.

In the application for amendment of the agreement as updated March 14, 1990, the IDNS had identified 11 key technical personnel for use in regulation uranium and thorium processing facilities and their associated 11e(2) byproduct material. A review of these staff resumes shows that they have the necessary education, training, and experience to ensure effective implementation of a regulatory program.

Seven key administrative personnel have been identified by the IDNS who will provide the necessary management guidance and policy direction necessary to assure completion of the licensing action. The positions of the seven

personnel in the IDNS structure are the director, four office managers, one assistant office manager, and one division chief.

Four key persons have been identified as providing operational support, legal support, and laboratory services. The positions of these four people are one chief legal counsel, one senior staff attorney, one section chief of radioecology, and one division chief of radiochemistry.

The NRC staff has concluded that the total professional staff-years effort which is available within the IDNS and will be directly responsible for regulating uranium and thorium mills and 11e(2) byproduct material is within the guidelines and consists of the necessary specialities for evaluating license applications. Additionally, IDNS has stated that consultants will be utilized, if necessary.

Abridged versions of the curricula vitae for key IDNS personnel involved in the regulation of source material milling facilities and 11e(2) byproduct material are as follows (as updated by IDNS on March 14, 1990):

Administrative Personnel:

T.L. Lash, Ph.D.—Director, IDNS: Ph.D. Molecular Biophysics and Biochemistry, Yale University; M.Ph. Molecular Biophysics and Biochemistry, Yale University; B.A. Physics, Reed College. Work Experience, 1970 to present, held positions as Postdoctoral Fellow, Yale University; Staff Scientist, NRDC; Director, Science and Public Policy, the Keystone Center; Science Director, Scientists' Institute for Public Information; Deputy Director, IDNS, and Director, IDNS.

P.D. Eastvold—Manager, Office of Radiation Safety: B.S. General Science/Nuclear Medical Technology, University of Iowa. Work Experience, 1970 to present, held positions in the Radiation Protection Office, University of Iowa; Illinois Department of Public Health; and as Manager, Office of Radiation Safety, IDNS.

G.W. Kerr, CHP—Assistant Office Manager, Office of Radiation Safety: M.A. Economics, Trinity College. B.A. Biology, Peru State College. Work Experience, 1956 to present, held positions as Senior Industrial Hygienist, Pratt and Whitney Aircraft; Technical staff positions, Atomic Energy Commission; Manager and Assistant Director for State Agreements, USNRC; Director, Office of State Programs, USNRC; Independent Consultant; and Assistant Office Manager, Office of Radiation Safety, IDNS.

C.W. Miller, Ph.D.—Manager, Office of Environmental Safety: Ph.D.

Bionucleonics/Health Physics, Purdue University; M.S. Meteorology, University of Michigan; B.S. Physics/Math, Ball State University. Work Experience, 1967 to present, held positions in Anderson College in Physics; Health and Safety Research Division, Oak Ridge National Laboratory; and as Nuclear Safety Scientist, Office of Nuclear Facility Safety; and Manager, Office of Environmental Safety, IDNS.

R.R. Wright—Manager, Office of Nuclear Facility Safety: Master of Public Administration, Amencen University; B.S. Engineering, U.S. Naval Academy; Undergraduate Studies, Geology, Oklahoma University. Work Experience, 1954 to present, held positions in U.S. Navy, Nuclear Propulsion plants, Nuclear Submarines and Nuclear Weapons; Advance Science and Technology Associates Inc.; and as Manager, Office of Nuclear Facility Safety, IDNS.

D.A. Joswiak—Manager, Office of Administrative Services: M.S. Business Public Management, University of Wisconsin; M.A. Public Policy and Administration, University of Wisconsin; B.A. Political Science and Economics, University of Wisconsin. Work Experience, 1973 to present, held positions as Research Assistant, Public Expenditure Survey of Wisconsin, Inc.; Budget Analyst and Management Systems Specialist, Illinois Department of Transportation; Chief Fiscal Officer, Illinois Department of Financial Institutions; Associate Director for Administration, Illinois Emergency Services and Disaster Agency; and Manager, Office of Administrative Services, IDNS.

S.C. Collins—Chief, Division of Radioactive Materials: M.S. Radiation Science (health physics), University of Arkansas School of Medical Sciences; B.A. Mathematics/Chemistry, Arkansas Tech University. Work Experience, 1967 to present, held positions as laboratory assistant and instructor, Arkansas Tech University; Health Physicist II, Arkansas State Department of Health, Nuclear Medical Science Office, U.S. Army Reserve; Public Health Physicist II, Florida Division of Health; Radiation Specialist IV, Louisiana Nuclear Energy Division; Environmental Program Manager, Louisiana Nuclear Energy Division; Nuclear Medical Science Instructor, U.S. Army Academy of Health Sciences; Radiation Protection Program Manager, Louisiana Nuclear Energy Division; and Chief, Division of Radioactive Materials, IDNS.

Administrative Support Personnel:

S.J. England—Chief Legal Counsel, Office of Legal Counsel; J.D. Boston

University School of Law; B.A. University of Illinois. Work Experience, 1976 to present, held positions in City of Joliet, Illinois; Illinois Attorney General's office, Illinois Department of Transportation; and as Chief Legal Counsel, Office of Legal Counsel, IDNS.

B.P. Salus—Senior Staff Attorney, Office of Legal Counsel; J.D. Washington University School of Law; B.S. Vanderbilt University. Work Experience, 1964 to present, positions as Research Assistant, Washington University School of Law; Law Clerk to Chief Judge, U.S. District Court; and Staff Attorney, Office of Legal Counsel, IDNS.

R.A. Allen—Office of Environmental Safety; B.A. Biological Sciences, Rutgers University. Work experience, 1976 to present, held positions as Health Physicist and R.S.O., Roche Medi+Physics; Environmental Protection Group Leader, Fermi National Accelerator Laboratory; and Radioecology Section Head, Office of Environmental Safety, IDNS.

Lih-Ching Chu, Ph.D.—Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety; Ph.D., Chemistry, Washington University; M.A. Chemistry, Washington University; M.S. Chemistry, East Texas State University; B.S. Chemistry, Tankang College of Arts and Sciences. Work Experience, 1971 to present, held positions in Taiwan Military, ROC; Young-Ho Middle School, Taiwan; East Texas State University; Washington University, St. Louis; Illinois Department of Energy and Natural Resources; and as Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety, IDNS.

Technical Personnel:

J.G. Klinger—Head, Licensing Section, IDNS; M.S. Health Care Management and Public Administration, Southwest Texas State University; B.A. Microbiology and Chemistry, University of Texas; A.A. Glendale Community College. Work Experience, 1966 to present, held positions in U.S. Marine Corps and U.S. Naval Reserve Medical Service Corps; Algebra Tutor, Glendale; Laboratory Assistant, University of Texas; Food and Drug Inspector, Texas Department of Health; Regional Food and Drug Supervisor, Texas Department of Health; Chief of Food Control, Division of Food and Drugs, Texas Department of Health; Special Assistant to the Commissioner for Board of Health Affairs, Texas Department of Health; Administrator, Licensing Branch, Bureau of Radiation Control, Texas Department of Health; and Head, Licensing Section, IDNS.

D.F. Harmon—Licensing, Office of Radiation Safety, IDNS; M.S. Physics, Vanderbilt University; B.S. Physics, Tennessee Technological University. Work Experience, 1954 to present, held positions in Military Service, U.S. Army; Ballistics Research Laboratory, Aberdeen Proving Ground, Maryland and Camp Mercury, Nevada Test Site; Chemistry Department, Vanderbilt University; Radiation Safety Branch, Division of Licensing and Regulations, U.S. NRC; Source and Special Nuclear Materials Branch, Division of Materials Licensing, U.S. NRC; Materials Branch, Division of Materials Licensing, U.S. NRC; Fuels and Materials Standards Branch, Directorate of Regulatory Standards, U.S. NRC; Fuels Process System Standards Branch, Office of Standards Development, U.S. NRC; Waste Management Branch, Office of Nuclear Regulatory Research, U.S. NRC; Health Effects Branch, Office of Nuclear Regulatory Research, U.S. NRC; and Licensing, Office of Radiation Safety, IDNS.

M.H. Momeni, Ph.D.—Office of Radiation Safety, IDNS; Ph.D., Biophysics/Radiation Biology, University of Iowa; M.S. Nuclear Physics, University of Iowa; B.A. Physics/Mathematics, Luther College. Work Experience, 1962 to present, held positions as Science Teacher, Urbana Consolidated Schools; Biophysicist-Lecturer, University of California, Davis; Senior Scientist, Argonne National Laboratory; Professor and Director of Health Physics Program, San Diego State University; Scientist, Oak Ridge Associated Universities; and Health Physicists, Office of Radiation Safety, IDNS.

D.J. Scherer—Licensing, Office of Radiation Safety; M.S. Physics, Virginia Polytechnic Institute and State University; B.S. Physics, Virginia Military Institute. Work Experience, 1980 to present, held positions as graduate Teaching Assistant, VPIU; Graduate Research Assistant, Stanford Linear Accelerator Center; Nuclear Medical Science Officer, U.S. Environmental Hygiene Agency; Medical Plans Officer, Officer of the Surgeon, XVIII Airborne Corps; Chief, Health Physics Section, Womback Army Community Hospital; Assistant Health Physicist, Princeton University; Senior Health Physicist and Radiation Safety Officer, Albany Medical Center; and Health Physicist, Office of Radiation Safety, IDNS.

D.A. Huckaba, P.E.—Office of Radiation Safety; B.S. Civil Engineering, University of Missouri. Work Experience, 1969 to present, held positions as Highway Engineer, Missouri

Department of Transportation; Chief Highway Engineer, MTA, Inc.; and Engineer, Office of Radiation Safety, IDNS.

G.N. Wright, P.E.—Office of Nuclear Facility Safety; Degree Work in Public Administration, Sangamon State University; M.S. Nuclear Engineering, University of Illinois; B.S. Physics/Mathematics, Milliken University. Work experience, 1965 to present, held positions in Westinghouse Electric Company; Sangamo-Weston Electronics Company; Illinois Department of Public Health; and as Senior Nuclear Engineer, Office of Radiation Safety, IDNS.

D.D. Ed—Office of Environmental Safety; B.S. Chemistry, University of Illinois. Work experience, 1972 to present, held positions in Illinois Environmental Protection Agency, Illinois Department of Public Health; and as Nuclear Safety Scientist, Office of Environmental Safety, IDNS.

T.A. Kerr—Chief, Division of Low-Level Waste Management, Office of Environmental Safety; Business Administration, University of North Carolina. Work Experience 1973 to present, held positions in U.S. Navy, Electronics Technician-Reactor operator; Supervisor Solidification Services, Chem-Nuclear Systems, Inc.; Associate Instructor, Duke Power Co.; and as Chief, Division of Low-Level Waste Management, IDNS.

M.E. Klebe, P.E.—Office of Environmental Safety; M.S. Mining Engineering, Montana College of Mineral Science and Technology; B.S. Mining Engineering, Montana College of Mineral Science and Technology. Work Experience, 1982 to present, held positions as Mining Engineer, Shell Mining Co.; and Nuclear Safety Engineer, Office of Environmental Safety, IDNS.

C.G. Vinson—Office of Radiation Safety; B.S. Biology, Furman University. Work Experience, 1983 to present, held positions as Industrial Hygiene Technician, J.P. Stevens Textile Company; Environmental Engineering Specialist, Union Camp Corporation; Health Physicist and Section Manager, Bureau of Radiological Health, South Carolina Department of Health and Environmental Control; and Health Physicist, Office of Radiation Safety, IDNS.

