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RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

MOTION BY KERR-McGEE CHEMICAL CORPORATION
TO COMPEL PRODUCTION OF DOCUMENTS
AND ANSWERS TO INTERROGATORIES
BY THE STATE OF ILLINOIS

Pursuant to 10 C.F.R. § 2.740(f), Kerr-McGee Chemical Corporation ("Kerr-McGee") hereby moves for an order compelling the State of Illinois ("State") to produce documents and answer certain interrogatories in response to Kerr-McGee's First Set of Interrogatories and Requests for Documents, filed February 15, 1985 (Attachment 1).

I. THE STATE'S DOCUMENT PRODUCTION HAS BEEN DEFICIENT

A. Background Facts

Kerr-McGee's Request for Production of Documents asked the State to produce all documents identified in response to Kerr-McGee's interrogatories. The Request defined "document" to include all material "in the possession, custody, or control of the State, or any agency or representative of the State." Kerr-McGee's First Set of Interrogatories and Requests for Documents at 1-2. On April 1, 1985, nearly two weeks

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after the deadline for document production established by 10 C.F.R. § 2.741(d), the State filed the People's Response to Kerr-McGee's First Discovery Request ("Response") (Attachment 2). The State did not object to Kerr-McGee's instructions to produce all documents "in the possession, custody, or control of the State, or any agency or representative of the State," but nevertheless represented that it would produce only the "responsive nonprivileged documents in the possession of the Attorney General's Office and the Illinois Department of Nuclear Safety" ("IDNS").

Even the promised documents, however, were not immediately forthcoming -- and indeed have not yet all been provided. After several informal inquiries by Kerr-McGee's counsel, the State finally produced a small number of documents, on May 21, 1985, from the files of two employees of IDNS -- Dr. Cooper and Mr. Lash.[1] On June 3, 1985, the State produced "more documents in response to Kerr-McGee's second discovery request," this time from the personal files of Ms. Rapkin. See Letter from Rapkin to Meserve, June 3, 1985 (Attachment 3) (stating that the documents produced are "from my files.") On June 26, 1985, the State produced five additional documents from IDNS files, see Letter from Rapkin to Meserve, June 26, 1985 (Attachment 4), and on June 27, 1985 the State continued its piecemeal production by producing one

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[1] These documents were in file folders that were labelled to indicate from whose files they were produced.

additional document. See Letter from Rapkin to Meserve, June 27, 1985 (Attachment 5). The documents produced on May 21, June 3, June 26 and June 27 form a stack approximately six inches high, much of which consists of publically available reports. There has been no indication from the State that it has produced all responsive documents, and the small number of documents produced thus far, in addition to having been produced well after applicable deadlines, are obviously not fully responsive to Kerr-McGee's Requests.[2] For reasons described more fully below, the State stands in violation of this Board's May 1, 1985 order that document inspection be completed by June 3, 1985.

B. Specific Deficiencies In State's Document Production

The State's production of documents, in addition to being tardy, has been substantially inadequate in three respects:

1. Improper Limitation of Search to IDNS and Attorney General's Office

The State has taken the position in this proceeding that it is not obligated to produce documents from the files of any State agency other than the IDNS and the Attorney General's Office. Although the Board permitted this practice

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[2] In addition, the State did not indicate which particular requests its piecemeal productions were meant to address or even the proceeding to which a particular document was relevant. The State has produced documents in both this and the License Amendment proceeding simultaneously, generally without distinguishing between its productions in each proceeding.

in the License Amendment proceeding, over Kerr-McGee's strong objection and based upon a theory not advanced by the State,[3] the State has taken action since the Board's order that is diametrically inconsistent with a narrow view of its status as a party. Moreover, the state's intervention papers in this proceeding have not limited its representation to any particular agencies. Kerr-McGee should therefore not be unfairly restricted in its ability to obtain party-discovery from state agencies.

At the outset, it is important to note that there is every reason to believe that responsive documents are located in the files of the Illinois State Geological Survey ("ISGS"), Illinois State Water Survey ("ISWS"), the Illinois Environmental Protection Agency ("IEPA"), the Illinois Department of Public Health ("IDPH"), the Illinois Pollution Control Board ("IPCB"), and the Governor's Office -- in addition to the IDNS and Attorney General's office. Individuals from these agencies have been actively involved in the West Chicago proceedings for several years. The Board's January 9, 1985 order in the License Amendment proceeding limiting conventional document discovery against the State to the IDNS and the Attorney General's Office was based the Board's conclusion that the

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[3] The Board's Jan. 9, 1985 order in the License Amendment proceeding permitted party-discovery against even fewer State agencies than the State claimed to be representing. As discussed infra, the State continues to indicate its willingness to produce documents from IEPA and the Surveys.

IDNS was the only party to that proceeding. Since January, however, the State has substantially repudiated the Board's rationale by utilizing the services of additional agencies and by treating them, for all practical purposes, as "clients" in both this proceeding and the License Amendment proceeding. For example, the State has claimed that a letter from Ms. Rapkin to Thomas Johnson of the ISGS is protected by the attorney-client privilege. See letter from Rapkin to Meserve, June 3, 1985 (Attachment 3). Correspondence between Milton Zukor and Gary Wright of the IDPH has been denoted as privileged, as has correspondence between Zukor and the Governor's office. See Attachment 6. The State has utilized the services of Dr. Thomas Johnson (ISGS) and Larry Estap (IEPA) in drafting its interrogatory responses in the License Amendment proceeding. It has indicated in interrogatory responses that various individuals from the IEPA, ISWS, and ISGS have commented on the Kerr-McGee Stabilization Plan or the FES. Documents produced indicate that surveys and studies of Kress Creek and the West Branch of the Dupage River (hereinafter "Kress Creek" or the "Creek") have been conducted by IDPH and other state agencies, yet all of these surveys and studies have not been produced. Finally, the State has represented in the License Amendment proceeding that it will produce all responsive documents in the files of the Attorney General's office, IDNS, and IEPA and the Surveys. Although the State has not honored that promise in its recent production, it has inexplicably

limited its commitment in the Kress Creek case to producing documents from the Attorney General's Office and IDNS.

Furthermore, regardless of the State's status in the License Amendment proceeding, it has intervened in this proceeding "on the People's behalf on [the Attorney General's] motion and at the request of the Illinois Department of Nuclear Safety." People of the State of Illinois' Petition for Leave to Intervene at 2, July 10, 1984 (emphasis supplied). The State thus claims to represent "the People," and has not formally designated any specific agencies as its "clients" in this proceeding. Even if it were now to attempt to limit its representation of state agencies, this position would be without support. The Constitution of Illinois establishes that "[t]he Attorney General shall be the legal officer of the State, and shall have the duties and powers that may be prescribed by law." Ill. Const. Art. V § 15 (emphasis added). The Attorney General is empowered by statute "[t]o institute and prosecute all actions and proceedings in favor of or for the use of the State, . . ." Ill. Rev. Stat., ch. 14, § 4 (emphasis added). Kerr-McGee is aware of no State or other authority that empowers the Attorney General to limit its representation to certain State agencies when numerous other agencies have been intimately involved with the subject matter of the proceeding and possess relevant and responsive documents. Instead, the cases dealing with discovery against an overarching governmental entity clearly

indicate that all agencies within the control of the overarching entity are to be considered parties for purposes of discovery. See, e.g., Trane Co. v. Klutznick, 87 F.R.D. 473 (W.D. Wis. 1980); United States v. American Telephone & Telegraph Co., 461 F. Supp. 1314, 1333-34 (D.D.C. 1978); United States v. 58.16 Acres of Land, 66 F.R.D. 570, 572 (E.D. Ill. 1975).

2. Incomplete Search Within IDNS and Attorney General's Office

The State improperly limited its principal search for responsive documents to the files of three individuals -- Dr. Cooper and Mr. Lash from IDNS and Ms. Rapkin from the Attorney General's office.[4] Even if one were to accept the State's contention that it is obliged in this proceeding to search only the files of the IDNS and the Attorney General's office, the search conducted to date is inadequate. The State's interrogatory responses in this proceeding were prepared by, inter alia, James Van der Kloot and William Frerichs of the Attorney General's office, see Response No. 36, yet even the files of these individuals have apparently not been searched for responsive documents. In addition, it is simply not credible that there are no responsive documents in the files of persons within the Attorney General's office or IDNS

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[4] On June 26, 1985 the State produced five documents from IDNS, presumably from the files of Dr. Cooper, but without any indication of whose files were searched. On June 27, 1985, the State produced one document from the Illinois Natural History Survey ("INHS"). It does not appear, however, that files from the INHS or files within IDNS other than Cooper's and Lash's were thoroughly searched in order to locate these or other additional documents.

other than the three individuals named above, especially given the State's long interest in matters relating to Kress Creek. At a minimum, the State should be compelled to conduct a thorough search of the files of all individuals within these agencies who have had any involvement with the Kress Creek matter; this certainly includes the files of Messrs. Van der Kloot and Frerichs.

