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NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

PUBLIC MEETING ON
PROPOSALS FOR SETTLEMENT OF SHEFFIELD
WASTE DISPOSAL CASE

Place - Washington, D. C.

Date - Monday, 23 January 1978

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Public Meeting on
Proposals for Settlement of Sheffield
Waste Disposal Case

Commissioners' Meeting Room
1717 H Street N.W.
Washington, D.C.

Monday, January 23, 1978

The Commission met, pursuant to notice, at 11:15
a.m.

PRESENT: Commissioners Hendrie, Gilinsky, Bradford,
and Kennedy.

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CHAIRMAN HENDRIE: May we gather on the subject at hand, proposals for settlement of the Sheffield waste disposal case.

Steve Eilperin has been looking at the possibilities of settlement of the suit filed by the State of Illinois. Please go ahead, Steve.

MR. EILPERIN: We were out in Chicago to discuss the possibilities of settlement with the State about ten days or so ago.

The State was there, representatives from another of the proposed intervenors, Citizens for a Better Environment, was there, the company was there, and we were there.

I think it might be possible to settle the suit. I just wanted to bring the Commission up to date on what happened at that meeting, and suggest an avenue that the Commission could consider.

As you know, Illinois had brought suit saying we had not acted quickly enough on the Sheffield renewal license. Right now we are taking steps to prepare an EIS, which we will be doing before acting on the license. So that there is nothing more that the State of Illinois can gain from the lawsuit on that aspect of the complaint saying please act on the license.

CHAIRMAN HENDRIE: Presumably they could get a court order telling us to do our statutory duty here, I expect.

1 MR. EILPERIN: Yes, they could get a court order,
2 perhaps, which would set a date for completion of the EIS.
3 But that might be something of an unrealistic order to get.
4 Courts generally don't like to set specific dates.

5 In any event, so long as we are proceeding in good
6 faith and are seeking to do a thorough job on the EIS, that
7 really, I think, is in the State's interests and in our
8 interests.

9 So that I don't think there will be too much difficulty
10 trying to get some sort of specific agreement saying that we
11 are doing an EIS, we will use our best efforts to complete
12 it by a certain time period. And that really is what, if they
13 were successful, what they would get out of the law suit, at
14 least in part.

15 CHAIRMAN HENDRIE: Okay. May I ask-- I will be
16 asking, as we go down these things, how the staff is set up
17 to carry out the proposals that Steve has in hand. So please
18 come up here.

19 MR. EILPERIN: I understand, with regard to the
20 EIS -- maybe Mike can speak to this -- that right now the staff
21 is evaluating proposals preparatory to letting a contract out.

22 MR. CUNNINGHAM: That is correct. We have
23 several possible contractors. We thought we were going to
24 be able to --

25 CHAIRMAN HENDRIE:-- Michael, why don't you come up also?

1 MR. CUNNINGHAM: We are having a little bit of a
2 problem with our contracts people, and we have to go through
3 another formality that might take another month. At that time
4 we will let a contract for part of the EIS.

5 CHAIRMAN HENDRIE: This is the agency's normal
6 competitive bidding procedure?

7 MR. EILPERIN: That is correct.

8 CHAIRMAN HENDRIE: So I guess incumbrance is not the
9 right word, but it does have attached to it all of the
10 protections for competitive position and fair consideration of
11 everybody in advertising time and so on that attaches to those
12 procurement actions.

13 MR. CUNNINGHAM: That is exactly right. We have
14 gone through most of that procedure at this time. We have bids
15 on it, we have evaluated the various proposals, and now we
16 will get several contractors in to discuss the bids.

17 MR. BELL: The problem was there was not a clearly
18 superior proposal. There are a number of companies that have
19 to be included in negotiations, audits need to be done of
20 the companies, and these procedures will take longer than
21 we would prefer under the circumstances.

22 CHAIRMAN HENDRIE: That is not infrequently the case in
23 procurement actions. At this point do you feel that we
24 will get to a good quality environmental impact statement
25 more quickly by continuing to work on this procurement of

1 a contractor, or would it go more quickly by turning to
2 some other avenue?

