



UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING APPEAL PANEL
WASHINGTON, D.C. 20555

December 18, 1990

Mr. Michael Knapik, Chief Editor
Inside N.R.C.
Suite 1200
1120 Vermont Avenue, N.W.
Washington, D.C. 20005

Dear Mr. Knapik:

I call to your attention a number of misrepresentations and factual inaccuracies in the December 17, 1990, issue of *Inside N.R.C.* (pages 6-7) in connection with an article by Ben A. Franklin about an order issued by the Atomic Safety and Licensing Appeal Board on November 14 in the Kerr-McGee Chemical Corporation proceeding.

Contrary to the article, the Appeal Board was not "angry," "mad," or "humiliated." It did not "blow a fuse" or "clench its teeth." Nor did the order accuse anyone of "obstruction of justice," "temerity," or "contumacy." (Had that been the case, reading between the lines would have been quite unnecessary, inasmuch as Appeal Board orders are not that subtle.) Rather, learning from an internal NRC weekly report that the "official docket file" for a still pending, hotly contested, formal adjudicatory proceeding had been transferred out of the agency by the NRC staff, the Appeal Board asked for an "explanation." And, as a logical follow-up question "in the event that the 'official docket file' had in fact been transferred, the Board asked on whose authority such action was taken.

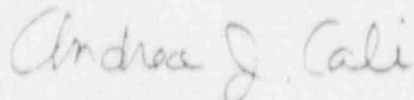
This inquiry was directed not so much to IRM, the mere vehicle for the transfer, but to NMSS, which reportedly requested the transfer of the files and, significantly, is the NRC staff party to the subject proceeding. The Appeal Board thus pursued its inquiry by order because that is the public means by which adjudicatory boards are supposed to communicate with the parties appearing before them (and the way in which Appeal Boards have always communicated), lest they run afoul of the prohibition against ex parte communications. Finally, the telephone call allegedly made to Judge Kohl by an unidentified "staff aide at IRM" never happened -- a fact that Mr. Franklin did not attempt to verify. Nor was anyone else at the Appeal Panel contacted. Instead, the NRC staff responded to the inquiry as it should have, in a publicly filed document. For the record, the staff's response was essentially that the transferred

material was the "licensing file," not the "official docket file," as the staff report had incorrectly characterized it.

To one unfamiliar with formal adjudication, this may all seem unimportant and much ado about nothing -- a "bureaucratic booboo," in the colorful words of Mr. Franklin. But "official docket" is a term-of-art in legal parlance. The proper treatment and preservation of the "official docket" -- i.e., the adjudicatory record -- is essential to the integrity of the adjudicatory process. The Appeal Board thus had the obligation to the parties and the process itself to assure that the official docket was being properly maintained and that no party's rights were being jeopardized.

The Board looks forward to *Inside N.R.C.*'s corrective article in the next issue.

Sincerely,



Andrea J. Cali
Senior Counsel
Atomic Safety and Licensing
Appeal Panel

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

KERR-MCGEE CHEMICAL CORPORATION

(West Chicago Rare Earths Facility)

Docket No. (s) 40-2061-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing CALI/LB MEMO TO JULIAN/DSB 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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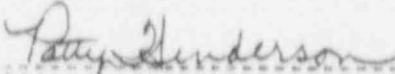
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Dated at Rockville, Md. this
20 day of December 1990


Office of the Secretary of the Commission