3. Inadequate Statement of Grounds for Privilege

The State has not adequately explained its basis for withholding allegedly privileged documents from the files it has searched. In Kerr-McGee's First Set of Interrogatories and Requests for Documents at 3-4, the State was instructed to supply detailed information to substantiate its privilege claims. Instead, the State has either provided a document marker containing sketchy information, has redacted documents without adequate explanation, or has merely listed allegedly privileged documents pulled from the documents produced.[5] The State has simply not met its burden to establish its alleged privilege claims. See Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2) LBP-83-17, 17 NRC 490, 495 (1983); United States v. Bump, 605 F.2d 548, 551 (10th Cir. 1979).

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[5] It is not always clear from these brief descriptions whether the document is responsive to Kerr-McGee's discovery requests in this proceeding or in the License Amendment proceeding.

In addition, several items are being withheld because they allegedly reveal "executive policy decisions" or are protected by the "predecisionmaking, executive privilege." Some courts have held that this "privilege" is waived when the government has initiated litigation. Federal Deposit Insurance Corp. v. St. Paul Fire & Marine Insurance Co., 53 F.R.D. 260 (W.D. Okl. 1971); United States v. Gates, 35 F.R.D. 524, 529 (D. Col. 1964). Moreover, even if the privilege is deemed to be potentially applicable, the State has utterly failed to follow the procedures or make the showings required to substantiate its claims. See Mobil Oil Corp. v. Department of Energy, 520 F. Supp. 414 (N.D.N.Y. 1981); Smith v. F.T.C., 403 F. Supp. 1000 (D. Del. 1975).[6]

The descriptive information called for in the instructions to Kerr-McGee's document request and the information

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[6] As Mobil Oil and Smith make clear, this privilege may only be asserted by the head of an agency, and not by a mid-level attorney. Mobil Oil, 520 F. Supp. at 416; Smith, 403 F. Supp. at 1016. Second, the claim of privilege must specifically designate and describe the documents that are purportedly privileged. Id. Third, the agency must demonstrate "precise and certain" reasons for preserving the privilege by filing an affidavit. Id. Even if these showings are made, the Court may order production of the documents if they contain purely factual communications or if a balancing of competing interests dictates that the documents should be disclosed. Mobil Oil, 520 F. Supp. at 417; Smith, 403 F. Supp. at 1015-16. Several factors in this "balancing test" weigh heavily in favor of production, including the relevance of the evidence sought to be protected, the "seriousness" of the issues involved, and the role of the State in the litigation. Id. Hence it is likely that the documents will have to be produced even if the State can satisfy the three prerequisites to invocation of the privilege that have yet to be satisfied.

required to substantiate any "executive policy" privilege are necessary to Kerr-McGee's and the Board's determination whether valid privilege claims have been asserted. Kerr-McGee requests that the State be ordered to provide such additional information for each document and for all information replaced by its markers, list or redactions, which are attached hereto as Attachment 7. In particular, for each document as to which the State claims privilege, it should be directed to supply (1) the date and type of document or information, (2) the person(s) who prepared the document or information, (3) the name and job title of each person to whom the document was shown, (4) the present location of the custodian of the document, (5) the basis for the privilege claim, (6) a description of the document or information sufficient to support the privilege, and (7) the paragraph of Kerr-McGee's interrogatories to which the document relates. If the State identifies any further documents for which it is claiming a privilege,[7] the State should be ordered to provide this same information. If the State cannot properly substantiate its claims, the withheld documents should be produced.

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[7] In its recent production for this and the License Amendment proceeding, the State has thus far identified only approximately 20 documents in its files for which it is claiming a privilege. Given the State's long history of litigation concerning the West Chicago site and its substantial involvement in the Kress Creek proceeding, it is inconceivable that the State's files are so scanty. Accordingly, the State should be directed to identify all responsive documents which it is withholding on a claim of privilege.

C. Summary of Request to Compel Production of Documents

In sum, Kerr-McGee requests that the Board issue an order: 1) compelling the State to search for and produce all responsive documents in the files of all State agencies that may possess responsive documents; 2) compelling the State to conduct a thorough search of all files located in the IDNS and the Attorney General's office that may contain responsive documents and to produce such documents; and 3) compelling the State properly to substantiate its privilege claims or to produce all documents for which such claims have not been adequately substantiated.[8]

II. THE STATE HAS FAILED TO PROVIDE COMPLETE ANSWERS TO INTERROGATORIES

A. Background

The State filed its Response to Kerr-McGee's First Set of Interrogatories on April 1, 1985. Kerr-McGee's interrogatories sought, inter alia, information about the State's contentions concerning the alleged contamination in Kress Creek, the factual basis for those contentions, and the studies and surveys of the Creek undertaken or relied upon by the State.

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[8] Of course, Kerr-McGee reserves the right to file another motion to compel to challenge the State's privilege claims once the information concerning these documents is provided. Although some of the State's privilege claims seem highly dubious -- e.g. the State's efforts to claim executive privilege and to deny access to information from an expert designated as a witness on the basis of work-product privilege -- Kerr-McGee may be required to address these matters in the future because the State's document production was tardy and is still incomplete.

The State's responses to many of these interrogatories were evasive or inadequate on their face, or incomplete due to unfounded objections.

In an effort to obtain responsive answers informally, Kerr-McGee counsel wrote to counsel for the State on April 17, 1985. See Letter from Meserve to Rapkin, April 17, 1985 (Attachment 8). In this letter, Kerr-McGee listed the interrogatory responses that it contended were inadequate, and set forth in both general and specific terms the reasons for Kerr-McGee's concerns. Kerr-McGee requested that the State supplement its answers to remedy the deficiencies described in the April 17 letter. On May 24, 1985, counsel for the State wrote to Kerr-McGee's counsel and indicated that the State would supplement certain responses but would stand by the State's responses to numerous other interrogatories (Attachment 9). On May 29, 1985, the State filed Supplemental Responses to four interrogatories (Attachment 10).

In spite of these informal efforts, the State has not responded, as required by 10 C.F.R. § 2.740(f) and 2.740b(b), to interrogatories 1(c), 3(b), 4(c), 5(d), 11, 15(d), 17, 18, 19, 20 and 24. Kerr-McGee therefore moves to compel responsive answers to the foregoing interrogatories.

B. General Deficiencies

The State's answers to numerous interrogatories suffer from two basic misunderstandings of the federal and NRC discovery rules. First, the State insists that it is not obligated to provide answers as to the State's contentions in

this proceeding if the contentions are based in part upon information contained in one or more of the over one million pages of materials that Kerr-McGee has produced. Second, the State believes that a general reference to documents "to be produced" suffices as a blanket answer to specific interrogatories even in instances where the State is in a superior position to review the documents and provide responsive answers. We discuss these two points in turn below.

1. State Contentions Based In Part Upon Kerr-McGee Documents

In response to Kerr-McGee's interrogatory requests to identify documents relating to the State's allegations concerning the presence of residual process chemicals (Interrogatory 1(c)), the source of the alleged contamination in Kress Creek (Interrogatory 3(b)), the license and statutory provisions allegedly violated and the nature of such alleged violations (Interrogatories 4(c) and 5(d)), and the alleged method of discharge of contaminants into the Creek (Interrogatory 15(d)), the State responds by citing, inter alia, "documents produced by Kerr-McGee in the Rare Earths proceeding." See Responses 1(c); 3(b); Supplemental Responses 4(c); 5(d); Response 15(d). The State makes no attempt to identify which of the over one million pages produced by Kerr-McGee it asserts to be the basis for its allegations. In the absence of such specification, Kerr-McGee is unable to determine what facts the State is relying on to support its allegations. It would be a simple matter for the State to identify the relevant

documents if they indeed exist; presumably the State has particular Kerr-McGee documents in mind and has already segregated them. On the other hand, it would be an almost impossible task for Kerr-McGee to sift through the voluminous documents it has produced in an effort to guess which responsive documents the State views as supporting its contentions. It is precisely in these circumstances that the federal discovery rules call for complete and responsive answers. Discovery, after all, is designed to provide the fullest practicable exchange of relevant facts before the hearing or trial. The State's shell-game tactics plainly contradict this principle.

The State asserts in a letter to Kerr-McGee counsel that "a party is not required to explain to its opponent which documents or information in the opponent's possession prove the party's case. . . . Moreover, I should think that the purpose of discovery is to enable a party to learn what relevant factual material the other side has beyond what is in the party's own knowledge and possession." Letter from Rapkin to Meserve at 3, May 24, 1985 (Attachment 9). This extraordinary characterization of "the purpose of discovery," unsupported by any authority, has been uniformly repudiated by courts for many years. As Professor Moore states, "the notion expressed by some courts [under the old "Equity Rules" of discovery] that interrogatories could not be used to request information already within the knowledge of the interrogating

party has been almost entirely discarded under Rule 33." 4A Moore's Federal Practice § 33.13 (1984). Courts routinely hold that it is immaterial whether information sought by an interrogatory is within the knowledge of the interrogating party; if a party has the requested information, it must answer the interrogatory forthrightly. See, e.g., City Consumer Services, Inc. v. Horne, 100 F.R.D. 740, 747 (D. Utah 1983); Cohn v. Dart Industries, Inc., 21 Fed. R. Serv. 2d 792, 793 (D. Mass. 1976).

The State should be ordered to provide complete answers to the interrogatories noted above, and to identify the documents upon which it purports to be relying in support of the designated allegations in this proceeding.