3 MR. CUNNINGHAM: The only other two avenues we
4 would have would be for the staff to do it itself, and we
5 are not really staffed to take on that kind of action at this
6 time, and carry out our other programs at the same time.

7 The other option is to have it done at a national
8 laboratory. I don't think at this stage that would get us
9 anywhere quicker.

10 MR. BELL: Before we decided to advertise this
11 particular project for competitive bidding, we did investigate
12 the possibility of having it done at all of the national
13 laboratories that normally do impact statements for the
14 Commission. And all of them were committed at the present
15 time, and would not be able to start on it.

16 CHAIRMAN HENDRIE: So that both on the staff and the
17 laboratory side, you just ran into manpower problems, which
18 are likely to in the long run delay rather than improve?

19 MR. CUNNINGHAM: That is correct.

20 CHAIRMAN HENDRIE: Steve, is it going to be
21 difficult to talk about this element of the settlement on a
22 best efforts basis?

23 MR. EILPERIN: I don't think so. I think it is
24 difficult to give any firm date, I think it is unrealistic to
25 give a firm date, and I think that the State should be willing

1 to accept a best efforts representation, we will do our best
2 to proceed towards preparation of an environmental impact
3 statement in the time period consistent with a thorough
4 analysis.

5 If we can get any sort of range of dates, we can
6 offer that. But it seems to me that if, for example, you choose
7 a date and that date is missed, and the process is nine-tenths
8 complete, it shouldn't be any problem about finishing up
9 that last period; the judge wouldn't listen to that.

10 MR. CUNNINGHAM: I might also point out, Mr.
11 Chairman, this is the first environmental impact statement
12 we have done on a low level waste burial ground. So while
13 we think we know all of the problems, we really won't know until
14 we get into it.

15 CHAIRMAN HENDRIE: Well, I think -- excuse me,
16 Peter.

17 COMMISSIONER BRADFORD: As to the draft EIS, if
18 the State felt that that were a real sticking point, I take it
19 there is no barrier to coming up with a fixed date there, the
20 way there would be with the final environmental impact
21 statement?

22 MR. EILPERIN: That is correct. You can control
23 a draft more than you can control the due date of the final,
24 because the final depends upon the extent of comments that
25 you receive, and the extent of the analysis that that requires.

1 Plus it would depend, it might also depend upon requests for
2 hearing, that sort of thing, that might extend the process for
3 acting on the license, and not getting out the final.

4 So I think that is true, that the draft is more
5 controllable.

6 COMMISSIONER BRADFORD: I just wouldn't want the
7 negotiation for settlement to break down over that point.

8 MR. EILPERIN: Yes.

9 MR. CUNNINGHAM: Except in the draft stage it is
10 a question of the technical problems we will run into that
11 is rather undefined.

12 COMMISSIONER BRADFORD: Obviously any deadline would
13 have to be a reasonable one.

14 CHAIRMAN HENDRIE: If mentioning a date, at least
15 in a target sense, gets to be an important element of
16 the ability to settle on this point, is there any way to
17 build into the agreement some sort of, you know, for good
18 cause the Commission will come back and explain why it is
19 having trouble meeting the date or something? Or do you have
20 that in hand?

21 MR. EILPERIN: I think the best efforts implies
22 that. But if one had to give some sort of statement of
23 some problem, a changed circumstance, I think that would be
24 possible as well.

25 I really don't think it's is going to be any
great difficulty in disposing of that aspect of the case.

1 CHAIRMAN HENDRIE: By the way, you are going to have
2 to make some estimates. They better be fairly realistic
3 to take account of the difficulties. Because I am sure
4 even if no date is required to go into the agreement for
5 settlement, I am sure people will be interested in knowing
6 just how long we have in mind. If it is ten more years, I
7 doubt if people will regard that as getting on with it. So
8 you are going to have to make some estimates.

9 MR. CUNNINGHAM: Two points. First, the contract
10 itself will have a performance date on it.

11 Secondly, the contractor will be required to submit
12 progress reports that will tell us where he stands and any
13 problems he runs into. Those would be publicly available,
14 of course.