M. Walle—Office of Radiation Safety; B.S. Earth Sciences, University of New Orleans; ARRT, Mercy Hospital School of X-Ray Technology. Work Experience, 1965 to present, held positions as Radiological Technologist, Mercy Hospital; Nuclear Medicine Technologist, Pathology Medical Services, PC; Engineering-Geologist, U.S.

Army Corps of Engineers; Civil Materials Technician; Geo. International; Civil Construction Inspector; Minority Engineers of Louisiana; Project Manager, Nuclear Grade Radiation Safety Officer, U.S. Testing Co., Inc.; and Health Physicist, Office of Radiation Safety, IDNS.

IDNS recognizes that a skilled and experienced staff is essential to accomplishing its mission. Consequently, technical training is a high priority for the IDNS. The IDNS training coordinator is developing a comprehensive technical and managerial training program, using a wide variety of professional seminars and courses. Courses may be sponsored by either government or private sector organizations. In addition, in-house courses to supplement outside training are arranged as necessary. These in-house courses are presented either by IDNS staff or outside contractors.

The IDNS has stated that for active extraction and concentration facilities it will allocate from 2.5 to 5.75 person-years for each major licensing action. This time will be apportioned as follows: 2 to 2.75 staff years effort for technical and administrative activities; 0.5 to 1 staff year effort for legal support; and 2 staff years effort for clerical support.

Following initial licensure, IDNS plans to assign an annual average of from 0.5 to 1 full-time equivalent staffing for each licensee. This allocation is for inspections, environmental assessments, minor amendments and environmental surveillance. IDNS anticipates that less time might be required to administer a license authorizing only decontamination, decommissioning, disposal, or post-closure monitoring. This appears to be a reasonable assumption on the part of IDNS.

Many of these key personnel have complementary training to their profession and several have been identified as having training in uranium mill related topics. Some of these individuals have written or published articles on uranium mill topics. The IDNS has stated that it will consult with other State agencies. Two State agencies have been identified by the IDNS at this time as providing the IDNS assistance in reviewing the impact of byproduct material on the environment. They are the Illinois Department of Energy and Natural Resources and the Illinois Environmental Protection Agency. However, the scope and depth of work to be completed by these agencies has not been identified. Because there are no indications that any uranium milling facilities are planning to operate in Illinois at this

time, and because much environmental assessment work has been completed for the Kerr-McGee site, the lack of MOUs with other State agencies is not considered a matter of paramount importance at this time. The IDNS can pursue this matter at some point in the future upon first indication that such MOUs will be necessary.

References: Illinois Program Statement, Section IV, "Personnel," Section VI, "Implementation of the Regulatory Program," and Appendices F, and G.

E. Functions to be Covered

35. The State should develop procedures for licensing, inspection, preparation of environmental assessments, and operational data review.

The IDNS has stated that regulation of recovery and processing of uranium and thorium and management of 11e (2) byproduct material may be divided into four stages: licensing, environmental assessments, inspection and enforcement, and review of operational data.

a. Licensing

The licensing evaluation or assessment should include in-plant radiological safety aspects in occupational or restricted areas and environmental impacts to populations in unrestricted areas from the facility. It is expected that the State will review, evaluate and provide documentation of these evaluations.

The IDNS has stated in its program statement that the IDNS licensing evaluations or assessments will include occupational or restricted areas and environmental impacts to population in unrestricted areas surrounding the facilities. IDNS has stated that they will review and evaluate license applications and prepare documentation of the evaluations. The IDNS evaluation will include, as necessary, pre-licensing visits to obtain relevant information directly. Items to be evaluated include, but are not limited to, the following: general statement of proposed activities; scope of the proposed action; specific activities to be conducted; administrative procedures; facility organization and radiological safety responsibilities, authorities, and personnel qualifications; licensee audits and inspections; radiation safety program, control and monitoring; radiation safety training programs for workers; restricted area markings and access control; at existing mills, review of monitoring data, exposure records, licensee audit and inspection records,

and other records applicable to existing mills; environmental monitoring; radiological emergency procedures; product transportation; tailings management facilities and procedures; site and physical plant decommissioning procedures other than tailings; and employee exposure data and bioassay programs.

b. Environmental Assessments

The environmental evaluation should consist of a detailed and documented evaluation of the items listed in subsection 2740 of the Act.

IDNS regulations, part 332, establish requirements for environmental assessments that define the scope of the assessments and specify associated administrative procedures. Part 332 requires that the following topics be included in the environmental assessment: an analysis of the radiological and nonradiological public health impacts; an analysis of any impact on surface water or groundwater; consideration of alternatives to the licensed activities; and consideration of long-term impacts of licensed activities. The IDNS has stated in their program statement that environmental assessments will consist, at a minimum, of detailed and documented evaluations of the following items: Topography; Geology; Hydrology and water quality; Meteorology; Background radiation; Tailings retention system; Interim stabilization; Reclamation; Site decommissioning programs; Radiological dose assessment which addresses source terms, exposure pathways, dose commitment to individuals, dose commitment to the population, evaluation of radiological impacts to the public to include a determination of compliance with State and Federal regulations and comparisons with background values, occupational dose, and radiological impact to biota other than man; Radiological monitoring programs to include pre-operational, operational, and post-operational monitoring; Impacts to quality and quantity of surface and groundwater; Environmental effects of accidents; and Evaluation of tailings management alternatives in terms of Illinois Regulations, part 332.

IDNS has also stated in their program statement that they will also examine the following items during preparation of environmental assessments: Ecology; Environmental effects of site preparation and facility construction; Environmental effects or use and discharge of chemicals and fuels; and Economic and social effects.

Although the IDNS regulations do not explicitly request the licensee to prepare a document called an Environmental Report, the regulations do require the licensee to provide the information in and to perform the analyses normally done in an Environmental Report.

c. Inspection and Enforcement

As a minimum, items which should be covered during the inspection of a uranium or thorium mill should be those items evaluated in the in-plant safety review, the environmental monitoring programs, and the byproduct material management plan. In addition, the inspector should perform independent surveys and sampling. A complete inspection should be performed at least once per year.

The IDNS has stated items examined during inspections will be consistent with items evaluated during licensing. IDNS will use appropriate NRC regulatory and inspection guides for guidance. A complete inspection is to be performed at least annually. As part of the IDNS inspection program, the inspectors will perform independent surveys and sampling in addition to examining aspects of licensee performance in: Administration; Mill processes including any additions, deletions, or operational changes; Accidents/incidents; Notices, instructions, and reports to workers in accordance with 32 Ill. Adm. Code 400; Action taken on previous findings; A tour of the facilities at the mill including tailings and waste management to determine compliance with regulations and license conditions; Records; Respiratory protection and bioassay to determine compliance with license conditions and 32 Ill. Adm. Code 340; Effluent and environmental monitoring; Training programs; Transportation and shipping; and internal review and audit by management. Following each inspection, the inspector will confer with licensee representatives to inform them of the inspection results. The inspectors will submit a comprehensive written report to the Springfield headquarters describing inspection findings and detailing any apparent violations.

The IDNS enforcement policy is described as follows: The IDNS states that the purpose of the enforcement program is to: ensure compliance with Departmental regulations and license conditions; obtain prompt correction of violations and adverse conditions that may affect safety; deter future violations and occurrences of conditions inimical to safety; and encourage improvement of licensee performance, including prompt

identification and reporting of potential safety problems.

The IDNS enforcement procedures have been described as follows: If IDNS discovers any deficiencies during an inspection, IDNS will send the licensee a written notice itemizing the area(s) of deficiency and will require the licensee to submit within 30 days of the date of the notice a written response which will state the corrective steps that have been taken by the licensee and the results achieved; the corrective steps that will be taken; and the date when full compliance will be achieved. If the licensee fails to provide an adequate response to the written notice, the IDNS normally holds a management conference with the licensee prior to taking enforcement action. The purpose of these conferences is to discuss items of deficiency or nonconformance, their significance and causes, and the licensee's corrective action. If compliance cannot be achieved through these informal conferences, IDNS will take more formal enforcement actions. All non-emergency enforcement actions will be initiated by the issuance of a Preliminary Order and Notice of Opportunity for Hearing as afforded by Code 200 of the Illinois' regulations. The Order will itemize the alleged violations and direct the licensee to remedy these violations within a given time unless a hearing is requested within 10 days of the date of the Preliminary Order. In addition, the licensee may request an informal conference prior to or during the hearing. In cases where there is an imminent threat to public health and safety, IDNS has stated it is prepared to take immediate action in accordance with State law. State law provides that, if the IDNS finds that a condition exists which constitutes an immediate threat to public health due to the violation of any provisions of the Radiation Protection Act or any code, rule, regulation or order promulgated under the Radiation Protection Act and requires immediate action to protect the public health or welfare, IDNS may issue an order reciting the existence of such an immediate threat and the findings of the IDNS pertaining to the threat. The IDNS may summarily cause the abatement of such violation or may direct the Attorney General to obtain an injunction against such violator. An abatement order will be effective immediately, but will include notice of the time and place of a public hearing before the IDNS to be held within 30 days of the date of such order to assure the justification of such order. The IDNS has exercised this authority on two occasions since becoming an Agreement

State. The first was in response to widespread facility contamination from leaking static eliminators, and the second was to remediate a health and safety hazard caused by inadequate radiation safety practices of a licensee.

Other remedial actions available to IDNS include orders to modify, suspend, or revoke licenses, assessment of civil penalties, and impoundment of radiation sources. Also, licenses may be modified, suspended or revoked to remove a threat to public health and safety and the environment and for any reason for which license modification, suspension, or revocation is legally authorized.

No order of the IDNS, except an order to abate an immediate threat to health, will take effect until the IDNS has found upon conclusion of such hearing that a condition exists which constitutes a violation of any provision of the Radiation Protection Act or any code, rule or regulation promulgated under the Radiation Protection Act except in the event that the right to public hearing has been waived by the licensee, in which case the order shall take effect immediately. Follow-up inspections are to be conducted as necessary by IDNS staff to verify compliance with IDNS rules and enforcement orders and to rule out willful or flagrant violations, repeated poor performance in areas of concern, and serious breakdown in management controls. All previous areas of deficiency will also be given special attention by the inspector during the following routine inspection of the facility.

As a result of program reviews conducted on December 7-18, 1987 and January 29 through February 9, 1990, the NRC staff concluded that the IDNS has an acceptable licensing program which is capable of determining whether a licensee or applicant can operate safely and in compliance with the regulations and license conditions. Likewise, during these program reviews, the NRC staff concluded that the IDNS has an acceptable compliance program which assures that licensee activities are being conducted in compliance with regulatory requirements and consistent with good safety practices.

d. Operational Data Review

To enhance radiological assessment capability and to confirm doses to receptors in unrestricted areas, States should require the semiannual reports, preferably within 60 days after January 1, and July 1, of each year, specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous six months of

operation. This data shall be reported in a manner that will permit the regulatory agency to confirm the potential annual radiation dose to the public. Additionally, all data from the radiological and non-radiological environmental monitoring program will also be submitted for the same time periods and frequency. The data will be reported in a manner that will allow the regulatory agency to confirm the dose to receptors.

IDNS has stated that according to 32 Ill. Adm. Code 332, IDNS will require licensees to submit written reports at least semiannually that identify quantities of radionuclides released to unrestricted areas in liquid, gaseous, and particulate effluents during specified periods of operation. IDNS will also require submission of data from licensee environmental monitoring programs. Written reports and data must be for identical periods and frequencies and in a form permitting confirmation of potential annual radiation doses to the public.