2. State Production of Documents in Lieu of Responses

In response to two multipart interrogatories concerning the State's Kress Creek sampling activities, the State simply answers that "Any non-privileged documents will be produced." See Interrogatories 19 & 20 and Responses thereto. Similarly, in its Supplemental Response to interrogatory 24, concerning studies of the potentially adverse health and environmental effects of the alleged contamination in Kress Creek, the State responds that "[t]he People have not conducted any studies except as may be found in the documents we produce, and are aware of only such studies as may be found in Kerr-McGee's discovery documents." Supplemental Response No. 24. These answers are plainly nonresponsive.

Presumably, the State is attempting to avoid the responsibility set forth in 10 C.F.R. § 2.740b to provide complete answers by relying on the NRC equivalent of Fed. R. Civ. P. 33(c). Rule 33(c) permits a party to answer an interrogatory by specifying the records from which the answer may be derived or ascertained and by making such records available for inspection. Fed. R. Civ. P. 33(c). But Rule 33(c) specifically requires that "[a] specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer can be ascertained," and the Rule 33(c) procedure may be utilized only when "the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served." Fed. R. Civ. P. 33(c). See Rainbow Pioneer v. Hawaii-Nevada Investment Corp., 711 F. 2d 902, 906 (9th Cir. 1983); Al Barnett & Son, Inc. v. Outboard Marine Corp., 611 F.2d 32, 35 (3d Cir. 1979); Budget Rent-A-Car of Missouri, Inc. v. Hertz Corp., 55 F.R.D. 354, 357 (W.D. Mo. 1972).

Here, the State's Responses clearly do not satisfy the Rule's requirements. The State has made no effort to specify which documents contain responsive information, as clearly required by the Rule. See Budget Rent-A-Car, supra, 55 F.R.D. at 357. It has not asserted in its Responses that Kerr-McGee is able to cull the requested information from the documents produced, let alone made the required showing that

the burden on Kerr-McGee to locate responsive information would be substantially the same as the burden on the State. See Al Barnett & Sons, Inc., supra, 611 F.2d at 35. In fact, the documents produced thus far contain only scattered references to State sampling activities and studies of the Creek and Kerr-McGee cannot begin to comprehend what sampling and studies the State has undertaken.

Furthermore, the State's responses do not even state unequivocally whether any sampling or study has been undertaken, but merely imply that if such activities have taken place, they will be reflected in the documents produced. Such a response "is little more than an offer to play the discredited game of blindman's bluff," and is clearly insufficient under Rule 33(c). In re Master Key Antitrust Litigation, 53 F.R.D. 87, 90 (D. Conn. 1971); accord: Lacey v. Superior Dental Laboratories, Inc., 21 Fed. R. Serv. 2d 1375, 1376 (E.D. Pa. 1974).

In addition, several of the subparts to Kerr-McGee's interrogatories require only "yes" or "no" answers or simple lists or dates; this is the kind of information that can easily be the subject of conventional interrogatory responses and for which the Rule 33(c) procedure was not intended. Lacey, supra, 21 Fed. R. Serv. 2d at 1376. All of the information requested by the subparts must be provided by conventional answers unless the State can identify, with the specificity required by Rule 33(c), documents that contain information responsive to each subpart. The State should be ordered to

provide responsive answers to interrogatories 19, 20 and 24, and to each subpart thereof.

C. Additional Deficiencies In the State's Answers to Interrogatories

In addition to the recurring deficiencies discussed above, the State has failed to provide responsive answers to the following three interrogatories:

1. Interrogatory No. 11

This interrogatory asks whether the State asserts that the material in the Creek poses significant risks. The State objects on the ground that "even assuming this interrogatory is relevant, the word 'significant' is vague." Response No. 11. Both the relevance and vagueness objections are meritless.

The significance of the risks presented by the alleged material in the Creek is clearly relevant, as Kerr-McGee's Averment raising this issue is, by Board order, a part of this proceeding. See Memorandum and Order (Ruling on Kerr-McGee's Motion for Reconsideration) at 5 (March 22, 1985)("We view Kerr-McGee's averment that the proponents must show a specific, significant risk as also relevant. . . .").

The word "significant," in the context of this proceeding, is not vague, but has a specific legal meaning. Kerr-McGee has set forth its view of the meaning of "significant risk" in both its Memorandum in Response to the Board's Questions at 26-30, filed Jan. 17, 1985, and in its Response to the State's First Set of Interrogatories, Response No. 12,

filed April 1, 1985. The phrase has been used in several decisions, including Industrial Union Department v. American Petroleum Institute, 448 U.S. 607, 642 (1980). Like other legal terms that the State frequently employs, such as "hazardous," the meaning of "significant risk" has been defined sufficiently to make any claim that it is "vague" patently frivolous. The State knows exactly what it is being asked by this interrogatory, and it should be compelled to provide a responsive answer without further equivocation.

2. Interrogatory No. 17

This interrogatory asks the State to identify "all correspondence concerning the alleged contamination in Kress Creek or the West Branch of the Dupage River" between the State and certain other entities. The State objects on the ground that the interrogatory "is vague, overbroad, and calls for potentially irrelevant material." Response No. 17. The State then effectively waives its objection by promising to produce "All relevant non-privileged documents responsive to this discovery request in the possession of the Attorney General's Office and the Illinois Department of Nuclear Safety." Id. In its letter responding to Kerr-McGee's informal request to provide a responsive answer to this interrogatory and interrogatory 18 (discussed below), the State represents that because "government offices serve the

public,"[9] they receive "countless requests, visits, and phone calls every week from local residents, other citizens, newspaper and radio reporters, and anyone else you care to think of." Letter from Rapkin to Meserve at 5, May 24, 1985 (Attachment 9). Yet in the documents produced thus far, very few letters between the State and such entities have been included, and relatively few letters between the State and other governmental entities concerning Kress Creek were produced. The State is either exaggerating the burden it is facing or it has not lived up to its promise to produce all relevant non-privileged documents.

The information requested by Kerr-McGee's interrogatory is clearly relevant because the presence of alleged contamination in the Creek is a central issue in this proceeding. Further, "[r]elevancy is broadly construed at the discovery stage of litigation and a request for discovery should be considered relevant if there is any possibility that the information sought may be relevant to the subject matter of the action." Flour Mills of America, Inc. v. D.F. Pace, 75 F.R.D. 676, 680 (E.D. Ok. 1977)(emphasis supplied). Correspondence between the State and other entities may reveal facts about the alleged contamination in the Creek not known to Kerr-McGee, and this interrogatory is directed to the discovery of such facts.

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[9] This representation underscores the paucity of any State argument that it represents only the Attorney General's office and IDNS.

With respect to the State's vagueness and overbreadth objections, Kerr-McGee simply notes that the interrogatory is clear, direct and narrow. It asks for correspondence between the State and other specified entities concerning one simple and clearly defined issue: the alleged contamination in Kress Creek. Arguments that the State may have to search its files to find such correspondence, or that the volume of such documents may be substantial, do not support objections of vagueness or overbreadth. The State should be compelled to answer the interrogatory completely and to produce all responsive documents.

3. Interrogatory No. 18

This interrogatory asks the State to identify and describe discussions that took place "at all private and public meetings that the State participated in or sponsored at which the alleged contamination of Kress Creek or the West Branch of the Dupage River was discussed." Again, the State objects on the ground that "this interrogatory is vague, overbroad, and calls for potentially irrelevant material." Response No. 18. In contrast to its response to interrogatory 17, however, the State refuses to identify or produce any information in response to this interrogatory.

In correspondence between counsel relating to this interrogatory, the State expressed its fear that Kerr-McGee is "fishing for the substance of conversations among [the proponents] concerning the various joint briefs submitted in this

proceeding," . . . [and for] "internal state policy decisions." Letter from Rapkin to Meserve at 5, May 24, 1985 (Attachment 9). But if this interrogatory reaches privileged information, the State is entitled to withhold such information based on a valid claim of privilege. It goes without saying that the State's objection has no bearing on responsive non-privileged information. Yet the State has provided no information at all.

Again, the issue to which this interrogatory is addressed -- the alleged contamination in the Creek -- is clearly relevant. The interrogatory is to be understood in terms of its plain and common-sense meaning. The interrogatory obviously does not require -- as the State purportedly fears -- a description of every conversation at the "water cooler." Similar interrogatories asking about the substance of meetings, discussions, and communications are routinely upheld against objections similar to the State's. See, e.g., In Re Shopping Carts Antitrust Litigation, 95 F.R.D. 299, 306-308 (S.D. N.Y. 1982).

D. Summary of Requests to Compel Answers to Interrogatories

For the reasons stated above, the State should be compelled to identify with specificity the Kerr-McGee documents referred to in its answers to interrogatories 1(c), 3(b), 4(c), 5(d), and 15(d); to provide complete and responsive answers to interrogatories 13, 20, 24 and each of the subparts thereof; and to remedy the specific deficiencies discussed

above with respect to its responses to interrogatories 11, 17 and 18.

