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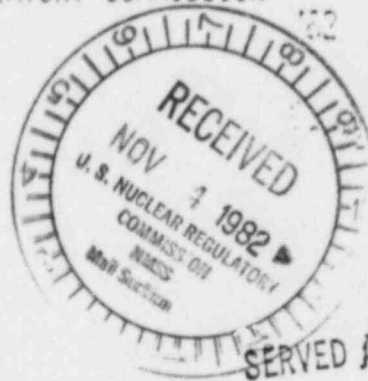
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

NOV 4 1982

COMMISSIONERS:

Nunzio J. Palladino, Chairman  
Victor Gilinsky  
John F. Ahearne  
Thomas M. Roberts  
James K. Asselstine



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In the Matter of

KERR-McGEE CORPORATION

(West Chicago Rare Earths  
Facility)

Docket No. 40-2061



ORDER  
(CLI-82-21)

Pending before the Commission are the petitions of the City of West Chicago (City) for a hearing on the request of Kerr-McGee Corporation (Kerr-McGee) for an amendment to the 10 CFR Part 40 license issued for its Rare Earths Facility, a now-inactive thorium ore milling facility located in West Chicago, Illinois. Currently under consideration by the agency are various proposals to decommission the facility by collecting and disposing of contaminated materials onsite. The proposed fifth amendment to the license, which was requested in letters to the NRC staff dated February 19, 1982, and May 6, 1982, has been sought, according to Kerr McGee, for the purpose of establishing a water collection and retention system to eliminate any uncontrolled discharges to the West Chicago storm sewer system. In addition, Kerr-McGee asserts that the amendment is necessary to facilitate the siting and utilization

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of an incineration system for organic material volume reduction that is permitted by Amendment Nos. 2 and 4 to the license.<sup>\*/</sup> Specifically, to carry out these plans, Kerr-McGee requests permission to dismantle Building No. 14, which now covers the existing plant collection sump, and to raze Building No. 16, which is in the southwestern corner of the factory site where the incinerator is to be located.

In its petitions, the City has asserted that Commission regulations, the Atomic Energy Act, and the precepts of constitutional due process require the Commission to institute a formal, trial-type hearing under 10 CFR Part 2, Subpart G in which it can challenge the requested amendment. This, of course, is not the first time the Commission has been confronted with such claims from this party. The City recently sought a formal hearing to challenge another amendment to the Kerr-McGee license. In ruling on that request, Kerr-McGee Corp. (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232 (1982), the Commission discussed these supposed bases for convening a formal hearing and concluded that none compelled the agency to institute such a

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<sup>\*/</sup> Up to this time, the agency has issued four amendments relating to the Kerr-McGee license for its West Chicago facility. Amendment No. 1, which was issued on April 24, 1981, permitted the demolition of two buildings on site. On September 28, 1981, the NRC staff issued Amendment No. 3 that authorized the dismantling of additional buildings and the receipt by Kerr-McGee of contaminated materials to be gathered by the State of Illinois from various sites located in West Chicago. Amendment No. 2, which was issued on August 11, 1981, gave agency approval to the construction by Kerr-McGee of an incinerator to reduce the volume of contaminated organic wastes generated during decommissioning activities. Several technical revisions and additions to Amendment No. 2 were made by Amendment No. 4, dated February 12, 1982.

proceeding. As we indicated in that decision, there is no statutory entitlement to a formal hearing under the Atomic Energy Act or NRC regulations with regard to materials licensing actions. Further, the City's petitions, on their face, do not give us cause to exercise our discretion and grant such a hearing under the "public interest" standard of 10 CFR §§ 2.104(a) and 2.105(a)(6) or to find due process concerns require that a formal proceeding need be convened. As such, only an informal hearing need be instituted at this time.

In its February 1982 West Chicago order, after finding that only an informal hearing need be held, the Commission itself dealt with the merits of the hearing petitions of the City on the basis of its written filings and those of Kerr-McGee. However, such direct Commission involvement in each informal hearing for a materials license amendment is neither necessary nor prudent. Rather, we believe the responsibility for disposition of the hearing issues can be placed in the hands of an informal adjudicator chosen from the NRC staff. Accordingly, we direct that the Director of the Office of Nuclear Material Safety and Safeguards (NMSS), or any NMSS Division Director or Branch Chief that he may designate, act as the presiding officer to adjudicate those contentions that the City may assert in challenging the Kerr-McGee amendment request. The parties to the informal adjudication shall be Kerr-McGee and the City. If the presiding officer finds that additional legal or technical assistance would aid him in conducting the informal proceeding he may, with the approval of the Director of NMSS or the

Executive Legal Director, designate such staff personnel as are necessary to serve as his advisors.

In carrying out his responsibility under this delegation, the presiding official shall have the authority to request and receive whatever written submissions and documents he deems necessary from Kerr-McGee and the City on any schedule he deems proper. Such requests may include requirements that the parties answer specific questions, with supporting materials, that the adjudicator poses to them. In addition, he may, in his discretion, entertain oral presentations from the parties. Any oral communications between the presiding officer, or any staff personnel assisting him, and any party concerning any matter at issue in the proceeding shall be conducted in the presence of all parties or memorialized in a written memorandum that is served on all parties and made a part of the docket file on the proceeding.

If, on the basis of the parties' presentations and other information that the adjudicator is entitled to rely upon as discussed below, the presiding officer believes that additional procedures are necessary to ensure the full development of the agency record or to resolve any material factual issues that could not be resolved through the procedures set forth in this order, he should seek authority from the Commission to implement any additional procedures.

The presiding officer's decision, which shall be in writing, shall be made on the basis of the parties' written submissions, any oral presentations, any other technical or factual information that is publicly available in the docket file, and any other matters of which he

may take official notice (giving the parties an opportunity to show to the contrary). The presiding officer's decision shall become final agency action thirty days after the date of issuance unless the Commission, on its own motion, undertakes a review of the decision. No petitions for review will be entertained by the Commission regarding the presiding officer's decision.

Commissioner Gilinsky dissents from this Order.

It is so ORDERED.

For the Commission<sup>\*/</sup>



*John C. Hoyle*  
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 John C. Hoyle  
 Acting Secretary of the Commission

Dated at Washington, D.C.  
 this 6th day of August, 1982.

<sup>\*/</sup> Commissioner Gilinsky was not present when this Order was affirmed, but had previously indicated his disapproval. Had Commissioner Gilinsky been present he would have affirmed his prior vote.