Section 332.200f of 32 Ill. Adm. Code 332 requires semiannual reports to be filed within 60 days after January 1 and July 1 of each year covering the previous six months.

References: Illinois Program Statement, Section VI, "Implementation of the Regulatory Program" and 32 Ill. Adm. Code Parts 200, 332, and 340.

F. Instrumentation

36. The State should have available both field and laboratory instrumentation sufficient to ensure the licensee's control of materials and to validate the licensee's measurements.

IDNS has available an extensive inventory of field and laboratory instrumentation for radiation detection and measurement. A fully equipped radiochemistry facility has been established for performing radiochemical analysis of radioactive samples. Additionally, the IDNS has a well equipped mobile field laboratory which can be used for routine sample analysis while in a standby mode for emergency response. IDNS has also reported that they have twenty-two portable instrumentation kits available for use. Appendix H to the program statement provides an overview of the laboratory and instrument capabilities and lists the instrumentation available to the State.

IDNS has participated in a cross-comparison study on analysis of radionuclides in drinking water. The study has been completed and IDNS is expecting certification at time of this analysis.

Although IDNS did not provide any information on Equipment Calibration procedures, the program reviews conducted December 7-19, 1987 and January 29 through February 8, 1990 found that the State had adequate instrumentation for surveying licensee operations and satisfied the requirements for calibrating its radiation detection equipment.

References: Illinois Program Statement, Section V, "Instrumentation," and Appendix H.

III. Staff Conclusion

Section 274d of the Atomic Energy of 1954, as amended, states:

The Commission shall enter into an agreement under subsection b of this section with any State if—

(1) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) the Commission finds that the State program is in accordance with the requirements of subsection c, and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

The amendment to the State of Illinois agreement is for source material milling activities including the resulting 11e.(2) byproduct material to which section 274c of the Act applies. Section 274c provides that the State may adopt standards for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose. The staff has identified some sections of the State's regulations that are considered to be more stringent than NRC's regulations. The NRC staff has concluded that the program of the State of Illinois is in accordance with the requirements of section 274c of the Act and meets the NRC criteria for an amended agreement. The State's statutes, regulations, personnel, and licensing, inspection, and administrative procedures are compatible with, or more stringent than, those of the Commission and are adequate to protect the public health and safety with respect to the materials covered by the proposed amendment to the Agreement.

Dated at Rockville, Maryland, this 23d day of March 1990.

For the U.S. Nuclear Regulatory Commission.

Fred Combs,

Acting Director, State Programs, Office of Governmental and Public Affairs.

Appendix A—Proposed Amendment Number One to the Agreement Between the United States Nuclear Regulatory Commission and the State of Illinois for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, the Governor of the State of Illinois is authorized under Illinois Revised Statutes, 1987, ch. 111 1/2, par. 216b and ch. 111 1/2, par. 241-19 to enter into this Agreement with the Commission; and

Whereas, on June 1, 1967, an Agreement between the Commission and the State of Illinois became effective which transferred regulatory authority over byproduct materials defined in section 11e.(1) of the act, source materials, special nuclear materials in quantities not sufficient to form a critical mass, and the land disposal of source, byproduct, and special nuclear material received from other persons; and

Whereas, Article III of that Agreement provides that the Agreement may be amended, upon application by the State and approval by the Commission, to include the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material; and

Whereas, Governor of the State of Illinois certified on _____ that the State of Illinois (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and that the State desires to assume regulatory responsibility for such materials; and

Whereas, the Commission found on _____ that the program of the State for the regulation of the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and,

Whereas, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and

Whereas, the Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to Amendment Number One to the Agreement; and

Whereas, Amendment Number One to the Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, Therefore, it is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

1) Article I of the Agreement is hereby amended to expand the scope of the Agreement to include the extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in Section 11e.(2) of the Act. As amended, Article I now reads as follows:

Article I

Subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 181 of the Act with respect to the following:

A. Byproduct material as defined in Section 11e.(1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass; and,

D. The land disposal of source, byproduct, and special nuclear material received from other persons.

Pursuant to Article III, and subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Amendment Number One to this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 181 of the Act with respect to the following:

E. The extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in section 11e.(2) of the Act.

2) Article II of the Agreement is hereby amended by inserting "A." before "This Agreement," by redesignating paragraphs A, through D, as subparagraphs 1, through 4, by deleting paragraph E, relating to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material; and by adding a new paragraph B., relating to authorities that will be retained by the Commission. As amended, Article II now reads as follows:

Article II

A. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

1. The construction and operation of any production or utilization facility;

2. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

3. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission; and,

4. The disposal of such other byproduct, source, or special nuclear materials as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct materials as defined in section 11e.(2) of the Atomic Energy Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance, and ownership of such byproduct material and of land used as a disposal site for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to paragraph 2 b. of this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger the public health, safety, welfare, or the environment;

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2 b. of this section taking into consideration the status of such material and land and interests

therein, and the ability of the licensee to transfer title and custody thereof to the United States or a State;

e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety, and other actions as the Commission deems necessary; and,

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance of such disposal sites on land held in trust by the United States for any Indian tribe or land owned by an Indian tribe and subject to a restriction against alienation imposed by the United States.

3) Article IX of the Agreement is hereby amended by redesignating Article X and by inserting a new Article IX, as amended. Articles IX and X now read as follows:

Article IX

In the licensing and regulation of byproduct material as defined in section 11e.(2) of the Act, or of any activity which results in the production of such material, the State shall comply with the provisions of section 274o of the Act. If, in such licensing and regulation, the State requires financial surety arrangements for the reclamation or long-term surveillance of such material,

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and,

B. Such State surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term surveillance of such byproduct material and its disposal site.

Article X

This Agreement shall become effective on June 1, 1987, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

4) The Agreement effective June 1, 1987 remains in effect except as modified by amendments contained in Paragraphs 1), 2), and 3) of this Amendment Number One.

5) This Amendment Number one to the June 1, 1987 Agreement shall become effective on _____ and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland, in triplicate, this _____ day of _____.

For the United States Nuclear Regulatory Commission.

Chairman.

Done at Springfield, Illinois, in triplicate,
this ____ day of _____
For the State of Illinois.

Governor.

[FR Doc. 90-7198 Filed 3-27-90; 8:45 am]

BILLING CODE 7590-01-2

DOCKET NO. PR-MISC. 90-1 (55FR11459)

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
04/30/90	04/26/90	COMMENT OF STATE OF ILLINDIS (JAMES A. DELED, MEMBER) (157)
04/30/90	04/26/90	COMMENT OF THORIUM ACTION GROUP (BRENDA H. KLECKNER) (158)
04/30/90	04/11/90	COMMENT OF DIANE WHEATLEY (159)
04/30/90	04/11/90	COMMENT OF BARBARA SHERIDAN (160)
04/30/90	04/25/90	COMMENT OF WAYNE E. KEDING (161)
04/30/90	04/23/90	COMMENT OF LYL4 WILSON (162)
05/02/90	04/26/90	COMMENT OF JOYCE, JOHN, JAIME & JAY SYMOWICZ (163)
05/02/90	04/26/90	COMMENT OF BILL AND EMMY LOU DRZAL (164)
05/04/90	05/01/90	COMMENT OF JON S. SHACKELFORD (165)
05/04/90	04/12/90	COMMENT OF STEVEN S. & BARBARA J. WOLFE (166)
05/07/90	04/27/90	COMMENT OF MR. AND MRS. RODGER M. DARLING (167)
05/07/90	04/30/90	LTR HDN. HASTERT, ET AL. TO CHM CARR URGING NRC TO MEET THE DEADLINE FOR THE DECISION PAPER AND NOTIFY THEM OF THE TARGET DATE
05/08/90	05/07/90	NOTICE OF PROPOSED AMENDED AGREEMENT W/STATE OF IL SUPPLEMENTAL COMMENTS OF KERR MCGEE CHEMICAL CORPORATION
05/15/90	05/02/90	COMMENT OF U S ENVIRONMENTAL PROTECTION AGENCY (RICHARD J. SUIMOND) (168)
05/21/90	05/18/90	LTR FROM KAMMERER, SP/NRC TO R. MESERVE, ESQ. RE: CONFIRMATION OF CONVERSATION ON 4/17/90 FOR EXTENSION OF COMMENT PERIOD ON STATE OF ILLINOIS
06/08/90	06/01/90	LTR. SISUL TO NRC RE: RESPONSE OF THE OF IL TO KERR-MCGEE MOTION REQUESTING COMPLIANCE BY THE COMMISSION WITH SECTION 274 D
06/15/90	06/15/90	KERR-MCGEE REPLY TO STATE OPPOSITION TO THE MOTION REQUESTING COMPLIANCE WITH SECTION 274D
06/18/90	06/15/90	COMMENT OF ILLINOIS DEPARTMENT OF NUCLEAR SAFETY (THOMAS W. ORTICIGER, DIRECTOR) (169)
06/26/90	06/25/90	COMMENT OF KERR MCGEE CHEMICAL CORPORATION (RICHARD A. MESERVE) (170)

DUCKET NO. PR-MISC. 90-1 (89PR11459)

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
04/26/90	04/24/90	COMMENT OF NANCY KERSTEIN, ET AL. (136)
04/26/90	04/26/90	COMMENT OF SUSAN CORRIERO (137)
04/26/90	04/25/90	COMMENT OF CITY OF WEST CHICAGO (PAUL NETZEL, MAYOR) (138)
04/26/90	04/23/90	COMMENT OF SHIRLEY M. MATHESON (139)
04/26/90	04/22/90	COMMENT OF DENISE SMITH (140)
04/26/90	04/24/90	COMMENT OF THE RICHARDS' FAMILY (141)
04/26/90	04/25/90	COMMENT OF THE HONORABLE J. DENNIS HASTERT (142)
04/27/90	04/21/90	COMMENT OF BERNICE DIEHOLD (143)
04/27/90	04/23/90	COMMENT OF DAVID F. KIESA (144)
04/27/90	04/22/90	COMMENT OF TERESA C. NITZEL (145)
04/27/90	04/23/90	COMMENT OF THOMAS J. MERRISON (146)
04/27/90	04/22/90	COMMENT OF ROBERT AND JAN HODGE (147)
04/27/90	04/24/90	COMMENT OF JAMES AND JEANNINE ALLEN (148)
04/27/90	04/27/90	NOTICE OF PROPOSED AMENDED AGREEMENT W/STATE OF IL KERR-MCGEE MOTION REQUESTING COMPLIANCE BY THE COMMISSION WITH SECTION 2740
04/27/90	04/27/90	COMMENT OF KERR-MCGEE CHEMICAL CORPORATION (NICKLES, MESERVE & ESTREICHER) (149)
04/27/90	04/25/90	COMMENT OF THORIUM ACTION GROUP (CITIZENS OF ILLINOIS) (150)
04/27/90	04/25/90	COMMENT OF MR. AND MRS. MATT CHRISTIANSEN (151)
04/30/90	04/27/90	COMMENT OF THORIUM ACTION GROUP (MARYANN F. BRANDON, ET AL.) (152)
04/30/90	04/26/90	COMMENT OF JO GUSTAFSON (153)
04/30/90	04/25/90	COMMENT OF MRS. ANDREA WADOWIARI (154)
04/30/90	04/27/90	COMMENT OF STATE OF ILLINDIS (THOMAS W. ORTCIGER, DIRECTOR) (155)
04/30/90	04/11/90	COMMENT OF MARY JOINER (156)

DOCKET NO. PR-MISC. 90-1 (55FR11459)

