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December 31, 1986
51 FR 47327

April 15, 1987

(11)

BY HAND

Samuel J. Chilk, Secretary
Office of the Commission
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Re: Proposed Agreement with State of Illinois,
52 Fed. Reg. 2309 (Jan. 21, 1987).

Dear Mr. Chilk:

On February 24, 1987, I wrote you to request that a representative of Kerr-McGee Chemical Corporation ("Kerr-McGee") be allowed to make an oral presentation before the Commission's entry into an Agreement with the State of Illinois. Counsel for the NRC staff has recently filed a letter with the Appeal Board that was scheduled to resolve the staff's appeal in Kerr-McGee West Chicago Rare Earths Facility (Kress Creek Decontamination), Dkt. No. 40-2061-SC, ASLBP No. 84-502-01-SC, stating that the staff anticipates that the Commission will reach a decision on the proposed Agreement before the end of April. Because I have not received a response to my letter and because the Commission's decision is evidently imminent, I am writing again to request the opportunity to address the Commission on this matter.

As you may be aware, Kerr-McGee has spent over \$30 million to prepare for onsite stabilization at Kerr-McGee's West Chicago Rare Earths Facility of both onsite and offsite wastes, and to cleanup wastes that are alleged to have escaped from the facility during operations by Kerr-McGee's predecessors. Kerr-McGee's very substantial efforts are jeopardized by the proposed Agreement, as are the prospects of achieving the timely final stabilization of the West Chicago wastes.

The staff has indicated that the Agreement is intended to divide the responsibility for the West Chicago wastes between the NRC and the State -- the NRC will retain responsibility for onsite wastes, but will transfer

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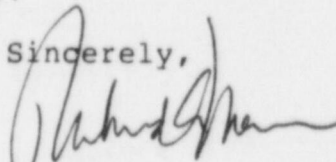
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responsibility to the State for the offsite wastes (including those offsite wastes that have already been moved onto the site for final disposal). Kerr-McGee views the transfer to the State with concern because the State has vigorously maintained its fixed opposition to any plan that involves onsite stabilization. Our concern in this instance is magnified, however, because the State has in fact not requested jurisdiction over the offsite materials and, indeed, there appears to be no sound explanation that would justify such a transfer. Although the offsite wastes are physically, chemically, and radiologically identical to the onsite wastes, the staff has stated that the offsite wastes are to be viewed as "source material" (which is encompassed by the Agreement) and the onsite wastes are "byproduct material (tailings)" (which is outside the Agreement). The staff has as yet not attempted to explain this arbitrary allocation.

As is more fully explained in Kerr-McGee's comments, the proposed transfer also raises serious due process concerns. The staff has indicated that it intends to use the transfer of jurisdiction to the State as the justification for terminating its appeal in the Kress Creek proceeding before a final decision is achieved. This is unfair because the staff might thereby evade the consequences of its loss before the licensing board. Moreover, because the State has prejudged the issues that would be presented to it as a regulator, any transfer of jurisdiction over West Chicago matters in the instant circumstances is improper.

In sum, the proposed Agreement threatens the achievement of a final disposition of the West Chicago wastes and raises serious legal questions. Accordingly, because these matters can best be illuminated by an oral presentation, I again request the opportunity to address the Commission before the entry of the proposed Agreement.

Sincerely,



Richard A. Meserve

Counsel for Kerr-McGee
Chemical Corporation

cc: Chairman Lando W. Zech, Jr.
Commissioner Thomas M. Roberts
Commissioner James K. Asselstine
Commissioner Frederick M. Bernthal
Commissioner Kenneth Carr