Conclusion

For all of the reasons stated in Sections I and II above, Kerr-McGee respectfully requests that the Board enter an Order compelling the State to:

1) search for and produce all responsive documents in the files of all State agencies that may possess responsive documents;

2) conduct a thorough search of all files located in the IDNS and the Attorney General's Office that may contain responsive documents and produce such documents;

3) properly substantiate its privilege claims or produce all documents for which such claims have not been substantiated; and

4) provide fully responsive answers to interrogatories 1(c), 3(b), 4(c), 5(d), 11, 15(d), 17, 18, 19, 20 and 24.

Respectfully submitted,

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Dated: July 3, 1985

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-SC
(Kress Creek Decontamination)	)	ASLBP No. 84-502-01-SC

KERR-McGEE CHEMICAL CORPORATION'S
FIRST SET OF INTERROGATORIES AND REQUESTS FOR
DOCUMENTS AS TO ADMITTED CONTENTIONS
TO THE STATE OF ILLINOIS

Kerr-McGee Chemical Corporation ("Kerr-McGee") requests that the State of Illinois ("the State"), through its duly authorized representatives, answer the following interrogatories under oath in accordance with 10 C.F.R. § 2.740b and produce the following documents in accordance with 10 C.F.R. § 2.741. Such answers and documents shall be produced at the offices of Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C. These interrogatories and requests for documents concern matters asserted by the State in the above-captioned proceeding.

DEFINITIONS

"Document" shall mean the complete original (or if the original is not in your custody, control, or possession, then a complete copy of the original) and each nonidentical copy (whether different from the original because of notes

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made on the copy or otherwise) of all written, recorded or graphic material however produced or reproduced now or at any time in the possession, custody, or control of the State, or any agent or representative of the State, including but not limited to: any letter, correspondence, memorandum, book, journal, article, paper, report, study, manual, worksheet, record, account, communication, minute, contract, note, record of telephone or personal conversation or conference, inter-office communication, inter-agency communication, drawing, date book, calendar, microfilm, tape recording, bulletin, circular, pamphlet, notice, computer printout, photograph, blueprint, instrument recording chart, plan, survey, working draft, newspaper or other press and media articles, and all writings of any nature whatsoever within the State's possession, custody, or control.

"Identify," when used in relation to a natural person, shall mean to supply: that person's full name; present and/or last known residential and business address; present employer; and offices, titles, or positions with that employer.

"Identify," when used in relation to a business or governmental entity shall mean to supply: that entity's legal name; present or last known address; and state of incorporation.

"Identify," when used in relation to the term "document," shall mean to supply: the date of the document; the names of its authors and recipients; a description of the

document in sufficient detail to enable it to be identified; and the present location of, and name and address of the present custodian of, such document.

"Identify," when used in relation to a chemical compound, shall mean to supply the chemical name or chemical formula of the compound.

"Person" shall mean any natural person and any partnership, firm, corporation, association, joint venture, governmental unit, or any other business or legal entity.

CLAIMS OF PRIVILEGE

If the State claims that any information requested in these Interrogatories or any document covered by this Request is not subject to discovery on grounds of any privilege, the State shall supply with respect to each such item:

1. the date of the information or document;

2. the type or nature of the information or document (e.g., letter, conversation, etc.);

3. the person or person who prepared the information or document and his, her, or their job title(s);

4. the name and job title of each person to whom the document was shown;

5. the present location and custodian of the document;

6. the basis on which the State claims the privilege;

7. a description of the information or the contents of the document sufficient to support the claim of privilege; and

8. the paragraph of these interrogatories or request for documents to which the document relates.

INTERROGATORIES

1. With respect to the State's Revised Contention 1a:

(a) State the basis for the contention that the materials involved in this proceeding may be contaminated with residual process chemicals.

(b) Identify the residual process chemicals that may be found in the materials involved in this proceeding.

(c) Identify any and all documents that relate to the presence of residual process chemicals in the materials involved in this proceeding.

(d) Specify how any chemicals found in the areas investigated as a result of this proceeding will be identified as residual process chemicals.

(e) Define with specificity the phrase "near or below."

(f) Identify, by reference to specific chemical or physical processes, the manner in which residual process chemicals, if they were present in the materials involved in this proceeding, may have "leached" out of the those materials.

2. With respect to the State's Revised Contention 1b:

(a) Identify the "other contaminants" to which this Contention makes reference.

(b) State the basis, separately for each contaminant identified in Subpart (a) above, for the State's contention that "site-contaminated materials" may also be contaminated from sources other than the site.

(c) Identify any and all documents that relate to the presence of contaminants from sources other than the site in the materials involved in this proceeding.

(d) Has the State performed any studies to determine the nature, presence, or other characteristics of contaminants from sources other than the site in the materials involved in this proceeding?

(e) If the response to Subpart (d) above is other than an unqualified "no," identify each and every such study.

(f) Identify, separately for each contaminant and with specificity, the probable source(s) of each contaminant identified in response to Subpart (a) above.

(g) Define with specificity the term "resuspended or otherwise released," including the concentration or detection level at which each substance identified in response to Subpart (a) above should be deemed to be "resuspended or otherwise released."

(h) Identify with specificity the physical, chemical, or biological mechanisms by which each of the contaminants identified in Subpart (a) above could be resuspended or released during cleanup operations.

(i) Identify with specificity the legal basis on which Kerr-McGee would be required to make an affirmative showing as to contaminants not generated at its facility.

(j) Identify the specific provisions of the Atomic Energy Act and of regulations thereunder that could not be met in the absence of the showing referenced in Subpart (i) above.

(k) Identify with specificity the jeopardy to the public health and safety that would exist in the absence of the showing referenced in Subpart (i) above.

3. With reference to the State's Contention 6:

(a) Identify with specificity the basis for the contention that the referenced contamination originates from the Kerr-McGee West Chicago Rare Earths Facility.

(b) Identify each and every document that supports or otherwise relates to the response to Subpart (a) above.

4. Does the State contend that Kerr-McGee violated any requirement imposed by its NRC (or AEC) license with respect to mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River? If so:

(a) State the license requirement that was allegedly violated, and the date such requirement was incorporated into Kerr-McGee's license.

(b) State when such violation or violations occurred, and describe the nature of such violation or violations with particularity.

(c) Identify all documents relating to such violation or violations.

5. Does the State contend that Kerr-McGee violated any statutory or regulatory requirement imposed by the Atomic Energy Act, as amended, or any regulations promulgated thereunder, other than the radium-in-soil standard set forth in the Order to Show Cause in this proceeding, with respect to mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River? If so:

(a) State the statutory or regulatory provisions that were allegedly violated, and the date when such provisions were enacted or promulgated.

(b) State when such violation or violations occurred, and describe the nature of such violation or violations with particularity.

(c) Identify all statutory provisions and regulations, other than those promulgated pursuant to the Uranium Mill Tailings Radiation Control Act (UMTRCA), if any, that provide the NRC with authority to order cleanup by Kerr-McGee of off-site tailings allegedly found in Kress Creek or the West Branch of the DuPage River, and state with specificity the level of cleanup required by such provisions.

(d) Identify all documents relating to any violation or violations identified in (a) and (b), and all documents relating to your response to (c).

6. Does the State contend that Kerr-McGee violated any state law or regulation with respect to mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River? If so:

(a) State the statutory or regulatory provisions that were allegedly violated, and the date when such provisions were enacted or promulgated.

(b) State the date when such violation or violations occurred, and describe the nature of such violation or violations with particularity.

(c) Identify all statutory provisions and regulations that provide a basis for requiring cleanup by Kerr-McGee of off-site tailings allegedly found in Kress Creek or the West Branch of the DuPage River, and state with specificity the level of cleanup required by such provisions.

(d) Identify all documents relating to any violation or violations identified in (a) and (b), and all documents relating to your response to (c).

7. Does the State contend that the alleged presence of mill tailings in Kress Creek or the West Branch of the DuPage River violates any state law or regulation? If so:

(a) State the statutory or regulatory provisions that are allegedly violated, and the date when such provisions were enacted or promulgated.

(b) State when such violation or violations occurred, and describe the nature of such violation or violations with particularity.

(c) Identify all statutory provisions and regulations that provide a basis for requiring cleanup by Kerr-McGee of off-site tailings allegedly found in Kress Creek or the West Branch of the DuPage River, and state with specificity the level of cleanup required by such provisions.

(d) Identify all documents relating to any violation or violations identified in (a) and (b), and all documents relating to your response to (c).

8. Does the State contend that mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River present a hazardous condition? If so:

(a) State the basis for this assertion.

(b) Identify all documents relating to the assessment of the hazard presented by the presence of such tailings.

9. Does the State concur with the conclusion in the Final Report of ORAU described in the Order to Show Cause that the primary mode of exposure of the local population through mill tailings is external gamma radiation?

10. Has the State made any estimate of the dose to any member of the public resulting from the mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River? If so:

(a) State the estimates of the dose resulting from the alleged contamination.

(b) Identify all documents relating to such estimates.

11. Does the State contend that the mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River pose significant risks to the public health, safety, or the environment? If so:

(a) State the basis for that assertion.

(b) Identify all documents relating to any State estimate of risk arising from mill tailings.

12. Has the State made any estimate of the costs associated with any cleanup of mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River? If so:

(a) State the estimate of costs.