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
04/23/90	04/17/90	COMMENT OF A. M. WASHBURN (112)
04/23/90	04/21/90	COMMENT OF BENNETT & COVEY, INC. (GEORGE E. PESETSKI, PRESIDENT) (113)
04/23/90	04/20/90	COMMENT OF RICK ENGSTROM (114)
04/23/90	04/19/90	COMMENT OF LINDA R. KROWCZYKOWSKI (115)
04/23/90	04/17/90	COMMENT OF SHARON MAJEWSKI (116)
04/23/90	04/14/90	COMMENT OF MR. AND MRS. THOMAS TINNES (117)
04/23/90	04/17/90	COMMENT OF SHERRY REUM (118)
04/23/90	04/17/90	COMMENT OF RICHARD A. FARR (119)
04/23/90	04/18/90	COMMENT OF HAZEL M. GROSS (120)
04/23/90	04/16/90	COMMENT OF City of Warrenville (ROSEMARY D. TIERNEY) (121)
04/23/90	04/19/90	COMMENT OF MS. S. KASIEWICZ (122)
04/24/90	04/20/90	COMMENT OF SECRETARY OF STATE (PHILIP S. HOWE, ESQ.) (123)
04/24/90	04/17/90	COMMENT OF JANET E. PELLEGRINI (124)
04/24/90	04/19/90	COMMENT OF LINDA W. SCHOENFELD (125)
04/24/90	04/13/90	COMMENT OF JO A. SANDERSON (126)
04/24/90	04/11/90	COMMENT OF MR. & MRS. J. R. JENSEN & FAMILY (127)
04/25/90	04/19/90	COMMENT OF CITY OF WEST CHICAGO (J. DONALD FOSTER) (128)
04/25/90	04/22/90	COMMENT OF GERALD & VIRGINIA EDGAR (129)
04/25/90	04/21/90	COMMENT OF MR. AND MRS. KENNETH E. STOGIS (130)
04/25/90	04/21/90	COMMENT OF ROBERT C. DIEBOLD (131)
04/25/90	04/23/90	COMMENT OF KATHERINE AND THOMAS BROTTD (132)
04/25/90	04/24/90	COMMENT OF THE THORIUM ACTION GROUP (THE THORIUM ACTION GROUP) (133)
04/26/90	04/01/90	COMMENT OF ROBERT V. POLASKY (134)
04/26/90	04/05/90	COMMENT OF MARVA SPIVEY (135)

DOCKET NO. PR-MISC. 90-1 (55FR11459)

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
04/17/90	04/10/90	COMMENT OF PAM WILKENING AND FAMILY OF SIX (88)
04/17/90	04/10/90	COMMENT OF DONALD E. KVASNICKA (89)
04/17/90	04/09/90	COMMENT OF SUSAN K. KVASNICKA (90)
04/17/90	04/14/90	COMMENT OF MARY MONICA GARCEAU (91)
04/17/90	04/11/90	COMMENT OF DONALD W. AND KAREN J. BELCHER (92)
04/18/90	04/11/90	COMMENT OF BARBARA L. HOFER (93)
04/18/90	04/12/90	COMMENT OF CHERYL STONEKING (94)
04/18/90	04/14/90	COMMENT OF JEANIE SCIACKITANO (95)
04/18/90	04/12/90	COMMENT OF ETHEL LOVE (96)
04/18/90	04/16/90	COMMENT OF SUZY REGITZ, ASID (97)
04/18/90	04/12/90	COMMENT OF C. M. TALBOTT, D.SC. (98)
04/18/90	04/07/90	COMMENT OF THE HONORABLE LEE A. DANIELS (99)
04/19/90	04/16/90	COMMENT OF LORRAINE J. ADAMS (100)
04/19/90	04/16/90	COMMENT OF MR. AND MRS. B. LIUEHEN (101)
04/19/90	04/16/90	COMMENT OF JOSEPH AND LAURA MURPHY (102)
04/20/90	04/11/90	COMMENT OF KRISTINA M. HICKS (103)
04/20/90	04/11/90	COMMENT OF ROBERT W. HOFER (104)
04/20/90	04/18/90	COMMENT OF LAUREL COFFMAN (105)
04/20/90	04/17/90	COMMENT OF GREGORY J. MAJENSKI (106)
04/20/90	04/17/90	COMMENT OF MITCHELL E. BELON (107)
04/23/90	04/16/90	COMMENT OF DONALD F. EARLEY (108)
04/23/90	04/12/90	COMMENT OF R. DANIELS (109)
04/23/90	04/14/90	COMMENT OF Z. STEVE & MICHELE M. CHYTRY (110)
04/23/90	04/10/90	COMMENT OF W CHICAGO CHAMBER OF COMMERCE & INDUSTRY (RON ADAMS, PRESIDENT) (111)

DOCKET NO. PR-MISC. 90-1 (55FR11459)

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
04/16/90	04/10/90	COMMENT OF MILDRED ARNOLD (66)
04/16/90	04/12/90	COMMENT OF DONNA & DAVID BROWN (67)
04/16/90	04/12/90	COMMENT OF KATHY CORRA (68)
04/16/90	04/13/90	COMMENT OF ANN PREUSS (69)
04/16/90	04/09/90	COMMENT OF HAROLD H. REORDEN (70)
04/16/90	04/09/90	COMMENT OF AMANDA KVASNICKA (71)
04/16/90	04/10/90	COMMENT OF RUTH ANN HENDUSHOFF (72)
04/16/90	04/09/90	COMMENT OF THOMAS E. SHAW (73)
04/16/90	04/10/90	COMMENT OF ROBERT AND MAUREEN RAWLS (74)
04/16/90	04/10/90	COMMENT OF STANLEY A. AND MARY C. KRANCE (75)
04/16/90	04/10/90	COMMENT OF JESSE M. COX (76)
04/16/90	04/10/90	COMMENT OF MRS. PATRICIA M. HILL (77)
04/16/90	04/09/90	COMMENT OF ALAN FREISETH (78)
04/16/90	04/11/90	COMMENT OF JOHN C. SMITH, JR. (79)
04/16/90	04/09/90	COMMENT OF JANE BODINE, C. LEDERMAN & JOSHUA (80)
04/16/90	04/10/90	COMMENT OF DANIEL J. RACHKE (81)
04/16/90	04/11/90	COMMENT OF MARY S. KOSIFAS (82)
04/16/90	04/09/90	COMMENT OF MIKE KVASNICKA (83)
04/16/90	04/10/90	COMMENT OF DUKANE CORPORATION (J. MCWILLIAMS STONE, JR.) (84)
04/17/90	04/17/90	NOTICE OF PROPOSED AMENDED AGREEMENT W/ILLINOIS *PETITION TO EXTEND COMMENT PERIOD & DEFER FURTHER CONSIDERATION OF THE PROPOSED AMENDMENT AGREEMENT*
04/17/90	04/12/90	COMMENT OF KEITH & JANICE NELSON & FAMILY (85)
04/17/90	04/10/90	COMMENT OF NOLAND SALES CORPORATION (DONNA M. MOCHLES, OFFICE MANAGER) (86)
04/17/90	04/11/90	COMMENT OF LESLIE AND MARK H. REYNOLDS (87)

DOCKET NO. PR-MISC. 90-1 (55FR11459)

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
04/11/90	04/11/90	COMMENT OF MISCODED & NO. WILL NOT BE REUSED (43)
04/11/90	03/31/90	COMMENT OF RAYMOND B. TATBE (44)
04/12/90	04/08/90	COMMENT OF MRS. AND MRS. ROBERT E. KROEHNKE (45)
04/12/90	04/09/90	COMMENT OF MR. AND MRS. S. TERRY WALKER (46)
04/12/90	04/02/90	COMMENT OF PATRICIA ZIEGLER (47)
04/13/90	04/10/90	COMMENT OF WESTCHEM SERVICE & SUPPLY, INC. (DEAN WESTROM, PRESIDENT) (48)
04/13/90	04/10/90	COMMENT OF BRYON K. HILTS (49)
04/13/90	04/09/90	COMMENT OF MRS. CHARLENE CLINGMAN (50)
04/13/90	04/09/90	COMMENT OF MARIAN BIEKMANN (51)
04/13/90	04/09/90	COMMENT OF MR. AND MRS. HAROLD MCFADYEU (52)
04/13/90	04/09/90	COMMENT OF AURA C. HAMMOND (53)
04/13/90	04/09/90	COMMENT OF RICHARD ANDERSON (54)
04/13/90	04/09/90	COMMENT OF JON S. SHACKELFORD (55)
04/13/90	04/10/90	COMMENT OF KEVIN BAXTON (56)
04/13/90	04/10/90	COMMENT OF KAMMES PROPERTIES (LANCE J. KAMMES, B.A.) (57)
04/13/90	02/17/90	COMMENT OF FOREST TRAILS HOMEDOWNERS ASSOCIATION (SONJA S. LONG, PRESIDENT) (58)
04/13/90	04/10/90	COMMENT OF JAMES M. SCHRAMER (59)
04/13/90	04/10/90	COMMENT OF JAMES B. RAUSCH (60)
04/13/90	04/09/90	COMMENT OF COLIN E. PERRY, ALDERMAN (61)
04/13/90	04/10/90	COMMENT OF ROSE M. SCHRAMER (62)
04/13/90	04/10/90	COMMENT OF COLETTE M. MERRION (63)
04/16/90	04/09/90	COMMENT OF FRANK E. WOODS (64)
04/16/90	04/10/90	COMMENT OF MRS. D. A. ISRAEL (65)

DOCKET NO. PR-MISC. 90-1 (55FR11459)

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
04/09/90	04/02/90	COMMENT OF KAREN BLACKLIDGE (18)
04/09/90	04/01/90	COMMENT OF ROBERT V. POLASKY (19)
04/09/90	03/31/90	COMMENT OF ALICE TALBE (20)
04/09/90	04/09/90	COMMENT OF DANIEL L. WANEUB (21)
04/09/90	04/06/90	COMMENT OF SHIRLEY ELLEN BROWN (22)
04/09/90	04/09/90	COMMENT OF DOROTHY M. FRANTZEN (23)
04/09/90	04/06/90	COMMENT OF CLIFF ADDISON (24)
04/09/90	04/05/90	COMMENT OF RON AND JEAN WILLIAMS (25)
04/09/90	04/06/90	COMMENT OF CARL AND CINDY BONNAN (26)
04/09/90	04/05/90	COMMENT OF JUDITH R. GRAY (27)
04/09/90	04/06/90	COMMENT OF MRS. MACKIE SPRAGUR (28)
04/09/90	04/09/90	COMMENT OF SHELLEY K. JOHNSON (29)
04/09/90	04/06/90	COMMENT OF MARY C. BEE (30)
04/09/90	04/09/90	COMMENT OF BARBARA MEDLIN (31)
04/09/90	04/06/90	COMMENT OF BOBBIE J. CAMPBELL (32)
04/09/90	04/06/90	COMMENT OF DAVID H. WARD (33)
04/09/90	04/06/90	COMMENT OF JAMIE A. BIRCH (34)
04/09/90	04/06/90	COMMENT OF JUDY EGGEV (35)
04/09/90	04/06/90	COMMENT OF CINDY NEAL (36)
04/09/90	04/06/90	COMMENT OF WILLIAM J. MATTAB (37)
04/09/90	04/06/90	COMMENT OF TOM VOLPE (38)
04/09/90	03/29/90	COMMENT OF CINDY PEREZ (39)
04/09/90	04/02/90	COMMENT OF BETH S. SHAPIRO (40)
04/10/90	04/09/90	COMMENT OF (MISCODED & NO. WILL NOT BE REUSED.) (41)
04/10/90	04/03/90	COMMENT OF DONALD W. WILBER (42)