15 CHAIRMAN HENDRIE: How much staff involvement will
16 there be in the sense -- there will certainly be a cognizant
17 engineer on the contract. How close a track are you going
18 to be able to keep?

19 MR. BELL: We will attempt to manage this very
20 carefully. We are particularly concerned about the fact that
21 this is the first statement of the kind. It might be of
22 interest to note that portions of the statement having to do
23 with the hydrology and geology will in fact be written in-house
24 by the geologists and hydrologists in the Office of Nuclear
25 Reactor Regulation.

1 The main emphasis on the contractor's part will be
2 putting the documents together and then handling all of the
3 non-radiological, the social, political areas of the
4 statement.

5 CHAIRMAN HENDRIE: I see.

6 MR. EILPERIN: The second aspect of the case is the
7 interim operations, what to do as to trenches becoming filled,
8 and what to do with respect to the company's application to
9 utilize a compact and fill method for trench 15.

10 As to that, as you know, the staff is asking for
11 public comment on the company's request to be allowed to
12 utilize trench 15, and that public comment is being considered
13 under the standards for an exemption, which look to the kind
14 of criteria which would be used under NEPA, the foreseeable
15 consequences of utilizing trench 15 before a full environmental
16 survey is completed, the extent of regressability, that sort
17 of action, and matters such as that.

18 The State indicated to us at the meeting that
19 they are willing to utilize NRC's administrative process,
20 that they will be submitting comments, and consequently, that
21 they are unlikely to ask the court to enjoin all operations
22 at this time.

23 So I think, again, that that aspect, that that
24 is favorable to us, in that it allows us to consider the
25 company's application and give a decision on whether or not

1 the application should be granted regarding trench 15.

2 So I don't think that should present any difficulty
3 in the settlement either. I would expect that the company
4 would probably, or that the State would file another lawsuit
5 if the company received a license to use trench 15. Presumably
6 the company would sue us also if we refused to grant it.

7 But in any event, that would be a separate lawsuit and
8 it would be based upon our consideration of the specific
9 request, with a factual record, and I think that is in a much
10 better position to be in than to battle it out in court on
11 trying to resist an injunction to future operations.

12 So I think that will work out without too much
13 difficulty.

14 The main thing the State seemed to be concerned about
15 was the possibility there would be other licenses,
16 especially licenses which Illinois would be concerned about,
17 licenses in Illinois, which might be in the same kind of
18 position as the Sheffield license, in the sense of renewal
19 application that has not been acted upon quickly. And we
20 think that -- well, we told Illinois that we would go back
21 to the Commission to explore possible avenues of looking
22 into, making changes in the timely renewal section of
23 our regulations, or the way that we become aware of what
24 licenses are under that kind of status, where an application
25 for renewal has been made, and has not yet been acted upon.

1 I think, in looking into things, that the Commission
2 actually is rather well-informed. The staff, in the brown
3 book, publishes on a monthly basis a very detailed listing
4 of the status of at least the major licensing actions, and I
5 think what the Commission might -- in terms of the major
6 licensing actions, the Commission has information available
7 to it which lists when the renewal application was submitted,
8 when the expected completion date is, matters such as that.

9 COMMISSION GILINSKY: Did we ever get the memorandum
10 listing the facilities that were on a timely renewal basis?

11 MR. EILPERIN: Yes. I think that was set out last
12 December by the staff. I think we have no specific suggestion
13 for changing the format of the brown book. But one thing we
14 could do is to ask that consideration be given to minor
15 revisions, such as perhaps classifying some lists by the state
16 in which the license is pending.

17 Right now, if you look at it, you can't tell what
18 state things are in, and it may be, if Illinois' reaction is
19 not unusual, that the specific states might like to be able to
20 turn to a heading like that.

21 COMMISSIONER GILINSKY: You mean have an additional
22 section?

23 MR. EILPERIN: Yes, just an additional section.

24 COMMISSIONER KENNEDY: That cross-classifies it.

1 MR. EILPERIN: That's right, cross-classifies by
2 state, so a state could look at the situation in its state
3 and find out rather quickly where licenses stand.

