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

Before Administrative Judges:

Charles Bechhoefer, Chairman
Dr. Richard F. Cole
Dr. Charles N. Kelber

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In the Matter of

Docket No. 30-29086-SC

RHODES-SAYRE &
ASSOCIATES, INC.

(Byproduct Material
License 24-18959-02)

ASLBP No. 91-628-01-SC

Order to Show Cause

January 31, 1991

MEMORANDUM AND ORDER
(Telephone Conference Call, 1/30/91)

On January 30, 1991, this Licensing Board conducted a telephone conference call with the parties to this proceeding. Participants in the call were all three members of this Licensing Board; Mr. Richard G. Rhodes, for the Licensee; and Colleen Woodhead, Esq., for the NRC Staff.

The Licensing Board initiated the conference call because it had received no filing from the Licensee in response to the filing of the NRC Staff dated January 7, 1991. The Licensing Board, in its Memorandum and Order (Schedule for Further Filings), dated December 13, 1990, had

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provided that the Licensee could reply to the Staff filing within 10 days of the date of service of the Staff's filing (which was served on January 7, 1991). Pursuant to NRC Rules, such reply would have had to have been filed by January 22, 1991 (and presumably would have reached us by January 28, 1991).

The Licensee advised first that it had never received the December 13, 1990 Memorandum and Order and, as a result, was not aware of the filing schedule. In addition, the Licensee stated that he had never received a copy of the December 7, 1990 Order constituting this Licensing Board to hear his case. Under separate cover, we have transmitted additional copies of these documents to the Licensee.

The proceeding involves the proposed revocation of the Licensee's byproduct materials license for failure to pay the inspection fee (of \$530) imposed by the NRC pursuant to 10 C.F.R. §§ 170.12(g) and 170.31(3)(P), for an inspection performed in 1987. The Licensee requires the license to permit certain byproduct materials to be used in gauges for moisture/density measurements of soils and construction materials.

The Licensee acknowledges non-payment of the fee but seeks a waiver on the ground that the fee related to activities performed exclusively for governmental bodies (about 90% for the county and the remainder for several cities or other governmental bodies). Under applicable

regulations in 10 C.F.R. § 170.11, certain governmental bodies holding a materials license would be exempt from the fees in question.

In its January 7, 1991 filing, the Staff explained that it would be unwilling to grant the requested waiver, inasmuch as there were a number of other commercial licensees performing services for governmental bodies that paid the fee in question. Furthermore, license revocation (sought by the Staff) is an available remedy for willful non-payment of a prescribed fee. 10 C.F.R. § 170.41.

The Licensee expressed the view that, if he had known of the inspection fee requirement, and the exemption for certain governmental bodies, he would not have sought the license in question (which he has held since approximately 1980) but would have recommended that the governmental bodies (in particular, the county, for which he did most of his work) obtain the license, with individuals from his company listed as authorized users. Neither when he obtained his license in 1980, nor when he renewed it in 1986, was he made aware of the inspection charges. The 1987 inspection was the first performed at his facility.

Mr. Rhodes stated that he served as County Engineer and, in servicing the county, could have used the gauge in the normal course of county business. He added that, to the best of his knowledge, he and other members of the firm listed as authorized users had never used the gauge for any

commercial enterprise and, in fact, that the gauge has been used only for the county and similar governmental bodies, in response to specific contractual arrangements to do so. The contractual arrangements were described by Mr. Rhodes as separate and distinct from contractual arrangements for other, more conventional engineering services rendered by the firm.

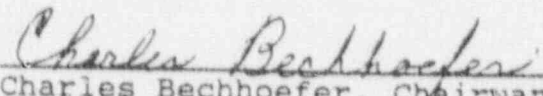
Finally, Mr. Rhodes noted that his license expires in May, 1991, and that he would be willing to negotiate a settlement of this proceeding based on the acquisition of a license (and the nuclear test gauge) by the county and a one-time waiver or compromise of the fee in question, based on his misunderstanding of the fee requirements at the time he obtained and renewed his license. (Subject to NRC approval, he would likewise seek to transfer the remainder of his current license to the county.)

The Commission encourages parties to attempt to settle various enforcement proceedings. 10 C.F.R. § 2.203. Mr. Rhodes indicated that he had called certain representatives of the NRC Office of the Controller to attempt to raise such settlement possibilities. In the Board's view, the proposal of Mr. Rhodes appears to be a fruitful way of commencing the settlement process that is encouraged by the Commission. The Board suggested that Mr. Rhodes attempt to call Mr. H. Lee Hiller, Acting Director, Division of Accounting and Finance, Office of the Controller.

Because the method of proceeding appears to be in the public interest and consistent with the NRC Rules of Practice, the Board deferred further activities in this proceeding pending the outcome of settlement negotiations. The Board requests a report from the parties (jointly or separately, as they may desire) at the point when agreement has been reached or, alternatively, when further settlement negotiations appear not to be fruitful. Given the Commission's encouragement of settlements, the Board urges the parties to negotiate in good faith and to attempt to resolve the proceeding in this manner.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
January 31, 1991

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

RHODES - SAYRE & ASSOCIATES, INC.

Docket No. (s) 30-29086-60

(Byproduct Material License
24-18959-02)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMO & ORDER (TELECONF CALL) 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.

Atomic Safety and Licensing Appeal
Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Charles Bechhoefer, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20553

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

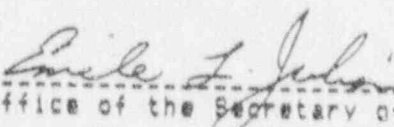
Administrative Judge
Charles N. Kelber
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Ronald M. Scroggins
Controller
U.S. Nuclear Regulatory Commission
Washington, DC, 20555

Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Richard G. Rhodes, P.E.
RHODES-SAYRE AND ASSOCIATES, INC.
401 West Helm, P.O. Box 365
Brookfield, MD 64628

Dated at Rockville, Md. this
1 day of February 1991


Office of the Secretary of the Commission