In the Matter of
NOTICE OF PROPOSED AMENDED AGREEMENT WITH
STATE OF ILLINOIS

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
04/02/90	03/23/90	STATE OF ILLINOIS; STAFF ASSESSMENT OF PROPOSED AMENDMENT NUMBER ONE TO THE AGREEMENT BETWEEN THE NRC AND THE STATE OF ILLINOIS
04/02/90	03/31/90	COMMENT OF BARBARA A. ERICKSON (1)
04/02/90	03/30/90	COMMENT OF FLORENCE HERBERS (2)
04/03/90	03/29/90	COMMENT OF JUDY KNAAK (3)
04/03/90	03/29/90	COMMENT OF KEN AND SUE BUGAREWICZ (4)
04/03/90	03/28/90	COMMENT OF MRS. PATRICIA M. HILL (5)
04/03/90	03/23/90	COMMENT OF ARTHUR HURT (6)
04/03/90	03/29/90	COMMENT OF MARY L. BALDERSTONE (7)
04/04/90	04/02/90	COMMENT OF MR. AND MRS. JOSEPH BUETLER, SR. (8)
04/04/90	03/31/90	COMMENT OF NEAL F. RABE (9)
04/04/90	03/30/90	COMMENT OF CAROL MCPHETERS (10)
04/04/90	03/28/90	COMMENT OF JOYCE WALKOE (11)
04/04/90	03/31/90	COMMENT OF PAUL E. RUPP (12)
04/04/90	04/01/90	COMMENT OF CAROL HUTTER (13)
04/04/90	04/01/90	COMMENT OF CAIRN HUTTER (14)
04/05/90	04/01/90	COMMENT OF DAVE AND ALYSON ROBBINS (15)
04/05/90	03/31/90	COMMENT OF VIRGINIA L. SCHWARTZ (16)
04/09/90	04/04/90	COMMENT OF A. EUGENE RENNELS (17)

Summaries of Public Comments and NRC Staff Responses

The response to the Federal Register (FR) Notice was extensive with 164 letters/submittals received during the comment period and three additional comment letters dated after the comment period had closed. In addition Covington and Burling for Kerr-McGee Chemical Corporation (Kerr-McGee) and the Illinois Department of Nuclear Safety (IDNS) submitted supplemental comments after the close of the comment period. The comment letters were from local residents (a total of 9708 signatories), local businesses (a total of 20 businesses), State and local officials (a total of 9), the U.S. Environmental Protection Agency, the Illinois Department of Nuclear Safety, the Illinois Senate, and the one licensee (Kerr-McGee Chemical Corporation) in the State affected by the amendment request. Due to the large number of comments, the NRC staff analysis was performed based on grouping or summarizing similar comments and is presented in the same manner. In excess of 9000 signatures were received as part of a local public action group's (Thorium Action Group, TAG) effort. The specific comment letters are available in the Public Document Room (PDR) and the Office of the Secretary (SECY) file.

Comment 1: Expressed General Support for the Transfer of Regulatory Authority from the NRC to the State of Illinois

Of the 167 comment letters received, 166 letters supported the discontinuance of Federal authority and the assertion of State authority over 11e.(2) byproduct material in the State of Illinois. In addition many of the letters discussed opinions about the one facility located in the State of Illinois. The assessment and the FR Notice did not address any specific facility and, therefore, these site-specific comments and discussions do not pertain to the issues covered in this analysis and the staff will not discuss or respond to them.

One commenter (Covington and Burling for Kerr-McGee Chemical Corporation) was opposed to the transfer of regulatory authority to the State of Illinois.

NRC Staff Response: The staff notes that the local population, business, and State and local officials support the transfer of regulatory authority to the State of Illinois. The staff also notes the opposition of the one licensee in the State.

Comment 2: Expressed Support for the NRC Assessment as Published in the Federal Register

A total of five letters specifically commented on the NRC assessment published in the Federal Register. The commenters expressed general support of the NRC assessment, except for Covington and Burling who objected to portions (discussed below) of the assessment.

NRC Staff Response: The staff notes the general support of the assessment, except for the Covington and Burling objections which will be individually addressed later in this analysis as separate comments.

Comment 3: EPA Stated That They Have No Objection to the Proposed Amendment

Letter dated May 2, 1990 from Richard J. Guimond, Director, Office of Radiation Programs, U.S. Environmental Protection Agency, stating that they have reviewed the NRC assessment particularly with reference to those portions which touch on the implementation of the EPA standards for such materials. The conclusion of their review was that they have no objection to the proposed amendment.

NRC Staff Response: The staff notes that EPA has no objection to the proposed Amendment Number One.

Comment 4: Extension to the Comment Period was Requested

Letter dated April 17, 1990 from Covington and Burling for Kerr-McGee Chemical Corporation requested an unspecified extension to the comment period to allow certain legal proceedings to come to conclusion.

NRC Staff Response: The staff considered the request and notified Covington and Burling by telephone on April 26, 1990 that the NRC did not intend to extend the comment period. This was confirmed by letter dated May 18, 1990. The basis for the denial of the extension was that the request was made to allow ongoing proceedings, including those in the NRC administrative and adjudicatory appeals process, to come to conclusion. The processing of the request for an amended agreement is not dependent on the outcome of these other proceedings and, therefore, granting an extension to the comment period to allow such proceedings to come to conclusion, is not warranted. However, all comments submitted have been considered because it was practicable to do so.

Comment 5: Request for a Hearing as Specified in Section 274o of the Atomic Energy Act of 1954, As Amended

NRC Staff Response: This issue is being addressed in a separate paper to the Commission.

Comment 6: The Transfer of Authority is Fundamentally Unfair

Letter dated April 27, 1990 from Covington and Burling for Kerr-McGee Chemical Corporation stated that the State's request to transfer regulatory authority for 11e.(2) byproduct material from the NRC to the State is fundamentally unfair and denied due process. The commenter stated that the only reason for the State seeking jurisdiction over 11e.(2) byproduct material was to prevent the onsite stabilization of the 11e.(2) byproduct material at the Kerr-McGee facility. The commenter further stated that the State seeks, through manipulation of jurisdiction, to achieve an objective that it could not obtain from a neutral tribunal -- a requirement that Kerr-McGee dispose of its wastes at an offsite location. Because the State agency that would assume regulatory authority under the amended Agreement has prejudged the most fundamental issue in the regulation of the Kerr-McGee facility, the transfer of jurisdiction raises profound due process concerns and is contrary to law.

NRC Staff Response: This comment addresses the application of Illinois' proposed program to regulate Section 11e.(2) byproduct material under an amended Section 274b Agreement to the Kerr-McGee facility. As explained more fully in the NRC staff response to Comment 12, *infra*, the requirements for entering into a Section 274b Agreement with a State are specified in Section 274d of the Atomic Energy Act, as amended. Section 274 does not require nor does the Commission's Statement of Policy¹ regarding criteria for guidance of States and NRC concerning Section 274b Agreements contemplate any prior evaluation of the effect that implementation of a State's proposed regulatory program is likely to have on a particular facility. The NRC staff has reviewed Illinois' application to amend its existing Section 274b Agreement in accordance with these and, as required by Section 274e of the Act, has published its assessment of Illinois' proposed amendment in the FR for public comment. The State's motives in requesting an amendment to its Section 274b Agreement are not relevant to the NRC's staff determinations. Moreover, Kerr-McGee will have an opportunity to address its concerns under the administrative and judicial adjudicatory procedures required by Section 274o of the Act. There is no reason to believe that these procedures will not be adequate to address Kerr-McGee concerns about such matters as denial of due process and prejudgment.

¹"Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement," 46 FR 7540, January 23, 1981; 46 FR 36969, July 16, 1981; 48 FR 33376, July 21, 1983.

Comment 7: The State's Regulatory Program for Mill Tailings is
Fatally Defective Under Federal Law

Letter dated April 27, 1990 from Covington and Burling for Kerr-McGee Chemical Corporation stated that the State has adopted regulations governing 11e.(2) byproduct material that are flatly inconsistent with the express requirements of the Uranium Mill Tailings Radiation Control Act of 1978, as amended (UMTRCA). The commenter stated that the State regulations were promulgated without any attempt to satisfy the UMTRCA requirements that the costs of the regulatory requirements bear a reasonable relationship to their benefits, that the regulations provide for site-specific flexibility, that the regulations recognize the need to regulate existing sites in a different fashion from new sites. The commenter also stated that many of the requirements in the State's regulations have no technical foundation, but are imposed for the sole purpose of advancing the State's political and litigation posture opposing onsite stabilization.

NRC Staff Response: The staff understands Kerr-McGee to be focusing on several State requirements that are more stringent than NRC's requirements. In authorizing such more stringent requirements, Section 2740 does not require that there be a reasonable relationship between costs and benefits, and NRC staff does not believe that it must examine the technical foundations for more stringent State requirements from this perspective. However, the State program does have site-specific flexibility including provisions where existing sites may possibly be treated differently than new sites. Kerr-McGee's concerns on the need for flexibility and differentiation between new and old sites can be addressed to the State in a petition by Kerr-McGee requesting that the State grant an exemption under Part 310.30. Also, the State has the flexibility to adopt site-specific alternatives to requirements of EPA and NRC under Section 2740 of the Atomic Energy Act. Kerr-McGee may petition the State under Part 310.30 to adopt an alternative under 2740.

Comment 8: The Commission Cannot Make the Finding Required By
Section 2740

Letter dated April 27, 1990 from Covington and Burling for Kerr-McGee Chemical Corporation stated that the Commission cannot make the finding required by Section 2740 of the Act that the alternatives to the Commission's regulations adopted by the State provide adequate protection of the public health, safety, and the environment. The commenter also stated that the alternatives were clearly adopted in order to require offsite stabilization. The NRC staff's analysis of disposal options for the West Chicago Rare Earths Facility shows that onsite stabilization pursuant to NRC requirements provides lesser risks than any offsite disposal of the materials.

Letter dated June 15, 1990 from the IDNS stated that the program proposed by the State of Illinois is in accordance with Sections 274d and 274e of the Atomic Energy Act, as amended. The State's regulations, including those that were adopted as an alternative to the regulatory requirements of 10 CFR Part 40, adequately protect the public health, safety and the environment. In its assessment the NRC staff found that Illinois' regulations, although more stringent than the NRC's regulations, provide adequate protection for public health, safety, and the environment. The IDNS further stated that Illinois' regulations do not force offsite disposal of the West Chicago waste materials as alleged by Kerr-McGee and the NRC staff in its assessment of the West Chicago disposal options found that the health effects of either onsite or offsite disposal of these wastes would have negligible health and environmental impacts. The specific impact of the proposed Illinois' regulations on the West Chicago site has no bearing on the question of the adequacy of Illinois' regulations to protect the public health, safety and the environment.

NRC Staff Response: The staff in its assessment (55 FR 11459-11470) identified seven parts of the State's regulations that were considered more stringent than NRC's regulations. Kerr-McGee also identified parts of the State's regulations that they consider more stringent. Based on additional information and review, the staff reconsidered each of the items previously identified as more stringent and the findings are presented below:

1. Part 332 does not contain a specific exemption provision or a provision for approving alternatives to its regulations.

Upon further review the staff identified that the State has such an exemption provision in Part 310.30 of the Illinois' regulations which allows the State to authorize exemptions to any provision of the State radiation protection regulations if the State can make the finding that such an exemption will be protective of public health and safety. Therefore, the State has the ability to address licensee proposals for alternative standards or exemptions to State requirements. The NRC staff no longer considers this issue a valid concern since the State regulations do contain an exemption provision.

2. Section 332.70 is written as technical criteria thereby eliminating the flexibility inherent in NRC's performance objectives in its regulations.

