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

IN THE MATTER OF KERR-McGEE CHEMICAL CORPORATION (West Chicago Rare Earths Facility)))))))))	Docket No. 40-2061-ML
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MOTION FOR A PROTECTIVE ORDER

Kerr-McGee Chemical Corporation ("Kerr-McGee") hereby moves that this Board issue an order to protect its jurisdiction. Such an order is necessary because the State of Illinois ("State") has sought to arrogate to itself the authority to determine matters that are currently pending before this Board.

As this Board is aware, on October 22, 1990, the State and the City of West Chicago filed a motion seeking, among other matters, the vacation of the Kerr-McGee license.^{1/} The Board set oral argument on this motion for January 16, 1990.^{2/} Despite the pendency of its motion, the State submitted a letter to Kerr-McGee dated December 5, 1990, notifying Kerr-McGee that its NRC license shall expire 90 days

^{1/} Motion to Terminate Proceeding and to Vacate Initial Decision for Lack of Jurisdiction, 3 (Oct. 22, 1990).

^{2/} Order (Nov. 28, 1990).

after receipt of the letter.^{3/} The State purports to exercise the authority to provide precisely the relief that it seeks in its pending motion.

The press reports make clear that the State action is part of a campaign of "[s]tepping up attempts to force Kerr-McGee Chemical Corporation to remove tons of radioactive thorium waste from West Chicago." Chicago Tribune, December 6, 1990, § 3, at 1 (Exhibit 2). In short, the State seeks through its intrusion on this Board's authority to obtain precisely the objective -- off-site disposal -- that the Licensing Board has determined to be both unnecessary and inappropriate. The State officials have implicitly made clear that the decade of litigation before the NRC should now be ignored. Id.

The State's action is an insult and an affront to this Board. This Board has full authority to protect its own jurisdiction and should do so now.^{4/} A protective order is

^{3/} Letter from Joseph O. Klinger, IDNS Licensing Section, to John C. Stauter, Kerr-McGee Chemical Corp. (Dec. 5, 1990) (Exhibit 1). By its terms, Kerr-McGee's NRC license would expire on February 28, 2000.

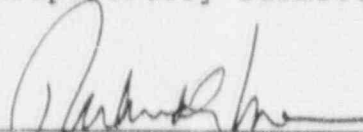
^{4/} It is axiomatic that once an adjudicatory body obtains jurisdiction, it also obtains the corollary power to preserve that jurisdiction. Courts thus frequently issue orders to preserve their own jurisdiction. See FTC v. Dean Foods Co., 384 U.S. 597, 604 (1966); Arrow Transp. Co. v. Southern R.R., 372 U.S. 658, 671 n.22 (1963). Similarly, NRC tribunals also have authority to issue orders to preserve jurisdiction. See Texas Utils. Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-83-6, 17 NRC 333, 334 (1983) (stay of Appeal Board's decision issued to protect the

(footnote cont'd)

necessary to preserve the status quo and to prevent the irreparable harm to Kerr-McGee that would result if the State were to succeed in its efforts to usurp the Board's jurisdiction.

In light of the foregoing, Kerr-McGee requests that the Board issue an order directing the State to vacate its notice of December 5, 1990, and specifically prohibiting the State from interfering with Kerr-McGee's NRC-issued license.

Respectfully submitted,



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Attorneys for Kerr-McGee
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December 12, 1990

(footnote cont'd)

Commission's jurisdiction); Texas Utils. Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-83-8, 17 NRC 339, 339 (1983) (Stay of Licensing Board order); Duke Power Co. (Amendment to Materials License SNM-1773), CLI-80-3, 11 NRC 185 (1980) (interim protective order); Kansas Gas and Electric Co. (Wolf Creek Nuclear Generating Station, Unit No. 1), ALAB-307, 3 NRC 17 (1976) (stay of Licensing Board order).



STATE OF ILLINOIS
DEPARTMENT OF NUCLEAR SAFETY
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ENVIRONMENTAL AFFAIRS

DEC 10 1990

RECEIVED

THOMAS W. ORTOIGER
DIRECTOR

JAMES R. THOMPSON
GOVERNOR

December 5, 1990

CERTIFIED MAIL

Dr. John C. Stauter, Vice President
Environmental Services
Kerr-McGee Chemical Corp.
Kerr-McGee Center
Oklahoma City, OK 73125

Dear Dr. Stauter:

As you know, "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" became effective on November 1, 1990. By the terms of Amendment Number One, Illinois assumed, and NRC relinquished, regulatory authority over byproduct material as defined in Section 11e.(2) of the Atomic Energy Act, as amended, thereby effectuating a transfer of regulatory authority.