(b) Identify all documents relating to the estimation of the cost of cleanup.

13. Has the State made any assessment of the risks to the public health, safety, or environment that might result from the implementation of any clean-up program for mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River? If so:

(a) State the results of any such assessment.

(b) Identify all documents relating to any such assessment.

14. Has the State made any assessment of the relationship between the costs and benefits of the cleanup of mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River? If so:

(a) State the results of any such assessment.

(b) Identify all documents relating to any such assessment.

15. With regard to the allegations in the Order to Show Cause concerning the mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River, does the State agree with the assertion that wastes from the Rare Earths Facility were disposed of by being discharged into Kress Creek? If so:

(a) State the basis for the State's view.

(b) Describe the mechanism or process by which such releases occurred.

(c) State the dates, with as much specificity as possible, on which the State asserts that such releases occurred.

(d) Identify all documents relating to any such releases.

16. Does the State assert that "source material," as defined in the Atomic Energy Act and in regulations promulgated thereunder, is found in Kress Creek or the West Branch of the DuPage River? Is so:

(a) State the basis for the assertion.

(b) Identify all documents relating to the presence of source material in Kress Creek or the West Branch of the DuPage River.

17. Identify all correspondence regarding the alleged contamination in Kress Creek or the West Branch of the DuPage River between the State and: other citizens or property owners in West Chicago; any local or federal officials or regulatory bodies; or any members of the print, broadcast, television, or other media.

18. Identify with reasonable specificity and describe the discussions that took place at all private and public meetings that the State participated in or sponsored at which the alleged contamination of Kress Creek or the West Branch of the DuPage River was discussed, including meetings with Kerr-McGee or its predecessors in interest; other citizens or property owners in West Chicago; any local or federal officials or regulatory bodies; or any members of the print, broadcast, television, or other media.

19. State whether you have taken, or anyone on your behalf has taken, any sample of soil, surface water, groundwater, or ambient air from any location in or near Kress Creek or the West Branch of the DuPage River. If your response is other than an unqualified negative, for each sample:

(a) State the date the sample was taken;

(b) State the exact location from which the sample was taken;

(c) Identify each person who took the sample;

(d) Describe the method used to take the sample;

(e) State whether one or more split samples were taken;

(f) State whether the taking of any sample was intended to follow a written or verbal protocol;

(g) Describe in detail each such protocol;

(h) Identify the present custodian of each such sample;

(i) State whether the sample or any portion thereof was archived for future analysis; and

(j) Identify each document not previously identified which relates to or reflects any information supplied in response to subparagraphs (a)-(i) above.

20. State whether you have performed, or anyone on your behalf has performed, any test, analysis, inspection, or measurement of any sample identified in the response to interrogatory 17. If your response is other than an unqualified negative, for each such test, analysis, inspection, or measurement:

(a) Identify the sample;

(b) State the date of the test, analysis, inspection, or measurement;

(c) Identify the persons who performed the test, analysis, inspection, or measurement;

(d) Describe in detail the specific procedures followed;

(e) Describe the equipment used;

(f) State whether the test, analysis, inspection, or measurement performed was supposed to follow a written or verbal protocol;

(g) Describe in detail each such protocol;

(h) Identify conditions relevant to the work performed, including, but not limited to, ambient temperature, humidity, lighting conditions, and location;

(i) State the results obtained; and

(j) Identify each document which relates to or reflects any information supplied in response to subparagraphs (a)-(i) above.

21. State whether you have any information or knowledge of any sampling or analysis of groundwater, surface water, soil, or ambient air in or near Kress Creek or the West Branch of the DuPage River by persons other than the State or persons acting on its behalf, or on behalf of the United States Nuclear Regulatory Commission. For each such sampling or analysis:

(a) Identify the place at which the sampling or analysis was performed;

(b) Identify each person who performed the sampling or analysis;

(c) Describe in detail each sampling or analysis;

(d) State when the sampling or analysis was performed;

(e) Identify each document which relates to or reflects any information supplied in response to subparagraphs (a)-(d) above.

22. Identify and describe all studies, reports, surveys, and other documents prepared or used by the State concerning:

(a) The ecological composition of Kress Creek;

(b) The effect of wastes generated from operations conducted at the Rare Earths Facility on Kress Creek or any other naturally occurring body of water;

(c) The properties adjacent to Kress Creek;

(d) The effects of delay in decontaminating properties contaminated with thorium waste, including properties in West Chicago.

23. Has the State conducted, caused to be conducted, or participated in any studies, whether formal or informal, of adverse or potentially adverse effects on health or the environment resulting from alleged contaminant releases at or from Kress Creek or the West Branch of the DuPage River? If your response is other than an unqualified negative,

(a) Identify the person(s) who conducted or participated in such studies;

(b) Describe the methodologies used;

(c) State the date or time period during which such studies took place; and

(d) Identify all documents relating to or reflecting such studies.

24. Has the State conducted, caused to be conducted, or participated in, or is the State aware of any studies of geographic areas other than Kress Creek or the West Branch of the DuPage River, whether formal or informal, of adverse or potentially adverse effects on health or the environment resulting from releases or alleged releases of contaminants similar to those at issue in this proceeding, to which the State intends to refer as being relevant with respect to the admitted contentions? If your response is other than an unqualified negative,

(a) Identify the person(s) who conducted or participated in such studies;

(b) Describe the methodologies used;

(c) State the date or time period during which such studies took place; and

(d) Identify all documents relating to or reflecting such studies.

25. Does the State know of any person who claims to have suffered bodily injury or damage to property as the result of the alleged contamination in Kress Creek or the West Branch of the DuPage River?

(a) If so, identify any such person.

(b) If so, identify, with reasonable specificity, the nature of the injury or damage allegedly sustained.

(c) If so, state the date such claimed injury or damage was sustained.

(d) Identify all documents relating to any such claims.

26. In the State's view, would cleanup to levels above those specified in the Order to Show Cause satisfy the requirements of the Atomic Energy Act, as amended, and regulations promulgated thereunder?

(a) If not, why not?

(b) If so, describe with reasonable specificity the nature of the any cleanup plan, including the cleanup levels involved, that would satisfy such requirements.

(c) If so, state with reasonable specificity the State's reasons for concluding that such a plan would satisfy such requirements.

(d) Identify all documents relating to your answers to (a), (b), and (c).

27. Identify all witnesses that the State intends to call with respect to the admitted contentions.

28. For each witness identified in response to Interrogatory No. 27 for whom a current and complete resume is unavailable, state: that witness's past employers; dates of present and past employment; offices, titles, or positions with past employers; educational background, including degrees obtained, colleges or universities attended, and dates of attendance; and a bibliography of books, articles, and reports that the witness has published or has submitted for publication.

29. State in reasonable detail the substance of the testimony of each witness identified in response to Interrogatory No. 27.

30. Will any witness called by the State testify as to any study, calculation, or analysis? If so, for each such witness:

(a) Identify the person(s) who conducted or participated in each such study, calculation, or analysis;

(b) Describe in detail the information or data that were subject to each such study, calculation, or analysis;

(c) Describe the methodology used in each such study, calculation, or analysis;

(d) Describe the results of each such study, calculation, or analysis;

(e) State the date or the period during which each such study, calculation, or analysis took place; and

(f) Identify all documents relating to or reflecting each such study, calculation, or analysis.

31. Identify any document on which each witness identified in response to Interrogatory No. 27 will rely in his or her testimony.

32. Specify each witness identified in response to Interrogatory No. 27 whom you intend to call to testify at trial as an expert witness, and for each such expert witness state:

(a) The subject matter on which the expert is expected to testify;

(b) The expert's conclusions and opinions;

(c) The complete basis for the expert's conclusions and opinions; and

(d) The expert's qualifications.

33. State whether any expert witness identified in the response to Interrogatory No. 32 participated in or observed any of the sampling identified in the responses to Interrogatories 19-21. If your response is other than an unqualified negative;

(a) Identify the expert; and

(b) For each expert, identify the sampling which he or she participated in or observed.

34. State whether any expert witness identified in the response to Interrogatory No. 32 participated in or observed any of the tests, analyses, inspections, or measurements identified in the responses to Interrogatories 20-23. If your response is other than an unqualified negative,

(a) Identify the expert; and

(b) For each expert, identify the test, analysis, inspection or measurement he or she participated in or observed.

35. As to each of the requests for documents, identify the person or persons who participated in assembling such documents.

36. As to each of the foregoing interrogatories, identify the person or persons who prepared the answer, and if

the information furnished is not within the personal knowledge of the person answering, identify the person who has such knowledge. For interrogatories consisting of multiple subparts, answer separately for each subpart.