As noted above the State has the flexibility to authorize other specific requirements if the licensee has requested such flexibility and has provided the health and safety basis for the request. The NRC staff considers this flexibility to be sufficient to eliminate the concern in this area.

3. Section 332.170c) contains an annual average total radon release rate of 2 picocuries per meter square per second flux limit which is more stringent than the 20 picocuries per meter per second flux limit in Criterion 6 of Appendix A to 10 CFR Part 40.

This section of the State regulations remains more stringent than NRC's criterion, however, this flux limit is considered to meet the requirements of Section 274o.

4. Section 332.210b)1) bans disposal sites within a distance of 2.5 km of any municipality without the consent of the municipality and was identified as more stringent than NRC's performance objective of locating disposal sites in remote areas.

The State requirement will in most cases, be more stringent than NRC's general performance objectives, and is considered acceptable under Section 274o.

5. Section 332.220b)1) does not allow slopes steeper than 10h:1v which is more stringent than NRC's criterion which allows 5h:1v slopes or steeper when justified.

The State requirement does not allow the side slopes of tailings piles to be designed with steeper slopes and appropriate erosion protection. The staff considers this requirement to be more stringent and the resultant pile should be more stable. Therefore, the requirement should, in most cases, satisfy the requirements of 274o. However, in site-specific applications, this requirement could have significant nonradiological environmental impact because significantly more land will be needed for above grade disposal of mill tailings.

6. Section 332.240 requires that a tailings disposal site be designed to be stable for 1000 years which is considered to be more stringent in that it does not allow the flexibility that is in Criterion 6 in Appendix A to 10 CFR 40.

The staff considers the State requirement to be more stringent and as satisfying the requirements of Section 274o.

7. Section 332.250b) requires chemical treatment of tailings where NRC's requires that chemical treatment be considered.

The staff considers this requirement to be generally more stringent because it requires chemical treatment in all cases. However, in some cases, requiring the tailings to be chemically treated may have a detrimental effect depending on the site-specific conditions and may be of no benefit in other cases.

8. Section 332.250c) requires groundwater restoration to levels consistent with those before operations. This was identified as more stringent in the staff assessment, but upon further review the staff no longer considers this requirement more stringent.

Kerr-McGee also listed Sections 332.200, 332.210b)6), and 332.220a)2) as parts of the State regulations which are stated in such a manner that the State has removed the flexibility inherent in the NRC regulations. In reviewing these regulations, the NRC staff accepted regulatory wording which the staff considered essentially the same as NRC's. These sections identified by Kerr-McGee are examples of such wording. The NRC staff does not consider the wording of these sections to be more stringent than the comparable NRC requirements.

The staff is finding several of the sections discussed above more stringent and in accord with Section 274o of the Act only for the purpose of finding the Illinois program adequate, compatible and in compliance with statutory requirements so that authority may be relinquished lawfully to the State. In making the findings, NRC staff exercised a programmatic judgment that, in the majority of reasonably foreseeable circumstances, the sections would achieve a level of stabilization and containment, and a level of protection of the public health, safety, and the environment from radiological and nonradiological hazards, which is equivalent to, to the extent practicable, or more stringent than the level that would be achieved by NRC's and EPA's requirements. The staff offers no opinion whether, as applied to any particular site, the findings required by the last paragraph of Section 274o can necessarily be made.

Comment 9: The State Regulatory Program is Inconsistent with the Commission's Own Guidelines Governing Jurisdictional Transfers

Letter dated April 27, 1990 from Covington and Burling for Kerr-McGee Chemical Corporation stated that the State regulatory program is inconsistent with the Commission's own guidelines governing jurisdictional transfers. The State has made no provision to ensure that the proposed transfer will not interfere with NRC-licensed activities or interrupt the processing of license amendments. Indeed, the very purpose of the proposed amendment is to assure exactly such interference with and interruption of the activities authorized by an NRC license at the one site that would be affected.

Letters dated April 27, 1990 and June 15, 1990 from the Illinois Department of Nuclear Safety (IDNS) stated that Illinois' proposed program incorporates the standard language from the Suggested State Regulations for the Control of Radiation, which have been approved by the NRC. IDNS agreed with the NRC assessment that the proposed program meets the criteria for entering into an agreement with the NRC.

NRC Staff Response: The staff notes that Kerr-McGee does not approve of what they perceive as the State's motive for requesting the amendment to the Agreement. However, the provisions in Illinois' regulations for recognition of NRC licenses for a period of 90 days is the standard language used in most State regulations. The NRC will work with Illinois to transfer all records to the State for the one licensee (the West Chicago Rare Earths Facility) affected by this transfer.

Comment 10: The State's Regulatory Program is Flawed Under State Law

Letter dated April 27, 1990 from Covington and Burling for Kerr-McGee Chemical Corporation stated that the State's regulatory program is flawed under State law. The rules clearly violate various State statutory and constitutional provisions. The Illinois Joint Committee on Administrative Rules (JCAR) has already found that the rules are invalid. The NRC should not transfer authority while the State regulations are under a cloud.

Letter dated June 15, 1990 from the Illinois Department of Nuclear Safety (IDNS) stated that the IDNS responded to the JCAR on April 12, 1990 refusing to modify its regulations. The IDNS' refusal to modify its regulations in response to the JCAR objections issued pursuant to Section 7.07 of the Illinois Administrative Procedures Act does not affect the validity of the adopted regulations. Upon the effective date of an agreement with NRC transferring regulatory responsibility over 11e.(2) byproduct material to Illinois, the regulations will be effective and enforceable.

NRC Staff Response: The NRC staff is aware of the challenge to the validity of the State's regulations in the State court (Kerr-McGee Chemical Corp. v. IDNS, No. 90 MR 49 (Ill. Cir. Ct., Sangamon Cty) and the objections to the final regulations issued by the Illinois Joint Committee on Administrative Rules (JCAR). The proceedings in the State court are currently being appealed in the Illinois Appellate court. The Illinois Department of Nuclear Safety (IDNS) responded to the JCAR on April 12, 1990. In the response the IDNS refused to initiate rulemaking to remedy any of the JCAR objections. Under Illinois law, since the objections were on the final regulations, the final regulations are not affected unless the State Legislature passes a law requiring the IDNS to initiate rulemaking proceedings.

Comment 11: The State has Sought to Subvert NRC's Review Process

Letter dated April 27, 1990 from Covington and Burling for Kerr-McGee Chemical Corporation stated that the State has sought to subvert the NRC's review process. The State was required to submit final, valid regulations to the NRC as part of its application for the amendment. Kerr-McGee stated that the State has failed to do so. In an effort to ensure that it would assume jurisdiction before the completion of the ongoing proceeding related to the onsite stabilization of wastes, the State circumvented important rulemaking procedures under State law. When the Joint Committee on Administrative Rules urged IDNS to modify certain of its regulations, the IDNS declined because such changes might require further negotiations with the NRC staff and hence could cause delay. Nonetheless, the IDNS representative assured the Committee that the IDNS would be prepared to accommodate the Committee's concerns and to make modifications once the transfer of authority was accomplished. In other words, the State has told the NRC staff that its regulations will say one thing, but has promised its sister State agency that they will be revised to say something different once jurisdiction is obtained. The State's action circumvents the NRC's review process and should not be tolerated.

The IDNS, in supplemental comments submitted by letter dated June 15, 1990, state that IDNS by letter dated April 12, 1990 responded to the JCAR refusing to modify the 11e.(2) byproduct material regulations. IDNS also stated in their supplemental comments that such a refusal to modify its regulations in response to objections issued pursuant to Section 7.07 does not affect the validity of the adopted regulations.

NRC Staff Response: The NRC staff has reviewed the IDNS response to the JCAR and concluded that the IDNS appears to have followed the Illinois Administrative Procedures Act in responding to the JCAR. The JCAR has not taken any further action on this matter, therefore, the NRC staff considers this a closed issue. In any event, the Illinois' regulations

are still in effect and, therefore, proper for consideration in the State's program. If Illinois' regulations are changed, than NRC may review the program again and suggest changes or, if needed, suspend or terminate the Agreement under Section 274j.

Comment 12: A Transfer of Jurisdiction to the State Would Be Contrary to the Public Interest in That It Would Disrupt the Substantial Progress That Has Been Made in Achieving the Final Disposition of the West Chicago Wastes

Letter dated April 27, 1990 from Covington and Burling for Kerr-McGee Chemical Corporation stated that a transfer of jurisdiction to the State would be contrary to the public interest in that it would disrupt the substantial progress that has been made in achieving the final disposition of the West Chicago wastes. After literally years of analysis and the completion of two environmental statements, both the NRC staff and an NRC Atomic Safety and Licensing Board have concluded that onsite disposal is the preferred stabilization option. The approach favored by the State -- transportation of the wastes to a distant (preferably out-of-state) location -- would increase the risks to the general public and the environment, as well as substantially increase costs. If the State assumes jurisdiction, it will be years, at a minimum, before the final stabilization of the West Chicago wastes can be accomplished. It is thus in the public interest for the NRC to retain its jurisdiction so that the final stabilization of these materials can and will go forward.

The IDNS in its supplemental comments dated June 15, 1990 stated that the Kerr-McGee comment and discussion on this issue has tried to introduce site-specific concerns and issues into the process to become an Agreement State. The discussion of the public interest by Kerr-McGee did not address the issue of the public anxiety concerning the site. Since the NRC has previously identified that all the disposal options considered by the NRC met the safety standards, the final decision on the ultimate disposal approval will be based on other contributing issues. The IDNS also stated that the analyses and other action before the ASLBP and the ASLAP should not influence the determination of the State's Amendment request.

NRC Staff Response: The NRC staff reviewed the request from the State of Illinois to amend their Agreement and their radiation control program in accordance with the guidelines for entering into such agreements (see Commission guidelines) and published the staff's assessment in the FR on March 28, 1990 (55 FR 11459). The staff has not expressed any opinion on the effect of the Illinois regulatory program on the Kerr-McGee West Chicago Rare Earths Facility in making its determination that the State's proposed amended program complies with Sections 274d and 274o of the Act.

Comment 13: The NRC's Amendment of the Agreement with the State of Illinois Would Be Arbitrary And Capricious, As Well As Contrary to the Law

Letter dated April 27, 1990 from Covington and Burling for Kerr-McGee Chemical Corporation stated that because of the above comments and many other failings, the NRC's amendment of the Agreement with the State would be arbitrary and capricious, as well as contrary to law. Accordingly, Kerr-McGee urges the Commission to decline to amend the Agreement.

NRC Staff Response: The Commission's action in amending the 274b Agreement with Illinois is not arbitrary and capricious or contrary to law. The Commission has complied fully with the applicable procedures and requirements of Section 274 of the Atomic Energy Act of 1954, as amended. Under Section 274d of the Act, the Commission is required to enter into a Section 274b agreement with a State if,

1. The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and
2. the Commission finds that the State program is in accordance with the requirements of subsection o. and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

On April 11, 1989, the Governor made the above required certifications and upon receipt of the State's final regulations by letter dated January 10, 1990 the Commission considered the State's application complete.

In reviewing Illinois' application to amend its Section 274b Agreement to include Section 11e.(2) byproduct material, the Commission applied the criteria in its revised Statement of Policy dated January 23, 1981 including, in particular, Criteria 29-36 which relate specifically to the regulation of uranium and thorium mill tailings. Based on that review, the Commission has found that the Illinois program for the regulation of Section 11e.(2) byproduct material is in accordance with the requirements of Section 274b, is in all other respects compatible with the Commission's program for regulating such materials, and is adequate to protect the public health and safety. The provisions of the proposed Amendment Number One to the Illinois Agreement and the NRC staff's

assessment of the proposed amended program have been published for public comment as required by Section 274e of the Act. Thus, the Commission's actions in amending its Section 274b Agreement with Illinois comply fully with applicable law and are not arbitrary and capricious.