With regard to such transfers, Section 332.30(c) of the Department's regulations provides:

Any person who, on the effective date of an Agreement between the State and NRC transferring regulatory authority to the State, possesses a license issued by the NRC, to operate a source material milling facility or byproduct material surface impoundment or disposal area or to receive, possess, dispose of, or transfer source or byproduct material associated with such facilities, shall be deemed to possess a like license issued under this Part. Such license shall expire 90 days after receipt from the Department of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier. (32 Ill. Adm. Code 332.30)

In accordance with this provision, I am hereby notifying you that License Number STA-583 issued to Kerr-McGee Chemical Corporation shall expire 90 days after receipt of this letter.

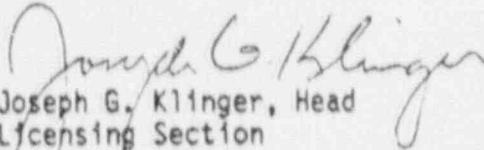
As provided by the Department's regulations, the expiration date applies only to the receipt and processing of ores and the emplacement of byproduct material. Please take note that expiration of the license does not relieve

Dr. John C. Stauter
Page 2
December 5, 1990

the licensee of responsibility for implementing reclamation, decontamination, stabilization and closure, postclosure observation and maintenance, and transfer of the license to the ultimate governmental owner.

Kerr-McGee may apply for a new license by submitting an appropriate application to the Illinois Department of Nuclear Safety. Should you have any questions, please feel free to contact me.

Sincerely,


Joseph G. Klinger, Head
Licensing Section

ANDREWS OFFICE PRODUCTS CAPITOL HEIGHTS, MD

State agency turns up heat on Kerr-McGee

By Rick Pearson
Chicago Tribune

SPRINGFIELD—Stepping up attempts to force Kerr-McGee Chemical Corp. to remove tons of radioactive thorium waste from West Chicago, state officials formally notified the company Wednesday that its license to store the waste will expire in early March.

Using the power it assumed from the federal Nuclear Regulatory Commission last month, the state Department of Nuclear Safety told Kerr-McGee officials they will have to apply for a new license and meet what the state agency contends are more stringent requirements, if they intend to proceed with plans to bury the waste at an abandoned factory site in West Chicago.

The notice by the department intensifies a long-running dispute between state officials who want the waste removed and Kerr-McGee officials, who have threatened a lawsuit if the state persists in its efforts.

The action also places a series of impediments in Kerr-McGee's way in an unstated attempt to have the company move the waste out of Illinois.

"We have submitted criteria that varies from the NRC—in many areas it's tougher but it's fair—that we're going to ask them to respond to by submitting a new license application," said Thomas Ortziger, nuclear safety director.

"By issuing this notice, the department is paving the way to evaluate against state standards any activities that Kerr-McGee may propose regarding the materials at West Chicago," he said.

Officials for Kerr-McGee, based in Oklahoma City, withheld comment until they had

received a copy of the expiration notice.

Local residents have fought throughout the years to rid West Chicago of the waste, a byproduct of thorium and rare earth processing and a problem Kerr-McGee inherited when it merged with American Potash Co. 23 years ago.

Last winter, the Nuclear Regulatory Commission gave Kerr-McGee approval to construct a clay-lined depository for the waste at an abandoned factory site at Factory and Ann Streets. Kerr-McGee's license from the commission was set to expire in the year 2000.

But on Nov. 1, the state Department of Nuclear Safety assumed regulatory control over Kerr-McGee's thorium processing and mill tailing disposal from the NRC following a two-year effort to prove that the state was competent to regulate the waste.

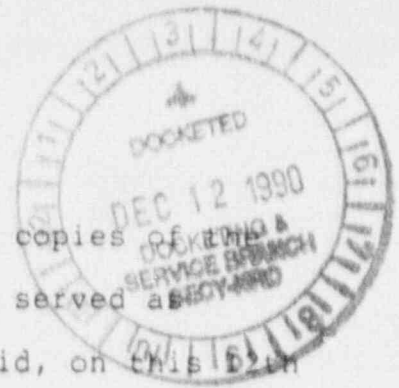
As a result of that transfer of control, the state also was given the authority to terminate Kerr-McGee's existing license—technically, 90 days after the firm receives the expiration notice—and require the company to apply for a new permit.

"As the regulatory authority over the materials in West Chicago, we want to make sure that any actions at the site are in compliance with our regulations," Ortziger said. "We believe the best way to ensure this is to have Kerr-McGee apply for a new license."

Even if Kerr-McGee decides not to seek a new license from the state, "they would be fully responsible for reclamation, decontamination and other activities that ensure public health and safety are not threatened," Ortziger said.

CERTIFICATE OF SERVICE

I hereby certify that I have caused copies of the foregoing Motion for a Protective Order to be served as indicated by the parenthetical, postage prepaid, on this day of December 1990, as follows:



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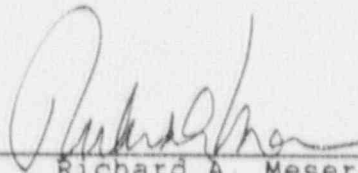
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