REQUESTS FOR DOCUMENTS

1. All documents identified in response to Interrogatory 1(c).

2. All documents identified in response to Interrogatory 2(c).

3. All documents identified in response to Interrogatory 2(e).

4. All documents identified in response to Interrogatory 3(b).

5. All documents identified in response to Interrogatory 4(c).

6. All documents identified in response to Interrogatory 5(d).

7. All documents identified in response to Interrogatory 6(d).

8. All documents identified in response to Interrogatory 7(d).

9. All documents identified in response to Interrogatory 8(b).

10. All documents identified in response to Interrogatory 10(b).

11. All documents identified in response to Interrogatory 11(b).

12. All documents identified in response to Interrogatory 12(b).

13. All documents identified in response to Interrogatory 13(b).

14. All documents identified in response to Interrogatory 14(b).

15. All documents identified in response to Interrogatory 15(d).

16. All documents identified in response to Interrogatory 16(b).

17. All documents identified in response to Interrogatory 17.

18. All documents identified in response to Interrogatory 19(j).

19. All documents identified in response to Interrogatory 20(j).

20. All documents identified in response to Interrogatory 21(e).

21. All documents identified in response to Interrogatory 22.

22. All documents identified in response to Interrogatory 23(d).

23. All docuemnts identified in response to Interrogatory 24(d).

24. All documents identified in response to Interrogatory 25(d).

25. All documents identified in response to Interrogatory 26(d).

26. A complete and current resume for each witness identified in response to Interrogatory 27.

27. All documents identified in response to Interrogatory 30(f).

28. All documents identified in response to Interrogatory 31.

Respectfully submitted,

Peter J. Nickles
Richard A. Meserve

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Counsel for Kerr-McGee
Chemical Corp.

Dated: February 15, 1985

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-SC
	)	ASLBP No. 84-502-01-SC
(Kress Creek Decontamination)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Kerr-McGee Chemical Corporation's First Set of Interrogatories and Requests for Documents as to Admitted Contentions to the State of Illinois have been served by first-class mail, postage prepaid, on this 15th day of February, 1985, as follows:

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Chairman
The Atomic Safety and Licensing Board
Nuclear Regulatory Commission
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Washington, D.C. 20555

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The Atomic Safety and Licensing Board
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Richard A. Meserve

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
U.S. NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	Docket No. 40-2061
KERR-McGEE CHEMICAL CORPORATION	)	
(Kress Creek Decontamination)	)	

PEOPLE'S RESPONSE TO
KERR-McGEE'S FIRST DISCOVERY REQUEST

INTERROGATORIES

Interrogatory 1

With respect to the State's Revised Contention 1a:

(a) State the basis for the contention that the materials involved in this proceeding may be contaminated with residual process chemicals.

(b) Identify the residual process chemicals that may be found in the materials involved in this proceeding.

(c) Identify any and all documents that relate to the presence of residual process chemicals in the materials involved in this proceeding.

(d) Specify how any chemicals found in the areas investigated as a result of this proceeding will be identified as residual process chemicals.

(e) Define with specificity the phrase "near or below."

(f) Identify, by reference to specific chemical or physical processes, the manner in which residual process chemicals, if they were present in the materials involved in this proceeding, may have "leached" out of those materials.

Answer

(a) See ¶5, p. 3 of the People's Petition For Leave To Intervene filed July 10, 1984.

(b) Until the residual process chemicals that have been present in the onsite (i.e., at the Rare Earths Facility) wastes are identified, this Interrogatory cannot be answered.

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(c) The FES, Kerr-McGee's Stabilization Plan for decommissioning the Rare Earths Facility, and documents produced by Kerr-McGee in the Rare Earths Facility proceeding.

(d) Objection, on the ground that this Interrogatory is irrelevant.

(e) This phrase cannot be defined with precision because it is unknown without study of the affected areas how far chemicals may have migrated.

(f) Residual process chemicals, if they were present in the materials, may have leached out of those materials by dissolution or physical transport.

Interrogatory 2

With respect to the State's Revised Contention 1b:

(a) Identify the "other contaminants" to which this Contention makes references.

(b) State the basis, separately for each contaminant identified in Subpart (a) above, for the State's contention that "site-contaminated materials" may also be contaminated from sources other than the site.

(c) Identify any and all documents that relate to the presence of contaminants from sources other than the site in the materails involved in this proceeding.

(d) Has the State performed any studies to determine the nature, presence, or other characteristics of contaminants from sources other than the site in the materials involved in this proceeding?

(e) If the response to Subpart (d) above is other than an unqualified "no," identify each and every such study.

(f) Identify, separately for each contaminants and with specificity, the probable source(s) of each contaminant identified in response to Subpart (a) above.

(g) Define with specificity the term "resuspended or otherwise released," including the concentration or detection level at which each substance identified in response to Subpart (a) above should be deemed to be "resuspended or otherwise released."

(h) Identify with specificity the physical, chemical, or biological mechanisms by which each of the contaminants identifed in Subpart (a) above could be resuspended or released during cleanup operations.

(i) Identify with specificity the legal basis on which Kerr-McGee would be required to make an affirmative showing as to contaminants not generated at its faiclity.

(j) Identify the specific provisions of the Atomic Energy Act and of regulations thereunder that could not be met in the absence of the showing referenced in Subpart (i) above.

(k) Identify with specificity the jeopardy to the public health and safety tha would exist in the absence of the showing referenced in Subpart (i) above.

Answer

(a) In the absence of studies of the affected areas, the People cannot identify other contaminants that may be present in the thorium wastes involved in this proceeding.

(b) Other entities besides Kerr-McGee may have discharged contaminants into Kress Creek or West Branch DuPage River.

(c) The People do not rely on any documents for this contention.

(d) No.

(e) N/A.

(f) N/A.

(g) This phrase means to be dispersed.

(h) N/A.

(i) Objection, on the ground that this Interrogatory calls for a legal conclusion.

(j) Objection, on the ground that this Interrogatory calls for a legal conclusion.

(k) Objection, on the ground that this Interrogatory is tautological. It effectively asks how the public health and safety would be jeopardized in the absence of a showing that hazardous substances--i.e. substances jeopardizing the public health and safety--will not be released.

Interrogatory 3

With reference to the State's Contention 6:

(a) Identify with specificity the basis for the contention that the referenced contamination originates from the Kerr-McGee West Chicago Rare Earths Facility.

(b) Identify each and every document that supports or otherwise relates to the respnose to Subpart (a) above.

Answer

(a) The Staff's Show Cause Order; the FES; documents provided by Kerr-McGee in the Rare Earths Facility proceeding; Kerr-McGee's answers to Interrogatories in this proceeding.

(b) See answer to Interrogatory 3(a).

Interrogatory 4

Does the State contend that Kerr-McGee violated any requirement imposed by its NRC (or AEC) license with respect to mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River? If so:

(a) State the license requirement that was allegedly violated, and the date such requirement was incorporated into Kerr-McGee's license.

(b) State when such violation or violations occurred, and describe the nature of such violation or violations with particularity.

(c) Identify all documents relating to such violation or violations.

Answer

Objection, on the ground that this Interrogatory calls for a legal conclusion.

Interrogatory 5

Does the State contend that Kerr-McGee violated any statutory or regulatory requirement imposed by the Atomic Energy Act, as amended, or any regulations promulgated thereunder, other than the radium-in-soil standard set forth in the Order to Show Cause in this proceeding, with respect to mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River? If so:

(a) State the statutory or regulatory provisions that were allegedly violated, and the date when such provisions were enacted or promulgated.

(b) State when such violation or violations occurred, and describe the nature of such violation or violations with particularity.

(c) Identify all statutory provisions and regulations, other than those promulgated pursuant to the Uranium Mill Tailings Radiation Control Act (UMTRCA), if any, that provide the NRC with authority to order cleanup by Kerr-McGee of off-site tailings allegedly found in Kress Creek or the West Branch of the DuPage River, and state with specificity the level of cleanup required by such provisions.

(d) Identify all documents relating to any violation or violations identified in (a) and (b), and all documents relating to your response to (c).

Answer

Objection, on the ground that this Interrogatory calls for a legal conclusion.

Interrogatory 6

Does the State contend that Kerr-McGee violated any state law or regulation with respect to mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River? If so:

(a) State the statutory or regulatory provisions that were allegedly violated, and the date when such provisions were enacted or promulgated.

(b) State the date when such violation or violations occurred, and describe the nature of such violation or violations with particularity.

(c) Identify all statutory provisions and regulations that provide a basis for requiring cleanup by Kerr-McGee of off-site tailings allegedly found in Kress Creek or the West Branch of the DuPage River, and state with specificity the level of cleanup required by such provisions.

(d) Identify all documents relating to any violation or violations identified in (a) and (b), and all documents relating to your response to (c).

Answer

Objection, on the ground that this Interrogatory calls for a legal conclusion.

Interrogatory 7

Does the State contend that the alleged presence of mill tailings in Kress Creek or the West Branc of the DuPage River violates any state law or regulation? If so:

(a) State the statutory or regulatory provisions that are allegedly violated, and the date when such provisions were enacted or promulgated.

(b) State when such violation or violations occurred, and describe the nature of such violation or violations with particularity.

(c) Identify all statutory provisions and regulations that provide a basis for requiring cleanup by Kerr-McGee of off-site tailings allegedly found in Kress Creek or the West Branch of the DuPage River, and state with specificity the level of cleanup required by such provisions.

(d) Identify all documents relating to any violation or violations identified in (a) and (b), and all documents relating to your response to (c).

Answer

Objection, on the ground that this Interrogatory calls for a legal conclusion.

Interrogatory 8

Does the State contend that mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River present a hazardous condition? If so:

(a) State the basis for this assertion.

