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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

FEB 19 1991

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD '91 FEB 19 P2:19

In the Matter of )  
RHODES-SAYRE & ASSOCIATES, )  
INC. )  
(Byproduct Material License )  
24-18959-02) )

Docket No. 30-29086-SC  
ASLBP No. 91-628-01-SC

DEPT. OF SECRETARY  
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NRC STAFF RESPONSE TO LICENSING BOARD'S MEMORANDUM  
AND ORDER DATED JANUARY 31, 1991

I. Introduction

By Memorandum and Order dated January 31, 1991 the Atomic Safety and Licensing Board (the Board) recited its determination to defer further action in this proceeding pending the outcome of settlement negotiations. The Board requested the parties to report when agreement is reached or when further negotiations appear not be fruitful. In accordance with the Board's Order, the NRC Staff (the Staff) hereby advises the Board that, for the reasons discussed below, further negotiation of this matter would not appear to be fruitful. Further, the Staff believes that this matter may appropriately be resolved by summary disposition in that no genuine issue of material fact appears to exist, and the Staff therefore intends to file a motion for summary disposition in the near future.

II. Discussion

On January 7, 1991, the Staff filed a response to two questions asked by the Board in a Memorandum and Order dated December 13, 1990, one of which requested the Staff's position concerning a waiver of the fee in question. In its

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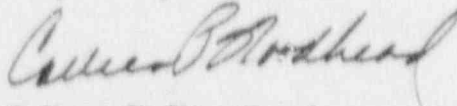
response, the Staff recited its determination not to waive the inspection fees, accumulated interest and penalties due from the Licensee, and explained why the Staff believed it to be inappropriate to do so. After reviewing the Board's January 31, 1991 Memorandum and Order, the Office of the Controller determined that there was nothing which would warrant a change in the position previously set out in the Staff's January 7 response. As there explained, the Staff had considered the Licensee's use of the licensed material for local governments, and found no sufficient reason under the regulations to waive or to reduce the inspection fee due from the Licensee. Moreover, the Staff does not consider the possibility of issuing a license for the county, as suggested by the Board, or the fact that the county could have applied for the license in the first instance, to alter the fact that fees should be paid for any previous inspection in accordance with the form of license in place at the time the inspection was conducted.

As noted in the Memorandum and Order, during the January 30, 1991 conference call, the Licensee stated that it had nothing to present to the Board to controvert its liability for the inspection fee other than the facts already presented, namely, that the Licensee's use of the licensed nuclear material by its company has been solely for local governmental units. Nor has the Licensee indicated a willingness to pay the monies due. The Licensee's Part 30 license imposes the obligation to comply with all applicable Commission regulations. Section 30.52 of 10 C.F.R. gives notice of the possibility of inspections, and the responsibility to pay the fee for such an inspection is established in 10 C.F.R.

Part 170. These are regulatory conditions of the license as to which the Licensee was or should have been aware. The Licensee has presented no satisfactory basis for its refusal to pay the fee.

The Licensee has stated its only reason for disputing the fee is the nature of its use of the licensed material; as the Board noted, this does not give cause for exemption of the fee under the Commission's regulations. Accordingly, since the Staff has determined it would be inappropriate to reduce the fee, further negotiations are unlikely to result in a settlement of this matter, and there is no reason to further delay the proceeding. In light of these determinations, there does not appear to be a genuine dispute as to any material fact and, accordingly, the Staff intends to file a Motion for Summary Disposition in the near future.

Respectfully submitted,



Colleen P. Woodhead  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 19th day of February, 1991.

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NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

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OFFICE OF SECRETARY  
DOCKETING & SERVICE  
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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO LICENSING BOARD'S MEMORANDUM AND ORDER DATED JANUARY 31, 1991" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 19th day of February, 1991:

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Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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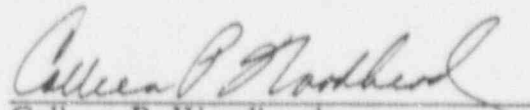
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