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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '90 DEC 24 11:27
OFFICE OF THE SECRETARY

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DOCKET CONTROL DIVISION
SEARCH

In the Matter of)
)
KERR-MCGEE CHEMICAL)
CORPORATION,)
)
(West Chicago Rare Earths Facility))
)
55 Fed. Reg. 41619 (October 12,)
1990))

Docket No. 40-2061 ML

**WEST CHICAGO'S RESPONSE TO COMMISSION'S DECEMBER 7,
1990 ORDER RELATING TO OFFSITE MATERIALS**

The City of West Chicago, Illinois ("West Chicago") hereby responds to the Commission's December 7, 1990 order. In that order, the Commission requested the parties to provide their views by December 24, 1990 as to whether Commission action on the hearing request may prejudice pending jurisdictional questions before the Appeal Board. The Commission also requested the parties to state any objections they may have to the Commission withholding action on the present hearing request, pending the Appeal Board's decision. In response, West Chicago states as follows:

1. In view of the Commission's agreement with the State of Illinois transferring regulatory authority over byproduct materials to Illinois, this Commission has no jurisdiction over the offsite materials that are the subject of this proceeding. As a result, this body must vacate the license amendment relating to offsite materials.

2. To the extent that the Commission's decision here will address the generic issue of how the NRC should respond to pending matters

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after transferring jurisdiction to a state, a decision here could have a significant impact on the legal issues presented by Illinois and West Chicago's Motion To Terminate Proceeding And To Vacate The Initial Decision For Lack Of Jurisdiction.

3. West Chicago has no objection to the Commission withholding action on the present hearing request until the Appeal Board has rendered a decision on the existing license amendment proceeding and the Commission has reviewed that decision *provided that* Kerr-McGee agrees not to move the offsite radioactive wastes pending the decisions on the underlying issues.

4. West Chicago notes that the offsite materials that are the subject of this action are on the United States Environmental Protection Agency's ("EPA") National Priorities List. 55 *Fed. Reg.* 35502, 35508 (August 30, 1990). As a result, the materials may not be moved except in accordance with the National Contingency Plan, 40 C.F.R., Part 300 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act and the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Section 6901 *et seq.* West Chicago adds that on December 5, 1990, the Illinois Department of Nuclear Safety informed Kerr-McGee that its license would expire in 90 days. As a result, any NRC license relating to offsite materials will soon expire.

Respectfully submitted,

WEST CHICAGO, ILLINOIS

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Dated: December 24, 1990

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CERTIFICATE OF SERVICE

I, James D. Brusslan, an attorney in this case do certify that on the 24th day of December 1990, I caused to be served the foregoing WEST CHICAGO'S RESPONSE TO COMMISSION'S DECEMBER 7, 1990 ORDER RELATING TO OFFSITE MATERIALS upon the parties listed below by Facsimile:

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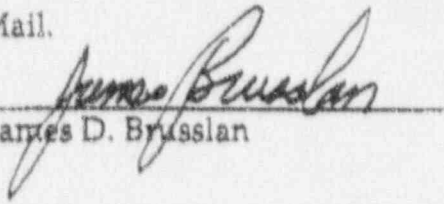
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