(b) Identify all documents relating to the assessment of the hazard presented by the presence of such tailings.

Answer

Yes.

(a) The Staff's Show Cause Order; 1978 Frigerio Report; the ORAU study.

(b) See answer to Interrogatory 8(a).

Interrogatory 9

Does the State concur with the conclusion in the Final Report of ORAU described in the Order to Show Cause that the primary mode of exposure of the local population through mill tailings is external gamma radiation?

Answer

The ORAU Report did not conclude that "the primary mode of exposure of the local population through mill tailings" is external gamma radiation. Rather, the ORAU Report concluded that the primary mode of exposure of the local population from the tailings at Kress Creek is "likely" to be external gamma radiation (p.14). Additional hazards are posed by the possibility of ingestion and exposures through unknown future uses.

Interrogatory 10

Has the State made any estimate of the dose to any member of the public resulting from the mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River? If so:

(a) State the estimates of the dose resulting from the alleged contamination.

(b) Identify all documents relating to such estimates.

Answer

No.

(a) N/A.

(b) N/A.

Interrogatory 11

Does the State contend that the mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River pose significant risks to the public health, safety, or the environment? If so:

(a) State the basis for that assertion.

(b) Identify all documents relating to any State estimate of risk arising from mill tailings.

Answer

Objection, on the ground that, even assuming this Interrogatory is relevant, the word "significant" is vague.

Interrogatory 12

Has the State made any estimate of the costs associated with any cleanup of mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River? If so:

(a) State the estimate of costs.

(b) Identify all documents relating to the estimation of the cost of cleanup.

Answer

No.

(a) N/A.

(b) N/A.

Interrogatory 13

Has the State made any assessment of the risks to the public health, safety, or environment that might result from the

implementation of any clean-up program for mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River? If so:

(a) State the results of any such assessment.

(b) Identify all documents relating to any such assessment.

Answer

No.

(a) N/A.

(b) N/A.

Interrogatory 14

Has the State made any assessment of the relationship between the costs and benefits of the cleanup of mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River? If so:

(a) State the results of any such assessment.

(b) Identify all documents relating to any such assessment.

Answer

No.

(a) N/A.

(b) N/A.

Interrogatory 15

With regard to the allegations in the Order to Show Cause concerning the mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River, does the State agree with the assertion that wastes from the Rare Earths Facility were disposed of by being discharged into Kress Creek? If so:

(a) State the basis for the State's view.

(b) Describe the mechanism or process by which such releases occurred.

(c) State the dates, with as much specificity as possible, on which the State asserts that such releases occurred.

(d) Identify all documents relating to any such releases.

Answer

The State agrees that wastes from the Rare Earths Facility were discharged into Kress Creek.

(a) The Staff's Show Cause Order; Kerr-McGee's answers to Interrogatories in this proceeding; storm sewer map of City of West Chicago; and documents produced by Kerr-McGee in the Rare Earths Facility proceeding.

(b) At this time it appears that waste from the Rare Earths Facility entered a storm drainage system serving the site during storm events and flowed to Kress Creek. Additional discharge to the storm drainage system may have occurred due to pumping of sumps at the site.

(c) The People assume the releases began when thorium milling operations commenced at the site. The People do not know whether or when the releases ceased.

(d) See answer to Interrogatory 15(a).

Interrogatory 16

Does the State assert that "source material," as defined in the Atomic Energy Act and in regulations promulgated thereunder, is found in Kress Creek or the West Branch of the DuPage River? If so:

(a) State the basis for the assertion.

(b) Identify all documents relating to the presence of source material in Kress Creek or the West Branch of the DuPage River.

Answer

The People do not assert that "source material" as defined in the Atomic Energy Act and regulations thereunder is

found in Kress Creek or the West Branch DuPage River. Source material may or may not be present in those streams.

Interrogatory 17

Identify all correspondence regarding the alleged contamination in Kress Creek or the West Branch of the DuPage River between the State and: other citizens or property owners in West Chicago; any local or federal officials or regulatory bodies; or any members of the print, broadcast, television, or other media.

Answer

Objection, on the ground that this Interrogatory is vague, overbroad, and calls for potentially irrelevant material. All relevant non-privileged documents responsive to this discovery request in the possession of the Attorney General's Office and the Illinois Department of Nuclear Safety will be produced.

Interrogatory 18

Identify with reasonable specificity and describe the discussions that took place at all private and public meetings that the State participated in or sponsored at which the alleged contamination of Kress Creek or the West Branch of the DuPage River was discussed, including meetings with Kerr-McGee or its predecessors in interest; other citizens or property owners in West Chicago; any local or federal officials or regulatory bodies; or any members of the print, broadcast, television, or other media.

Answer

Objection, on the ground that this Interrogatory is vague, overbroad, and calls for potentially irrelevant material.

Interrogatory 19

State whether you have taken, or anyone on your behalf has taken, any sample of soil, surface water, groundwater, or ambient air from any location in or near Kress Creek or the West Branch of the DuPage River. If your response is other than an unqualified negative, for each sample:

(a) State the date the sample was taken;

(b) State the exact location from which the sample was taken;

(c) Identify each person who took the sample;

(d) Describe the method used to take the sample;

(e) State whether one or more split samples were taken;

(f) State whether the taking of any sample was intended to follow a written or verbal protocol;

(g) Describe in detail each such protocol;

(h) Identify the present custodian of each such sample.

(i) State whether the sample or any portion thereof was archived for future analysis; and

(j) Identify each document not previously identified which relates to or reflects any information supplied in response to subparagraphs (a)-(i) above.

Answer

Any nonprivileged documents will be produced.

(a)-(i) N/A.

Interrogatory 20

State whether your have performed, or anyone on your behalf has performed, any test, analysis, inspection, or measurement of any sample identified in the response to interrogatory 17. If your response is other than an unqualified negative, for each such test, analysis, inspection, or measurement:

(a) Identify the sampe;

(b) State the date of the test, analysis, inspection, or measurement;

(c) Identify the persons who performed the test, analysis, inspection, or measurement;

(d) Describe in detail the specific procedures followed:

(e) Describe the equipment used;

(f) State whether the test, analysis, inspection, or measurement performed was supposed to follow a written or verbal protocol;

(g) Describe in detail each such protocol;

(h) Identify conditions relevant to the work performed, including, but not limited to, ambient temperature, humidity, lighting conditions, and location;

(i) State the results obtained; and

(j) Identify each document which relates to or reflects any information supplied in response to subparagraphs (a)-(i) above.

Answer

Any nonprivileged documents will be produced.

(a)-(j) N/A.

Interrogatory 21

State whether you have any information or knowledge of any sampling or analysis of groundwater, surface water, soil, or ambient air in or near Kress Creek or the West Branch of the DuPage River by persons other than the State or persons acting on its behalf, or on behalf of the United States Nuclear Regulatory Commission. For each such sampling or analysis:

(a) Identify the place at which the sampling or analysis was performed;

(b) Identify each person who performed the sampling or analysis;

(c) Describe in detail such sampling or analysis;

(d) State when the sampling or analysis was performed;

(e) Identify each document which relates to or reflects any information supplied in response to subparagraphs (a)-(d) above.

Answer

USEPA may have conducted sampling in the area of Kress Creek or West Branch DuPage River, but the People do not have any details. The People know of no other sampling or analysis of the area other than by the NRC and its contractors and by Kerr-McGee.

Interrogatory 22

Identify and describe all studies, reports, surveys, and other documents prepared or used by the State concerning:

(a) The ecological composition of Kress Creek;

(b) The effect of wastes generated from operations conducted at the Rare Earths Facility on Kress Creek or any other naturally occurring body of water;

(c) The properties adjacent to Kress Creek;

(d) The effects of delay in decontaminating properties contaminated with thorium waste, including properties in West Chicago.

Answer

The People object to this interrogatory in that the word "used" is (1) vague and (2) may call for information that is privileged as work-product. With respect to preparation of documents concerning the "ecological composition" of Kress Creek, the People are not sure what that phrase means; assuming that it means the types of flora and fauna found in and along Kress Creek, the People have not prepared any such documents. Nor have the People prepared any documents described in (b)-(d).

Interrogatory 23

Has the State conducted, caused to be conducted, or participated in any studies, whether formal or informal, of adverse or potentially adverse effects on health or the environment resulting from alleged contaminant releases at or from Kress Creek or the West Branch of the DuPage River? If your response is other than an unqualified negative:

(a) Identify the person(s) who conducted or participated in such studies;

(b) Describe the methodologies used;

(c) State the date or time period during which such studies took place; and

(d) Identify all documents relating to or reflecting such studies.

Answer

No.

(a)-(d) N/A.

Interrogatory 24

Has the State conducted, caused to be conducted, or participated in, or is the State aware of any studies of geographic areas other than Kress Creek or the West Branch of the DuPage River, whether formal or informal, of adverse or potentially adverse effects on health or the environment resulting from releases or alleged releases of contaminants similar to those at issue in this proceeding, to which the State intends to refer as being relevant with respect to the admitted contentions? If your response is other than an unqualified negative,

(a) Identify the person(s) who conducted or participated in such studies;

(b) Describe the methodologies used;

(c) State the date or time period during which such studies took place; and

(d) Identify all documents relating to or relfecting such studies.

