



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

NOV 16 1982

MEMORANDUM FOR: Files

FROM: W. A. Nixon
Uranium Process Licensing Section
Uranium Fuel Licensing Branch
Division of Fuel Cycle and
Material Safety, NMSS

SUBJECT: PHONE CALL TO MR. WALT HARRIS AND MR. IVAN DENNY,
KERR-MCGEE CHEMICAL COMPANY, NOV. 15, 1982

Phone calls were made to Mr. Harris and Mr. Denny to ensure that KM understood that the purpose of the visit to the site on Nov. 17, 1982 would be limited in scope exactly as described in the Nov. 8, 1982 letter from Mr. Mausshardt.

W. A. Nixon

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Uranium Process Licensing Section
Uranium Fuel Licensing Branch
Division of Fuel Cycle and
Material Safety, NMSS

cc:
D. Mausshardt
R. Fonner
L. Tyson

RECEIVED NOV 29



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

NOV 24 1982

MEMORANDUM FOR: Files
FROM: W. A. Nixon
SUBJECT: VISIT TO KERR-MCGEE SITE

A telephone call was made to Mr. Ivan Denny on November 16, 1982, to inform him that Mr. Mausshardt wanted, as part of the planned November 17, 1982 visit, to tour the entire site to obtain general knowledge of, and familiarity with, the West Chicago Rare Earths Facility.

W. A. Nixon
W. A. Nixon

cc: D. Mausshardt
R. Fonner
L. Tyson

~~8212070474~~

November 29, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

TO: Mr. Donald B. Mausshardt, Deputy Director
Office of Nuclear Material Safety
and Safeguards
Presiding Officer

_____)
IN THE MATTER OF)
)
KERR-MCGEE CORPORATION) Docket No.: 40-2061
)
(West Chicago Rare Earths)
Facility))
_____)

WEST CHICAGO'S RESPONSE TO
KERR-MCGEE'S APPLICATION FOR LICENSE
AMENDMENTS 5 AND 6 FOR WEST CHICAGO FACILITY

INTRODUCTION:

By NRC Order of November 1, 1982, the City of West Chicago Illinois ("City") is to provide Presiding Officer Mausshardt "with its specific objections to Amendment Number 6 (proposed by Kerr-McGee to NRC by letter dated August 6, 1982)." Since that Order, Mr. Mausshardt has advised the City that its comments on Amendment Number 5 should also be provided to him by that date.

Therefore, in response to these directives of NRC, the City of West Chicago hereby transmits the following comments on and objections to the two license amendment requests by Kerr-McGee now pending.

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LEGAL:

Before asserting its technical comments on the above referenced license amendment, the City must reiterate its continuing objection to the legality of the proposed "informal hearing" on the license amendments. The City has repeatedly asked NRC for the legal authority under which it proposes to conduct the hearing. NRC references only its Order of February 12, 1982 as providing it with authority to conduct "informal" hearings. That Order is, of course, not an administrative rule or a statutory provision but is an interpretation by NRC (and one never before given by the agency in a licensing case) of the statutory and regulatory authorities.

In a case now pending before the Seventh Circuit Court of Appeals, the City has challenged the validity of NRC's Order and its interpretation of the legality of "informal hearings." City of West Chicago v. U. S. NRC and Kerr-McGee Chemical Corporation, 82-1575 (1982).

Mr. Mausshardt's response to the City's request for information on the type of hearing to be held is that the rules of procedure will be informal, as suggested by the Commission in its Order of August 6, 1982 (CLI-82-21). That Order and Mr. Mausshardt's interpretation indicate that there will be written submissions to the agency to be followed by such other procedures as the hearing officer considers necessary to resolve material factual disputes. No rule, regulation or statutory authority is cited for the validity of such a discretionary informal process.

When asked specifically by the City whether the procedural rules of NRC (10 CFR Part 2 Subpart G) would apply in this case,

Mr. Mausshardt responded that his view of the Agency's Order of August 6, 1982 was that those procedures were not available as a basis of authority for this proceeding. As a result, Mr. Mausshardt has advised the City that there will be no notice of hearing under 10 CFR 2.703 nor will the discovery rules or subpoena provisions of 10 CFR 2.740 and 2.720 apply. Letter from Mausshardt to Spelman, October 22, 1982.

Thus, the City has been advised that none of the agency's rules for hearings contained in the Code of Federal Regulations will apply to this case. Because of the ad hoc, informal nature of the proposed hearing, the City believes that the proceeding will not meet the agency's own rules of procedure, the Atomic Energy Act and the Administrative Procedure Act. Indeed, the ambiguity of the type of proceeding to be given in this case belies the very purpose and nature of the Administrative Procedure Act. That Act was passed nearly forty years ago by Congress to ensure that proceedings of the fast-growing administrative agencies would be conducted uniformly and consistently. Marathon Oil v. EPA 562 F 2d 1253, 1264 n. 33 (9th Cir. 1977). NRC's only precedent for the type of ad hoc informal hearing it proposes in this case is the type it purportedly gave to the City a year ago in a case involving the same parties and similar issues.

