

Ltrs to Lash & d
11/15 & 18/85
attached.

more" of the categories of materials specified in the Statement. Thus, Illinois may choose not to include the category, "Byproduct materials as defined in section 11e(2) of the Act" and by doing so, not include the West Chicago site in the Agreement. This matter was discussed in detail with Mr. Lash and his staff on November 15, 1985 by Richard Cunningham, FC and other NRC staff. Mr. Lash noted that additional criteria relating to statutes, regulations and other program aspects would have to be met if Illinois elected to include 11e(2) materials in its request. He expressed reluctance to develop a whole regulatory program for just one site. As a result of these discussions NRC staff expressed a willingness to identify the criteria which would need to be met taking into account the particular circumstances relating to the West Chicago site. Illinois was also made aware that if such regulatory authority was assumed, technical assistance would be made available by NRC to the State, in line with our existing commitments to Agreement States.

Mr. Lash indicated he would consider requesting such authority upon receipt of the criteria referred to above. He stated a strong desire to stay "on a fast track" for an Agreement and, implicitly, to avoid arrangements or changes to the present proposal that would delay its progress. It was also noted that Illinois may, after the Agreement becomes effective, request an amendment to the Agreement to add 11e(2) materials. We will inform the Commission of Illinois' interest and position on the West Chicago matter when the paper is prepared for Commission action on the Illinois Agreement proposal.

Our discussions also took note of recent Licensing Board proceedings that would result in the finding that the Kress Creek contamination is source material. Under this interpretation regulatory responsibility for this material would be assumed by Illinois under the Agreement. Illinois did not express any problem or objection to this development. (As a parenthetical note, to enable such an assumption, we believe that FC and ELD staff should make appropriate modifications to the NRC license issued to Kerr-McGee for the West Chicago Rare Earths Facility so that a suitable license document for the Kress Creek material can be transferred to Illinois.)

When the Illinois request is formally received from Governor Thompson we will prepare a staff assessment for a Federal Register notice, which will be coordinated with you. I believe our discussions with Illinois, as documented herein and in the enclosures adequately address your comments on the Illinois draft proposal. If this is not the case, I would appreciate being informed promptly.

G. Wayne Kerr

G. Wayne Kerr, Director
Office of State Programs

Distribution:

SA R/F JSaltzman w/encl
Dir R/F Illinois file (fc) w/encl.
JOLubenau RCunningham, w/encl.
DANussbaumer
JHickey
JMapes

Enclosures:
As stated

cc: R. Lickus, RIII, w/o encls.

Identical Ltrs. sent to: J.Davis, NMSS

OFFICE	SA	SA	OSP	WCrow, w/encl.		
SURNAME	JOLubenau/bh	DANussbaumer	JHickey			
DATE	11/19/85	11/19/85	11/20/85			

NOV 21 1985

Ref: SA/JOL

MEMORANDUM FOR: Guy H. Cunningham
Executive Legal Director

FROM: G. Wayne Kerr, Director
Office of State Programs

SUBJECT: DISPOSITION OF ELD COMMENTS ON DRAFT PROPOSAL FROM
ILLINOIS FOR SECTION 274b AGREEMENT

Thank you for your review and comments on the draft proposal from Illinois for Agreement State status.

On November 12, 1985 Donald Nussbaumer, Joel Lubenau, William Crow, FCUF, John Hickey, FCML and Jane Mapes, ELD met to consolidate NRC Office comments on the draft proposal and to plan our meeting with Illinois on November 14, and 15, 1985. The agreements reached at that meeting formed the basis for our discussions of the draft proposal with staff members of the Illinois Department of Nuclear Safety on November 14, 1985 and with Mr. Terry Lash, Director of the Department and his staff on November 15, 1985. Our comments were confirmed by letters to Mr. Lash on November 15 and 18, 1985 (enclosures).

(Deleted paragraph)

With respect to the matter of West Chicago and Kress Creek, the Commission, in its Policy Statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority ..." established the availability of options for applicant States to include "any one or

more" of the categories of materials specified in the Statement. Thus, Illinois may choose not to include the category, "Byproduct materials as defined in section 11e(2) of the Act" and by doing so, not include the West Chicago site in the Agreement. This matter was discussed in detail with Mr. Lash and his staff on November 15, 1985 by Richard Cunningham, FC and other NRC staff. Mr. Lash noted that additional criteria relating to statutes, regulations and other program aspects would have to be met if Illinois elected to include 11e(2) materials in its request. He expressed reluctance to develop a whole regulatory program for just one site. As a result of these discussions NRC staff expressed a willingness to identify the criteria which would need to be met taking into account the particular circumstances relating to the West Chicago site. Illinois was also made aware that if such regulatory authority was assumed, technical assistance would be made available by NRC to the State, in line with our existing commitments to Agreement States.

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Officially signed by
G. Wayne Kerr

G. Wayne Kerr, Director
Office of State Programs

Enclosures:
As stated

cc: R. Lickus, RIII, w/o encls.

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WCrow, w/encl.

Identical Ltrs. sent to: J. Davis, NMSS
J. Keppler, RIII