Comment 14: It is inappropriate for the NRC to amend its Agreement with the State of Illinois to allow IDNS to assume responsibility for the regulation of 11e.(2) byproduct material given the information in the Special Counsel's Report

Letter dated June 25, 1990 from Covington and Burling for Kerr-McGee Chemical Corporation stated that Kerr-McGee questioned whether the IDNS could supervise the disposal of the wastes associated with the one licensee in the State given the IDNS management actions in the low-level waste siting program as described in the "Report of Special Counsel to the Illinois Senate Executive Committee on Siting a Low-Level Radioactive Waste Facility" dated May 17, 1990. Kerr-McGee pointed out in their letter that the Illinois Legislature has taken action to adopt legislation which would strip the IDNS of its authority to site a low-level radioactive waste repository for Illinois and would place that responsibility in a three-member, independent commission. This legislation has passed the Illinois Legislature and the Governor signed it into law. The three commissioners have been appointed.

On June 13, 1990 the Illinois Legislature passed a resolution urging the NRC to grant Illinois Agreement State status for the materials at the Kerr-McGee facility. This resolution was passed with the knowledge of the information in the Special Counsel's Report.

NRC Staff Response: The staff has reviewed the Special Counsel's Report and the resolution passed by the Illinois Senate. The Special Counsel's Report is very critical of IDNS top management and their handling of the low-level waste disposal siting process, but did not contain any criticism of the professional staff which is implementing the proposed amended 274b Agreement or will be implementing the proposed amended 274b Agreement. The siting process, which is questioned in the report, was established under the Low-Level Waste Policy and Amendments Acts and is not part of the program for implementing the Agreement between Illinois and the NRC under Section 274 of the Atomic Energy Act, as amended. Since the top management criticized in the report, and common to both programs, have left IDNS, we do not see a direct impact on the 274b Agreement.

The NRC State Programs has conducted routine reviews of the current 274 Agreement State program on two occasions, December 1987 and January 1990 and we have found the program adequate to protect the public health and safety and compatible with the NRC program. The 1990 finding of compatibility is contingent on the Commission's evaluation of the Illinois response to the 1 millirem issue.

The report discussed the issue of the potential conflict of interest having both the siting process and the licensing process under the Director of IDNS. The issue has been discussed with the IDNS and this issue was resolved by a new law which creates an independent Siting Commission. The IDNS retains the licensing responsibility for the low-level waste disposal facility but the site selection will be made by the Siting Commission.

The staff after reviewing the above information has concluded that, contrary to Kerr-McGee's attorney's assertion, the State of Illinois has the staff and the program necessary to regulate 11e.(2) byproduct material.

Comment 15: The IDNS Regulations Impermissibly Delegate Authority to Municipalities

Letter dated April 27, 1990 from Covington and Burling for Kerr-McGee Chemical Corporation stated that Section 332.210b)1) of the IDNS regulations would give each municipality in the State of Illinois an effective veto over any proposal to place a disposal site for 11e.(2) byproduct material within 2.5 km of its boundaries. If the State were to obtain jurisdiction, the provision would constitute an unlawful delegation of regulatory authority.

Letter dated June 15, 1990 from the Illinois Department of Nuclear Safety (IDNS) stated on this issue that the State regulatory program does not delegate licensing or regulatory authority to such municipalities. Because the authority to issue licenses would be vested solely with IDNS, and because source material milling and related activities could not take place without a license having been issued by IDNS, the requirement for local approval of the siting decision is not an impermissible delegation of authority. The State also noted that the NRC State Agreements Program in 1987 told Senator Jerome J. Joyce that NRC has considered the appropriateness of such local approval requirements and has determined that, provided the local governmental entity is not given authority to license the use of radioactive materials, the local approval requirement is not an impermissible delegation of authority and does not exceed the State's authority under the Agreement State program.

NRC Staff Response: The staff does not consider such local approval a delegation of authority under the Agreement State program and is permissible for the reasons given in the Illinois response. The staff would like to point out that the State is assuming regulatory responsibility under State law and the NRC is discontinuing Federal authority. Kerr-McGee incorrectly stated that the State was assuming authority under Federal law implying incorrectly the Agreement State program is a delegation of Federal authority.

Comment 16: The State Regulatory Program Fails to Identify Key Personnel

Letter dated April 27, 1990 from Covington and Burling for Kerr-McGee Chemical Corporation stated that several key IDNS personnel (one administrative, Dr. T. Lash, Director of IDNS, and one technical, T. A. Kerr, Chief of the Division of Low-Level Waste Management) have left the program since the assessment was published in March 1990. Kerr-McGee further stated that it would be improper to transfer authority until the NRC staff has evaluated the new staff replacing the above key personnel and subjected the evaluation to public comment.

Letter dated June 15, 1990 from the Illinois Department of Nuclear Safety (IDNS) stated that changes in the Department's staff since the publication of the assessment have not altered the fact that the level and competence of the Department's staffing clearly satisfies the personnel requirements as set forth in Criterion 34 of the NRC's guidance document (46 FR 7454).

NRC Staff Response: The staff acknowledges that one of seven administrative and one of eleven technical personnel left the program following NRC's assessment initially published March 28, 1990. The administrative portion (Director of IDNS) was filled by the Director from the State Emergency Management Agency. The technical position was one of providing technical support to the Licensing Division and, therefore, the State can hire a qualified individual or provide the needed expertise through a contract. The IDNS provided sufficient personnel to handle a uranium milling program significantly larger than the current industry in the State and, therefore, the loss of one or two persons from the staff discussed in the assessment does not change the conclusion of the assessment that the State has a sufficient number of qualified personnel to implement the proposed amended program.

Kerr-McGee Chemical Corp. v. NRC and Illinois v. USA & NRC Nos. 87-1254 and 88-1636, slip op. (Court of Appeals, District of Columbia, filed April 27, 1990)

The Court of Appeals determined that in these cases the Commission was wrong in its interpretation of the definition of "byproduct material" found in the 11e.(2) of the Atomic Energy Act. The Commission determined that certain onsite material and tailings offsite were byproduct material while other offsite material was source material. The Commission's determination was based on its reading of the Act to mean that the definition of source material was based on its content, while the definition of byproduct material required a determination of the purpose for which the ore was first processed. The Court held that, when considered in the context of the Atomic Energy Act's structure, the purposes of UMTRCA and its application to the wastes at Kerr-McGee facility, it is clear that the interpretation is wrong.

Kerr-McGee Chemical Corp. v. IDNS, No. 90 MR 49 (111. Cir. Ct., Sangamon County).

In view of Kerr-McGee's belief that the State's regulations governing 11e.(2) byproduct material are fatally defective under both Federal and State law, it sought judicial review of the IDNS regulations in the State courts. Argument on the State's motion to dismiss Kerr-McGee's petition as premature was argued in April, 1990. On April 27, 1990 the trial judge issued an order denying the State's motion to dismiss Kerr-McGee's suit as premature. The judge certified a question to the Illinois appellate court as to whether the litigation was ripe for judicial resolution. The State applied for and was granted an interlocutory appeal on this question. Further proceedings in the trial court have been stayed pending resolution of the State's appeal.

Kerr-McGee Chemical Corporation (West Chicago Rare Earths Facility), Docket No. 40-2061-ML, ASLBP No. 83-495-01-ML.

On February 13, 1990 the Licensing Board issued an initial decision authorizing an amendment to the materials license held by Kerr-McGee for its West Chicago Rare Earths Facility. The amendment authorizes Kerr-McGee to dispose of permanently at the site certain radioactive wastes. Appeals have been filed by the State of Illinois and the City of West Chicago. The Environmental Protection Agency filed an amicus curiae brief in this proceeding. The NRC staff, after reviewing the EPA brief, requested an opportunity to extend the time by which it had to respond to the two appeals to August 10, 1990 so that it could consider the EPA comments in its reply. That request was granted by the Appeal Board. The NRC staff is scheduled to file its brief in opposition to the appeals of the State and the City of West Chicago and its response to the amicus curiae brief of the EPA by August 10, 1990. The filing of the staff's brief will complete the briefing schedule in the appeal. Oral argument has been requested.

Kerr-McGee Chemical Corporation v. City of West Chicago, No. 90 C 1319 (N.D. Ill.). Kerr-McGee Chemical Corp. v. City of West Chicago No. 90 C 1622 (7th Cir.).

This litigation grew out of a "Stop work" order issued by the City of West Chicago after being informed by Kerr-McGee that it intended to proceed with onsite stabilization as authorized by the license amendment. A request for an injunction was filed by Kerr-McGee in the Federal District Court with a request for a declaratory judgement that such action is preempted. The District court denied the relief and Kerr-McGee filed an appeal and a motion for expedited briefing with the Court of Appeals for the Seventh Circuit. The Court granted the request for expedited treatment and oral argument was scheduled for May 1990. On June 15, 1990 the Seventh Circuit heard oral argument on Kerr-McGee's appeal from the decision by Judge Holderman denying Kerr-McGee's motions for a temporary restraining order and a preliminary injunction. The suit in the district court seeking injunctive relief and a declaratory judgement has been assigned to Judge Ann Williams. A status conference was held on June 28, 1990. At that time, Judge Williams issued a stay of the proceeding pending a decision by the Seventh Circuit.

Illinois v. Kerr-McGee Chemical Corp., No. 90 CH 220 (Ill. Cir. Ct., DuPage County); Kerr-McGee Chemical Corp. v. Illinois, No. 2-90-0577 (Ill. App. Ct.).

On March 14, 1990 the State filed suit in State court in DuPage County seeking an injunction to bar Kerr-McGee from proceeding with cell construction. The State alleged that Kerr-McGee was obliged to obtain various permits from the Illinois Environmental Protection Agency ("IEPA") before commencing with its NRC-authorized program. The State obtained an ex parte temporary restraining order which remains in effect pending a hearing on a preliminary injunction in State court on May 10, 1990. The scope of Federal preemption, among other points, will be addressed in resolving the State's claims of IEPA authority. On May 23, 1990 the DuPage County Circuit Court issued an interlocutory order preliminarily enjoining Kerr-McGee from proceeding with cell construction until various permits from the IEPA had been applied for and obtained. Kerr-McGee has appealed the interlocutory order to the Illinois appellate court. A briefing schedule on the appeal has been established. Kerr-McGee's brief is due on August 1, 1990, the State's brief is due on September 6, 1990, and Kerr-McGee's reply is due on September 20, 1990.

State v. Kerr-McGee Chemical Corp., No. 80 ch 298. (Ill. Cir. Ct., DuPage Cty).

In 1980 the State of Illinois brought suit in State court seeking an injunction requiring the removal of the Kerr-McGee Rare Earths Facility's wastes. The judge hearing this case dies. Recently, the court appointed a new judge and the State and Kerr-McGee are working with the judge to determine if this case can be combined with the other case in Dupage County.

The Honorable James R. Thompson
Governor of Illinois
Springfield, IL 62706

Dear Governor Thompson:

I am pleased to inform you that the U.S. Nuclear Regulatory Commission (NRC) has approved your proposed Amendment to the Agreement under which the NRC will discontinue and the State of Illinois will assume regulatory authority over 11e.(2) byproduct material and the facilities that produce 11e.(2) byproduct material in accordance with Section 274 of the Atomic Energy Act, as amended.