It is the City's position that NRC's proposed denial of a full adjudicatory hearing on the pending license amendments denies the City rights guaranteed by statute and the U.S. Constitution. Further, the denial of the opportunity for discovery, presentation

and cross-examination of witnesses violates statutory and constitutional rights. - The City cannot properly assert its position on the proposed license amendments without access to the documents supporting Kerr-McGee's applications for license amendments and the persons who prepared such documents.

Therefore, the City reserves the right to question and object to the legality of the proposed license amendments and does not waive that right by its submission of this letter response.

FACTUAL:

Kerr-McGee's applications for the new license amendments state that the demolition and stabilization activities (under the proposed amendments) "will employ the same control procedures used successfully in the demolition permitted under Amendments 1 and 3."

The City believes that any hearing in this matter must identify what the exact procedures are in the demolition process and how successful they are. To assure itself on both of these grounds, the City makes the following objections and requests for information:

1. The history of Kerr-McGee license amendments in this case indicates that the dust abatement procedures outlined in Kerr-McGee's Stabilization Plan were not followed in previous demolition activities authorized by NRC. Because the City had opportunity to comment on Kerr-McGee's Plan but has not received information that would allow it to responsibly comment on the amended dust abatement procedures which will presumably be used in the proposed demolition activities, the City requests that the "detailed engineering

procedures" referenced in Kerr-McGee's December 4, 1981 letter regarding Amendment 3 demolition be made available to the City. Also, the person(s) responsible for preparing those engineering documents should be disclosed so that the City may review the expertise behind the documents and cross-examine if necessary.

2. Kerr-McGee has relied on air monitors to detect airborne radioactivity in past demolition procedures. The City remains concerned about the dust emanating from the factory site and its increase during periods of demolition.

Therefore, the air sampling devices relied upon by Kerr-McGee must be shown to be positioned in such a manner as to fairly and accurately measure emissions in any direction from the Site. A detailed description of where the monitors are located is necessary.

Further, to assess the success of Kerr-McGee's dust abatement procedures, the air sampling units must be actively monitoring during all demolition activity. It is the City's understanding that air monitors have, in the past, been set for monitoring of general disbursement of airborne emissions from the site and that they were not adjusted for wind changes or for specific demolition activity.

The City, therefore, requests records of the monitoring on the specific days in the past on which demolition has occurred and data showing precisely what location(s) were being monitored. Any demolition in the future must be monitored

by units activated during all demolition activity periods and located so as to detect emission in any direction.

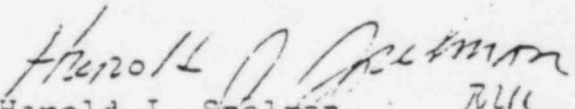
3. Although the proposed Stabilization Plan of Kerr-McGee includes the specifications of a lagoon to prevent the discharge of contaminated water from the site, Kerr-McGee has not, to the City's knowledge, constructed such a retention area. Instead, NRC's Order of February 12, 1982 indicates that "Kerr-McGee's present system uses existing floor trenches to funnel the water to available storage tanks." 15 NRC 268 (1982). The engineering drawings and specifications for this trench network need to be disclosed to the City so that a responsible response can be made.

It appears to the City that currently there is demolition work at the Site in areas where there are no trenches for run-off. Likewise, the buildings proposed to be demolished under the pending amendment requests do not have trenches. The exact water run-off procedures must be disclosed to the City. At the least, this must include proof of the elevation levels for the factory site so that the City's experts can determine run-off patterns, the location and specifications of all trenches currently being used and proposed of a water retention basin (apparently a concrete unit) currently on site, records of water monitoring from all decommissioning activities in the past, and details of the water monitoring system proposed to be used in future demolitic

work. Also, the City should be shown exactly what is being done (and proposed to be done) to protect the building rubble so that contamination does not run off in rain or snow.

4. The quantity of the material involved in the demolition activities proposed by Kerr-McGee is greater because of the size and number of buildings included in the proposals. Therefore, Kerr-McGee's procedures for environmental protection must be shown to be adequate for the greater potential impacts of the particular activities proposed as Amendments 5 and 6.

Respectfully submitted,


Harold J. Spelman *BUC*
Attorney for the City of West Chicago,
Illinois.

HJS:PLF:bao
cc: Attached Service List

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