

ROUTING - REQUEST

Please

- ☒ READ
☐ HANDLE
☐ APPROVE
and
☐ FORWARD
☐ RETURN
☐ KEEP OR DISCARD
☒ REVIEW WITH ME

Date

1/8/86

To Joel Lubenau:

Attached is Kerr-
McGee's response to
my letter re the
documents on the proposed
Agreement. I will be
drafting a response.

From

Steve Lewis

Joel

They seem to be arguing that Kress Book
 can't be transferred to State until ASLB
 makes a final decision. But what good
 is decision if matter is subsequently transferred
 to State regulation?

Don

8701150129 870113
 PDR STPRG ESGIL PDR

ALL PDR
 Initial

II. Lewis / Conner / Cucco / Hodgson / Rutberg / FF

Handwritten initials

8

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P. O. BOX 7566

WASHINGTON, D. C. 20044

(202) 662-6000

WRITER'S DIRECT DIAL NUMBER

(202) 662-5304

861882

January 3, 1986

DANIEL H. GRIBBON
STANLEY L. TEMCO
JAMES C. MURRAY
JOHN W. DOUGLAS
HAMILTON CROTHERS
J. RANDOLPH WILSON
ROBERTS B. OWEN
EDGAR F. CZARRA, JR.
WILLIAM H. ALLEN
DAVID B. ISBELL
JOHN B. JONES, JR.
PAUL R. DUKE
PHILIP R. STANSBURY
CHARLES A. MILLER
PETER BARTON HUTT
EUGENE I. LAMBERT
MARK A. WEISS
HARRIS WEINSTEIN
JOHN B. DENNISTON
PETER J. NICKLES
JONATHAN D. BLAKE
CHARLES E. BUFFON
ROBERT N. SAYLER
E. EDWARD BRUCE
DAVID H. BROWN
PAUL J. TAGLIABUE
ANDREW W. SINGER
DAVID H. WICKMAN
RUSSELL H. CARPENTER, JR.
NICHOLAS W. FELS
THEODORE L. GARRETT
DANA T. ACKERLY
JOHN M. VINE
JOHN THOMAS SMITH II
JOHN P. RUPP
CLAUSEN ELY, JR.
RICHARD F. KINGHAM
ROBERT M. SUSSMAN
MICHAEL R. LEVY
GEORGE B. REID, JR.
THOMAS S. WILLIAMSON, JR.
PAUL J. BERMAN
WILLIAM P. BRINNER
GEORGE M. CHESTER, JR.
RICHARD A. MESERVE
GREGG H. LEVY
CAROLYN F. CORWIN
OSCAR M. GARIBALDI

HARRY L. SHNIDERMAN
DON V. HARRIS, JR.
WILLIAM STANLEY, JR.
WEAVER W. DUNNAN
EDWIN M. ZIMMERMAN
JEROME ACKERMAN
HENRY P. SAILER
JOHN H. SCHAFER
ALFRED H. MOSES
JOHN L. MOYNE ELKSCOTT
DAVID E. Mc GIFFERT
H. EDWARD DUNKELBERGER, JR.
BRUCE McADOO CLAGETT
RICHARD A. BRADY
HERBERT DYM
JOHN VANDERSTAR
NEWMAN T. HALVORSON, JR.
HARVEY M. APPLEBAUM
MICHAEL S. HORNE
CHARLES F. C. RUFF
MICHAEL BOUDIN
BINGHAM B. LEVERICH
ALLAN TOPOI
VIRGINIA G. WATKIN
RICHARD D. COPAKEN
CHARLES LISTER
PETER D. TROBOFF
WESLEY S. WILLIAMS, JR.
DORIS D. AZEK
WILLIAM D. IVERSON
S. WILLIAM LIVINGSTON, JR.
JAMES R. RATWOOD
COLEMAN S. HICKS
STUART C. STOCK
EUGENE D. GULLAND
O. THOMAS JOHNSON, JR.
EUGENE A. LUDWIG
PATRICIA A. BARALD
REEVES C. WESTBROOK
THEODORE VOORHEES, JR.
JEFFREY G. HUVELLE
JOANNE B. GROSSMAN
J. MICHAEL HEMMER
GREGORY M. SCHMIDT
J. MARK IWRY
ROBERT J. GAGE
ARVID E. ROACH II

FONTAINE C. BRADLEY
EDWARD BURLING, JR.
HOWARD C. WESTWOOD
CHARLES A. HORSAY
JOHN T. SAPIENZA
JAMES H. McLOTHLIN
ERNEST W. JENNES
EDWIN S. COHEN
COUNSEL

JOHN SHERMAN COOPER
DON A. ZIMMERMAN
OF COUNSEL

TW: 710 822-0005 (CB WSH)
TELEX: 89-893 (COVING WSH)
TELECOPIER INFORMATION:
(202) 662-6280
CABLE COVING

Stephen H. Lewis, Esq.
Deputy Assistant Chief Hearing Counsel
U.S. Nuclear Regulatory Commission
Office of the Executive Legal Director
Washington, D.C. 20555

Re: Kerr-McGee Chemical Corporation (West-Chicago
Rare Earths Facility), Docket No. 40-2061-ML,
ASLBP No. 83-49501-MI; Kerr-McGee Chemical
Corporation (Kress Creek Decontamination),
Docket No. 40-2061-SC, ASLBP No. 84-502-01 SC.

