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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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'90 NOV -8 P3:41

COMMISSIONERS:

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In the Matter of  STATE OF ILLINOIS  (Amendment Number One to the Section 274 Agreement between the NRC and Illinois)	}	Docket No. PR MISC 90-1
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MEMORANDUM AND ORDER

CLI-90-11

On October 29, 1990, the Kerr-McGee Chemical Corporation filed a petition for reconsideration of the Commission's October 17, 1990 Memorandum and Order denying Kerr-McGee's motion requesting the Commission to hold an adjudicatory hearing before deciding whether to approve a proposed Amendment to its Agreement with the State of Illinois. In the Matter of State of Illinois (Amendment Number One to the Section 274 Agreement between the NRC and Illinois), CLI-90-09, \_\_\_ NRC \_\_\_ (1990). Illinois responded to Kerr-McGee's petition on November 5, 1990. The Amendment, which became effective November 1, 1990, approves the State's generic program for the regulation of "byproduct material" as defined in section 11e(2) of the Atomic Energy Act of 1954, as amended (AEA), and permits Illinois to assume regulatory authority over such material, in accordance with section 274 of the AEA. Some of the

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standards in the State's generic program differ from analogous standards established by the Commission.

In denying Kerr-McGee's motion for an adjudicatory hearing before approving the amendment, the Commission held that the Commission did nonetheless have

the very important obligation [under section 274o of the AEA] to assure that a state's application of standards that differ from those established by the Commission also achieve ... a level of protection of public health and the environment, equivalent to, to the extent practicable, or greater than, the level which would be achieved by the Commission's standards.

Order at 8-9. However, the Commission ruled that "this site-specific obligation will arise only later if and when Illinois seeks to impose standards which differ from the Commission's own standards." Id. at 9.

Kerr-McGee's petition for reconsideration of the Commission's October 17, 1990 Memorandum and Order is denied. The petition presents no relevant argument not considered previously by the Commission. In particular, the Commission fully expected that its approval of the Amendment to Illinois' section 274 Agreement would lead one or more of the parties in the proceeding now pending before the Atomic Safety and Licensing Appeal Board (Docket No. 40-2061-ML) to move to terminate that proceeding and vacate the initial decision. As Kerr-McGee points out, such a motion has been filed with the Appeal Board and the Commission expresses no opinion as to how that motion should be decided. Moreover, Kerr-McGee has given no reason why the further hearing which must be held before Illinois can impose its differing standards must be held now, before Illinois has even formulated a disposal plan detailed enough to permit the Commission to determine in a hearing whether the plan achieved a level of protection of public health and the environment equivalent

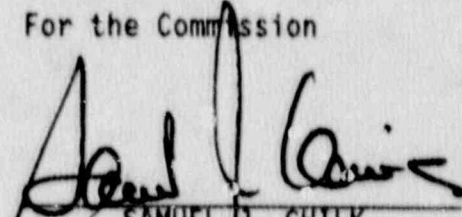
to, or greater than, the level which would be achieved by the Commission's standards.

Kerr-McGee's motion for stay of further action on the Amendment to the section 274 Agreement is also denied. Again, no new argument is presented on the need for an adjudicatory hearing, and the motion fails to address the usual factors associated with grants of stay motions. See 10 C.F.R. §2.788(e).

It is so ORDERED.



For the Commission

  
SAMUEL J. CHILK  
Secretary of the Commission

Dated at Rockville, Maryland  
this 8<sup>th</sup> day of November, 1990.

Docket No. (a)40-2061-ML  
COMMISSION M&D (CLI-90-11)

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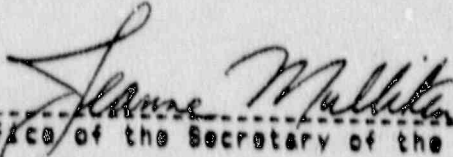
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Dated at Rockville, Md. this  
8 day of November 1990

  
Office of the Secretary of the Commission



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

Docket No. (s) 40-2061-ML  
and PR MISC 90-1

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION M&O (CLI-90-11) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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