I am pleased to enclose three (3) copies of the Agreement for your signature (enclosure 1). Following your execution of the Amendment to your Agreement please return two (2) copies to NRC. The third copy is for retention by the State.

On behalf of the Commission, I congratulate you, your staff, and the State of Illinois for taking this important step in Federal-State relations.

Sincerely,

Kenneth M. Carr
Chairman

Enclosure:
As stated

Attachment 6

The Honorable Morris K. Udall, Chairman
Subcommittee on Energy and the Environment
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

We are pleased to advise the Committee that, pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, entitled "Cooperation With States," the Commission on _____ approved a proposed amendment to the Agreement with the State of Illinois under which the State will assume regulatory authority over 11e.(2) byproduct material and the facilities that produce 11e.(2) byproduct material. Also, enclosed is a copy of the public announcement which we issued.

In his proposal requesting that the Commission amend the Agreement with the State, Governor Thompson certified that the State of Illinois has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials covered by the proposed amendment to the Agreement, and that the State desires to assume regulatory responsibility for such materials.

The proposed amendment to the Agreement and the staff's assessment of the proposed State program were published in the Federal Register for public comment as required by Section 274e of the Atomic Energy Act, as amended. Copies of the proposal were made available for public inspection at the Commission's Public Document Room.

The Commission has determined that the Illinois program for regulation of 11e.(2) byproduct material and the facilities that produce 11e.(2) byproduct material is compatible with the Commission's program for the regulation of like materials and adequate to protect the public health and safety with respect to the materials covered by the proposed Amendment.

The Agreement was executed on _____, 1990 with an effective date of _____, 1990.

Sincerely,

Dennis K. Rathbun, Director
Congressional Affairs
Office of Governmental and
Public Affairs

Enclosure:
As stated

cc: Representative James V. Hansen

The Honorable Philip R. Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20510

Dear Mr. Chairman:

We are pleased to advise the Committee that, pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, entitled "Cooperation With States," the Commission on _____ approved a proposed amendment to the Agreement with the State of Illinois under which the State will assume regulatory authority over 11e.(2) byproduct material and the facilities that produce 11e.(2) byproduct material. Also, enclosed is a copy of the public announcement which we issued.

In his proposal requesting that the Commission amend the Agreement with the State, Governor Thompson certified that the State of Illinois has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials covered by the proposed amendment to the Agreement, and that the State desires to assume regulatory responsibility for such materials.

The proposed amendment to the Agreement and the staff's assessment of the proposed State program were published in the Federal Register for public comment as required by Section 274e of the Atomic Energy Act, as amended. Copies of the proposal were made available for public inspection at the Commission's Public Document Room.

The Commission has determined that the Illinois program for regulation of 11e.(2) byproduct material and the facilities that produce 11e.(2) byproduct material is compatible with the Commission's program for the regulation of like materials and adequate to protect the public health and safety with respect to the materials covered by the proposed Amendment.

The Agreement was executed on _____, 1990 with an effective date of _____, 1990.

Sincerely,

Dennis K. Rathbun, Director
Congressional Affairs
Office of Governmental and
Public Affairs

Enclosure:
As stated

cc: Representative Carlos J. Moorhead

The Honorable Bob Graham, Chairman
Subcommittee on Nuclear Regulation
Committee on Environmental and Public Works
United State Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We are pleased to advise the Committee that, pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, entitled "Cooperation With States," the Commission on _____ approved a proposed amendment to the Agreement with the State of Illinois under which the State will assume regulatory authority over 11e.(2) byproduct material and the facilities that produce 11e.(2) byproduct material. Also, enclosed is a copy of the public announcement which we issued.

In his proposal requesting that the Commission amend the Agreement with the State, Governor Thompson certified that the State of Illinois has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials covered by the proposed amendment to the Agreement, and that the State desires to assume regulatory responsibility for such materials.

The proposed amendment to the Agreement and the staff's assessment of the proposed State program were published in the Federal Register for public comment as required by Section 274e of the Atomic Energy Act, as amended. Copies of the proposal were made available for public inspection at the Commission's Public Document Room.

The Commission has determined that the Illinois program for regulation of 11e.(2) byproduct material and the facilities that produce 11e.(2) byproduct material is compatible with the Commission's program for the regulation of like materials and adequate to protect the public health and safety with respect to the materials covered by the proposed Amendment.

The Agreement was executed on _____, 1990 with an effective date of _____, 1990.

Sincerely,

Dennis K. Rathbun, Director
Congressional Affairs
Office of Governmental and
Public Affairs

Enclosure:
As stated

cc: Senator Alan K. Simpson

PROPOSED PUBLIC ANNOUNCEMENT

NRC APPROVES AMENDMENT TO ILLINOIS AGREEMENT
ALLOWING STATE TO CONTROL MILL TAILINGS

The Nuclear Regulatory Commission has approved an amendment to the Agreement with Illinois under which that State will assume regulatory authority over uranium and thorium mills and mill tailings. The amended Agreement will become effective on _____, 1990.

There is one site in Illinois which contains mill tailings, the Kerr-McGee Chemical Corporation's West Chicago Rare Earths Facility.

The amendment supplements a 1987 Agreement with Illinois that transferred responsibility for licensing, rulemaking, inspection and enforcement concerning the use of byproduct materials, source materials uranium and thorium, small quantities of fissionable materials, and commercial disposal of low-level waste.

The Illinois Department of Nuclear Safety will be the State agency responsible for administering the regulatory program for the extraction and the concentration of uranium and thorium from any ore processed primarily for its source material content, as well as the possession, use, transfer and disposal of the mill tailings and other wastes associated with the ore processing.

Draft Federal Register Notice

NUCLEAR REGULATORY COMMISSION

ACTION: Notice of Amended Agreement with the State of Illinois

SUMMARY: Notice is hereby given that the Honorable Kenneth M. Carr, Chairman of the United States Nuclear Regulatory Commission, and the Honorable James R. Thompson, Governor of the State of Illinois, signed an Amendment to the existing Section 274b Agreement between NRC and the State of Illinois pursuant to Section 274 of the Atomic Energy Act of 1954, as amended. The Amendment permits the State to regulate 11e.(2) byproduct material and the facilities that produce 11e.(2) byproduct material.

The proposed Amendment to the existing Section 274b Agreement was published in the Federal Register for public comment for four consecutive weeks beginning March 28, 1990 (55 FR 11459).

The Amendment is published in accordance with the requirements of Public Law 86-373. A copy of the consolidated version of the Agreement is available at the Office of Governmental and Public Affairs, State Programs.

FOR FURTHER INFORMATION CONTACT: Vandy L. Miller, State Programs, United States Nuclear Regulatory Commission, Washington, D.C. 20555 (telephone 301-492-0326).

SUPPLEMENTARY INFORMATION:

Public Comments: In response to the FR Notice, the NRC received 166 letters with two commenters (Kerr-McGee and the State of Illinois) submitting supplemental comments. The commenters included local residents (9708 total number of signatures), businesses (20), community leaders (9), the Environmental Protection Agency, the State of Illinois, and Kerr-McGee Chemical Corporation (the only licensee in the State affected by this amendment). Of the letters received, all except Kerr-McGee's were in support of the amendment and transfer of regulatory authority for 11e.(2) byproduct material to the State of Illinois. Kerr-McGee opposed the granting of the amendment and requested that a hearing be held. A list of all commenters was provided to the Commission along with an analysis of the major comments which was prepared by the staff. All comments except for those presented by Kerr-McGee Chemical Corp. supported the proposed amendment to the Agreement and all comments were carefully considered by the Commission in its deliberations on the Illinois request. The comments are available in the Commission's Public Document Room at 2120 L Street, N.W., Washington, D.C.

Amendment to the Agreement Between the United States Nuclear Regulatory Commission and the State of Illinois for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended.

WHEREAS, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11c.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

WHEREAS, the Governor of the State of Illinois is authorized under Illinois Revised Statutes, 1987, ch. 111 $\frac{1}{2}$, par. 216b and ch. 111 $\frac{1}{2}$; par. 241-19 to enter into this Agreement with the Commission; and,

WHEREAS, on June 1, 1987, an Agreement between the Commission and the State of Illinois became effective which provided for State assumption under State law regulatory authority over byproduct material as defined in Section 11.e(1) of the Act, source materials, special nuclear materials in quantities not sufficient to form a critical mass, and the land disposal of source, byproduct, and special nuclear material received from other persons; and,

WHEREAS, Article III of that Agreement provides that the Agreement may be amended upon application by the State and approval by the Commission, to include the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material; and,

WHEREAS, the Governor of the State of Illinois certified on _____ that the State of Illinois (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and that the State of Illinois desires to assume regulatory responsibility for such materials; and,

WHEREAS, the Commission found on _____ that the program of the State for the regulation of the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and,

WHEREAS, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and where necessary compatible; and,

WHEREAS, the Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to Amendment Number One to the Agreement; and,

WHEREAS, Amendment Number One to the Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

NOW, THEREFORE, IT IS HEREBY AGREED between the Commission and the Governor of the State, acting in behalf of the State, as follows:

- 1) Article I of the Agreement is hereby amended to expand the scope of the Agreement to include the extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in Section 11e.(2) of the Act. As amended, Article I now reads as follows:

ARTICLE I

Subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following:

- A. Byproduct material as defined in Section 11e.(1) of the Act;
- B. Source materials;
- C. Special nuclear materials in quantities not sufficient to form a critical mass; and,
- D. The land disposal of source, byproduct, and special nuclear material received from other persons.

Pursuant to Article III, and subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Amendment Number One to this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following:

E. The extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in Section 11e.(2) of the Act.

- 2) Article II of the Agreement is hereby amended by inserting "A." before "This Agreement," by redesignating paragraphs A. through D. as subparagraph 1. through 4., by deleting paragraph E., relating to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and by adding a new paragraph B., relating to authorities that will be retained by the Commission. As amended, Article II now reads as follows:

ARTICLE II

- A. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:
1. The construction and operation of any production or utilization facility;
 2. The export from or import into the United States of byproduct, source, or special nuclear material, or utilization facility;

3. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission; and,
 4. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.
- B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct materials as defined in Section 11e.(2) of the Atomic Energy Act:
1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material. Such reserved authority includes:
 - a. The authority to established terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;
 - b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be

transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

- c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger the public health, safety, welfare, or the environment;
- d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests

therein, and the ability of the licensee to transfer title and custody thereof to the United States or a State;

- e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety, and other actions as the Commission deems necessary; and,
- f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian tribe or land owned by an Indian tribe and subject to a restriction against alienation imposed by the United States.

- 3) Article IX of the Agreement is hereby amended by redesignating it Article X and by inserting a new Article IX. As amended Articles IX and X now read as follows:

ARTICLE IX

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity which results in production of such material, the State shall comply with the provisions of Section 2740 of the Act. If in such licensing and regulation, the State requires financial surety arrangements for the reclamation or long-term surveillance and maintenance of such material,

- A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and,

- B. Such State surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

ARTICLE X

This Agreement shall become effective on June 1, 1987, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

- 4) The Agreement effective June 1, 1987 remains in effect except as modified by amendments contained in Paragraphs 1), 2), and 3) of this Amendment Number One.

- 5) This Amendment Number One to the June 1, 1987 Agreement shall become effective on _____, and shall remain in effect until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland, in triplicate, this ___ day of

_____.

For the United States Nuclear Regulatory Commission.

Chairman

Done at Springfield, Illinois, in triplicate, this _____ day of

_____.

For the State of Illinois

Governor

Dated at Rockville, MD this _____ day of _____, 1990.

For the United States Nuclear Regulatory Commission.

Carlton Kammerer, Director
State Programs
Office of Governmental and
Public Affairs