4 COMMISSIONER GILINSKY: You could have a page that
5 lists all of the icenses on a timely renewal basis.

6 MR. EILPERIN: YOU could do that. The other thing
7 the brown book does not give you right now is a full isting
8 of licenses.

9 As I understand it, it is the major ones, but there
10 are something like 9,000 material licenses which we handle,
11 and I think there is something like 1500 running out every year.
12 So obviously in the nature of things there are obviously
13 going to be a number of those under timely renewal. It might
14 just suffice to have a list so someone could see where those
15 stand.

16 CHAIRMAN HENDRIE: Steve, do you detect in
17 Illinois' concern perhaps the pressure that the Commission
18 give special attention to Illinois' licenses as to quid pro quo?

19 MR. EILPERIN: What I told the Assistant Attorney
20 General from the State is that materials licenses are just
21 one aspect of the Commission's business and the Commission
22 couldn't just totally reset its priorities to go after
23 materials licenses when there are obviously many more
24 important licensing actions that the Commission considers.
25 And actually the State agreed it would not particularly want

1 its tax dollars spent by a crash project on the materials
2 licenses, which let things like power reactors slip, or
3 other types of licensing actions.

4 So I think it is more a way of trying to make things
5 visible to people, so that they can see where things are,
6 rather than any marked shift in priorities that is called for.

7 Another thing the staff could consider is whether
8 or not it is conceivable to set up milestones or bench marks
9 or classify various types of materials licenses into different
10 kinds of actions setting different priorities for them.

11 MR. CUNNINGHAM: Of course we have this as a working
12 part of our program. The staff in fact does set priorities
13 on some of these licenses. But when you are dealing with a
14 large volume, I don't know how meaningful that becomes after
15 a while, when you have 200 of these and 100 of those, and
16 so forth.

17 But there are several things that are going on that
18 might be useful to the State.

19 First, you will recall that we are getting ready
20 to start up our regional licensing program. This is a pilot
21 program, it is scheduled to start March 1, and it will be
22 in Illinois in the regional office there. So that brings
23 the materials licensing closer to the State in that case.

24 Exactly how that is going to perform, we don't know
25 yet, but hopefully it will certainly make the operation more.

1 visible and more available to the State itself.

2 Secondly, we have a study due to the Commission
3 at the end of March that reviews the whole license renewal
4 process, not only licensing periods, which are five years
5 on materials licenses, but also the scope of the review.

6 When a license comes up for renewal, we look at
7 the whole license again. We are seeing whether or not there
8 aren't certain parts of this we can eliminate or spend less
9 time on, so that should speed up the process.

10 I might point out in Illinois the bulk of their
11 licenses certainly are the small materials licenses, hospitals,
12 universities, that kind of thing. They only have one other
13 fuel cycle operating plant and that is the Allied plant, UF6
14 conversion plant, that the license has been renewed on within
15 the last few months.

16 So they don't have any other big operation I am
17 aware of. There is a special problem with the closed-out
18 Kerr McGee rare earth plant, but we are working with the State
19 and local community on that.

20 CHAIRMAN HENDRIE: Okay. Any comments, gentlemen?

21 I must say the proposition from the Solicitor
22 seems to me eminently reasonable. As we did before, I would
23 suggest we urge him to move forward along these lines and
24 see if a settlement can be accomplished.

25

MR. EILPERIN: Fine.

1 CHAIRMAN HENDRIE: I would also add, keep in close
2 contact as these negotiations go forward with NMSS staff,
3 so you have at all times a pretty clear realistic idea of what
4 is practical from their standpoint. And they may also
5 have some ideas that will help in the settlement. Does that
6 seem fair?

7 COMMISSIONER BRADFORD: Fine.

8 COMMISSIONER KENNEDY: Yes.

9 CHAIRMAN HENDRIE: Let's move along those lines
10 then. Thank you.

11 (Thereupon, at 11:40 a.m. the meeting was
12 concluded.)

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