Dear Steve:

I am writing in response to your letter of December 17, 1985, in which you indicate that you intend to withhold certain documents relating to the NRC Staff's proposal to shift adjudicatory responsibility for the above-captioned cases from the NRC to the State. I am writing to urge that you reconsider your position and forward any such documents forthwith.

The Staff's proposal would serve to shift decision-making authority from a neutral panel to one of the parties in the ongoing NRC proceedings. Such an action not only would jeopardize the very substantial investment by Kerr-McGee in preparing for the proceedings, but also would be fundamentally unfair. Because the ongoing negotiation is evidentially designed to frustrate the jurisdiction of the ASLBP, it is our view that the matter should be fully aired now.

35702 081

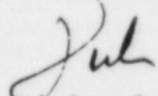
8644240044

2pp

Stephen H. Lewis, Esq.
January 3, 1986
Page 2

In the event that the Staff continues to withhold these materials, it is our intention to seek an appropriate order from the Board.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R. Meserve', written in a cursive style.

Richard A. Meserve

Joel Leiman

from
Tina Lewis

804027

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

KERR-McGEE CHEMICAL CORPORATION
(West Chicago Rare Earths Facility)

Docket No. 40-2061-ML

ASLBP No. 83-405-01-ML

In the Matter of

KERR-McGEE CHEMICAL CORPORATION
(Kress Creek Decontamination)

Docket No. 40-2061-SC

ASLBP No. 84-502-01-SC

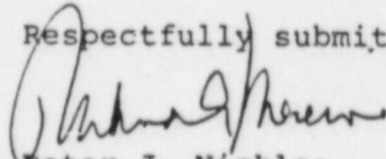
KERR-McGEE REPLY TO THE NRC STAFF TO RESPONSE
TO THE KERR-McGEE MOTION TO COMPEL
PRODUCTION OF DOCUMENTS

On March 4, 1986, Kerr-McGee Chemical Corporation ("Kerr-McGee") filed a motion to compel the NRC Staff to produce all documents in its control or possession that relate to discussions with the State of Illinois concerning the State's assumption of authority over the above-captioned proceedings. Although the Staff had resisted Kerr-McGee's several informal requests for access to these documents, the Staff responded to the motion by disclosing the documents. In light of the Staff's representation that all relevant documents have been produced, the Kerr-McGee motion is now moot.

8604090179 4 pr

After reviewing the documents, Kerr-McGee must again express its grave concern with any transfer of responsibility to the State that would serve to usurp the authority of this Board. As the documents make clear, the purpose of a transfer of authority over mill tailings to the State would be solely to give the State adjudicatory responsibility for the stabilization of the West Chicago Facility. In light of the State's role as an advocate, it no longer has the capacity to reach an impartial decision on the matters at issue in these proceedings. A transfer thus would violate due process and would raise profound questions of fundamental fairness.

Respectfully submitted,



Peter J. Nickles
Richard A. Meserve
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044

Counsel for Kerr-McGee
Chemical Corporation

April 4, 1986

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
KERR-McGEE CHEMICAL CORPORATION)	Docket No. 40-2061-ML
(West Chicago Rare Earths Facility))	ASLBP No. 83-405-01-ML

In the Matter of)	
KERR-McGEE CHEMICAL CORPORATION)	Docket No. 40-2061-SC
(Kress Creek Decontamination))	ASLBP No. 84-502-01-SC

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing
Kerr-McGee Reply to the NRC Staff to Response to the Kerr-McGee
Motion to Compel Production of Documents was served by
first-class mail, postage prepaid, on this 4th day of April,
1986, as follows:

John H. Frye, III, Esq.
Chairman
The Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Dr. James H. Carpenter
The Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Dr. Peter A. Morris
The Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Dr. Jerry R. Kline
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

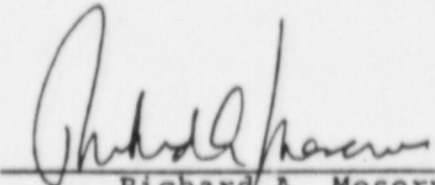
Stephen H. Lewis, Esq.
Ann P. Hodgdon, Esq.
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Mr. Steven Seiple, Esq.
Illinois Department of Nuclear Safety
1035 Outer Park Drive
Springfield, Illinois 62704

Thomas W. Fawell, Esq.
Fawell & Murutzky
2021 Midwest Road
Suite 206
Oak Brook, Illinois 60521

Anne Rapkin, Esq.
William J. Barzano, Jr., Esq.
Russell R. Eggert, Esq.
Office of the Attorney General
State of Illinois
100 W. Randolph Street
13th Floor
Chicago, Illinois 60601

Docketing and Service Section (3)
Atomic Safety and Licensing
Appeals Board
Nuclear Regulatory Agency
1717 H Street, N.W.
Room 1121
Washington, D.C. 20555


Richard A. Meserve

April 4, 1986