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July 20, 1990

Samuel J. Chilk
Office of the Secretary
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

RE: State of Illinois; Staff Assessment of Proposed Amendment Number One to the Agreement Between the NRC and the State of Illinois, 55 Fed. Reg. 11459 (March 25, 1990).

Dear Sir:

The Illinois Department of Nuclear Safety (IDNS) is hereby submitting this second supplemental comment regarding the above referenced notice. On April 26, the State of Illinois filed comments in support of the proposed Amendment Number One and the NRC staff's assessment of the State's application. On June 15, IDNS filed supplemental comments addressing some comments on the assessment submitted by Kerr-McGee Chemical Corporation. The comments being submitted today are in response to supplemental comments filed by Kerr-McGee Chemical Corporation on June 25, 1990.

In those supplemental comments, Kerr-McGee refers to concerns raised by the Special Counsel to the Illinois Senate Executive Subcommittee regarding IDNS's activities in conjunction with siting a low-level radioactive waste (LLW) disposal facility. Kerr-McGee then implies that these concerns should disqualify the State from entering into an Agreement with NRC regarding transfer of regulatory authority over 11e.(2) byproduct material. However, Kerr-McGee's comments are based on its apparent misunderstanding of the scope and significance of the Special Counsel's report and are devoid of merit.

While it is true that the Special Counsel to the Senate Executive Subcommittee prepared a report that is critical of IDNS's LLW disposal facility siting activities, the report noted that these criticisms are largely the result of a statute that put the Department in the untenable position of having to both site and regulate the LLW disposal facility. However, recent legislation passed by the General Assembly and signed into law by Governor Thompson corrects this deficiency by creating an independent siting commission. Furthermore, under the 274(b) agreement IDNS would only acquire

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regulatory responsibility for 11e.(2) byproduct material. The responsibility for locating, developing and operating a disposal facility for such materials would remain with the entity seeking a disposal license. The State is not proposing to assume responsibility for siting a mill tailings disposal facility. Therefore, the problems encountered by the LLW program do not exist for the regulation of mill tailings.

At no point has anyone questioned the ability of IDNS to regulate radioactive materials. The report to the Senate Executive Subcommittee did not suggest that any regulatory functions be removed from IDNS. Furthermore, as recently as June 27, 1990, Mr. Carlton Kammerer, Director of State Programs for NRC, notified IDNS that "Our staff has determined, as a result of the regulatory review and the routine exchange of information between the NRC and the State, that the Illinois program for regulating agreement materials is adequate to protect the public health and safety and is compatible with the Commission's program." In fact, Mr. Kammerer noted that the Department's management staff is knowledgeable of technical and administrative issues affecting their programs and that the technical staff is well-qualified and highly motivated. (Letter from C. Kammerer, NRC, to T. Ortziger, IDNS, dated June 27, 1990.)

In addition, on June 13, the Illinois Senate adopted Senate Resolution No. 941 urging the Nuclear Regulatory Commission to grant to Illinois Agreement State status over the radioactive waste located in West Chicago (thorium mill tailings). Clearly, any ill-perceived concerns that the Senate Executive Subcommittee may have had regarding LLW facility siting activities have not diminished the legislature's desire that Illinois assume regulatory responsibility for 11e.(2) byproduct material. For these reasons, we continue to believe that it is appropriate for NRC to enter Amendment Number One as requested by Governor Thompson on April 11, 1989.

Sincerely,



Thomas W. Ortziger
Director

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