Answer

Objection, on the ground that this Interrogatory calls for a legal conclusion and legal strategy.

Interrogatory 25

Does the State know of any person who claims to have suffered bodily injury or damage to property as the result of the alleged contamination in Kress Creek or the West Branch of the DuPage River?

(a) If so, identify any such person.

(b) If so, identify, with reasonable specificity, the nature of the injury or damage allegedly sustained.

(c) If so, state the date such claimed injury or damage was sustained.

(d) Identify all documents relating to any such claims.

Answer

While this Interrogatory is irrelevant, the People note that Nochiren Shoshu Temple has claimed harm as the result of the contamination of Kress Creek; all details about such claim are contained in pleadings and documents of record in this proceeding. The People do not know whether others may claim to have suffered harm because of the contamination.

Interrogatory 26

In the State's view, would cleanup to levels above those specified in the Order to Show Cause satisfy the requirements of the Atomic Energy Act, as amended, and regulations promulgated thereunder?

(a) If not, why not?

(b) If so, describe with reasonable specificity the nature of the any cleanup plan, including the cleanup levels involved, that would satisfy such requirements.

(c) If so, state with reasonable specificity the State's reasons for concluding that such a plan would satisfy such requirements.

(d) Identify all documents relating to your answers to (a), (b), and (c).

Answer

Objection, on the ground that this Interrogatory calls for a legal conclusion.

Interrogatory 27

Identify all witnesses that the State intends to call with respect to the admitted contentions.

Answer

Objection, insofar as this Interrogatory refers to witnesses other than expert witnesses. As for expert witnesses, the People have not yet decided whom they will call at hearing.

Interrogatory 28

For each witness identified in response to Interrogatory No. 27 for whom a current and complete resume is unavailable, state: that witness's past employers; dates of present and past employment; offices, titles, or positions with past employers; educational background, including degrees obtained, colleges or universities attended, and dates of attendance; and a bibliography of books, articles, and reports that the witness has published or has submitted for publication.

Answer

N/A.

Interrogatory 29

State in reasonable detail the substance of the testimony of each witness identified in response to Interrogatory No. 27.

Answer

N/A.

Interrogatory 30

Will any witness called by the State testify as to any study, calculation, or analysis? If so, for each such witness:

(a) Identify the person(s) who conducted or participated in each such study, calculation, or analysis;

(b) Describe in detail the information or data that were subject to each such study, calculation, or analysis;

(c) Describe the methodology used in each such study, calculation, or analysis;

(d) Describe the results of each such study, calculation, or analysis;

(e) State the date or the period during which each study, calcuation, or analysis took place; and

(f) Identify all documents relating to or reflecting each such study, calculation, or analysis.

Answer

N/A.

Interrogatory 31

Identify any document on which each witness identified in response to Interrogatory No. 27 will rely in his or her testimony.

Answer

N/A.

Interrogatory 32

Specify each witness identified in response to Interrogatory No. 27 whom you intend to call to testify at trial as an expert witness, and for each such expert witness state:

(a) The subject matter on which the expert is expected to testify;

(b) The expert's conclusions and opinions;

(c) The complete basis for the expert's conclusions and opinions; and

(d) The expert's qualifications.

Answer

N/A.

Interrogatory 33

State whether any expert witness identified in the response to Interrogatory No. 32 participated in or observed any of the sampling identified in the responses to Interrogatories 19-21. If your response is other than an unqualified negative:

(a) Identify the expert; and

(b) For each expert, identify the sampling which he or she participated in or observed.

Answer

N/A.

Interrogatory 34

State whether any expert witness identified in the response to Interrogatory No. 32 participated in or observed any of the tests, analyses, inspections, or measurements identified in the responses to Interrogatories 20-23. If your response is other than an unqualified negative,

(a) Identify the expert; and

(b) For each expert, identify the test, analysis, inspection or measurement he or she participated in or observed.

Answer

N/A.

Interrogatory 35

As to each of the requests for documents, identify the person or persons who participated in assembling such documents.

Answer

Documents produced from the files of the Attorney General's Office were assembled by Anne Rapkin. Documents produced from the files of the IDNS were assembled by Melanie Hamill.

Interrogatory 36

As to each of the foregoing interrogatories, identify the person or persons who prepared the answer, and if the information furnished is not within the personal knowledge of the person answering, identify the person who has such knowledge. For interrogatories consisting of multiple subparts, answer separately for each subpart.

Answer

Non-objectionable interrogatories were answered by James Van der Kloot with the help of Dr. John Cooper of the Illinois Department of Nuclear Safety and William Frerichs of the Illinois Attorney General's Office.

Request for Documents

Copies of all responsive nonprivileged documents in the possession of the Attorney General's Office and the Illinois Department of Nuclear Safety will be produced.

NEIL F. HARTIGAN
Attorney General
State of Illinois

BY: _____
ANNE RAPKIN
Assistant Attorney General
Environmental Control Division

ANNE RAPKIN
WILLIAM J. BARZANO, JR.
Assistant Attorneys General
Environmental Control Division
RUSSELL EGGERT
Administrative Assistant
160 North LaSalle Street
Room 900
Chicago, Illinois 60601
[312] 793-2512

DATED: April 1, 1985

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

A F F I D A V I T

I, JAMES VAN DER KLOOT, being sworn on oath do state that I have read the foregoing People's Response To Kerr-McGee's First Discovery Request and that the responses therein are true and correct to the best of my knowledge and belief.

JAMES VAN DER KLOOT

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 1ST DAY
OF APRIL, 1985.

NOTARY PUBLIC

PROOF OF SERVICE

I, ELAINE C. THOMAS, having been sworn and under oath do state that I have this 1st day of April, 1985 served a copy of the foregoing People's Response To Kerr-McGee's First Discovery Request upon the persons listed on the attached Service List by placing same in envelopes addressed to said persons, by first class mail, postage prepaid, and depositing same with the United States Postal Service located at 160 North LaSalle Street, Chicago, Illinois 60601.

Elaine C. Thomas

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 1ST DAY
OF APRIL, 1985.

NOTARY PUBLIC

SERVICE LIST

Chief, Docketing and Service
Section (3)
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

John H. Frye, III, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Peter A. Morris
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Steven Seiple
Illinois Department of
Nuclear Safety
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Richard A. Meserve
Covington & Burling
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Lillian M. Cuoco
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8500 Sears Tower
Chicago, Illinois 60606

NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
CHICAGO
60601

June 3, 1985

Mr. Richard A. Meserve
Covington & Burling
P.O. Box 7566
Washington, D.C. 20044

RE: In the Matter of Kerr-McGee Chemical Corporation,
(Rare Earths Facility and Kress Creek Decontamination),
Nos. 40-2061-ML

Dear Dick:

Enclosed are more documents in response to Kerr-McGee's second discovery request. These materials are from my files.

I have withheld the following responsive items as privileged:

1. Undated handwritten notes of conversations between me and Robert Minning; work-product.

2. Letters from me, dated April 23, 1985 and September 6, 1984 to David Bernhardt; work-product.

3. Handwritten undated notes of my conversations with David Bernhardt; work-product.

4. Letter dated November 21, 1984 from me to Thomas Johnson; attorney-client, work-product.

5. Letter dated November 21, 1984 from me to Robert Minning; work-product.

6. Letter dated September 6, 1984 from me to Terry R. Lash; attorney-client, work-product.

The following materials are available for your review if you would like to see them; because of their bulk I have not, however, xeroxed them:

1. Low-Level Waste Disposal Site Transfer Program Plan, 1/6/84, EG&G Idaho, Inc., Draft.

2. Low-Level Radioactive Waste Disposal Sites and Special Sites Transfer Program: Procedure, Application, and General Contract, National Low-Level Radioactive Waste Program, 12/14/83, Draft.

3. Low-Level Radioactive Waste Policies Act Report, Response to Public Law 96-573, 7/81, DOE/NE-0015.

4. Preliminary Report on Groundwater Resources of the Chicago Region, Suter, et al., State Water Survey, 1959.

5. Water Level Trends, Pumpage, and Chemical Quality in the Cambrian-Ordovician Aquifer in Illinois, 1971-1980, Sasman, et al., State Water Survey, 1982.

6. Ambient Monitoring of Airborne Radioactivity Near a Thorium Processing Plant, Jensen, et al., Health Physics, Vol. 46, #5.

7. Screening Survey for Radon and Thorium Decay Products in West Chicago, Illinois, Environmental Research Division, Argonne National Laboratory, 8/83, ANL/ER-TM-83-1.

I also have quite a few materials from USEPA and NRC obtained pursuant to FOIA requests made over the years. These materials contain some items responsive to your discovery request. Many months ago I identified some items from one USEPA FOIA request, but you requested none of them, no doubt because you have seen everything in USEPA's files yourself. Therefore I am not going to xerox any of these materials now. If you want to see them, let me know and we can try to make arrangements.

As I send you these materials from my files I am prompted to inquire why you and Chadwell Kayser did not produce responsive materials from your own files. I would appreciate an answer at your earliest convenience.

Sincerely yours,

ANNE RAPKIN
Assistant Attorney General
Environmental Control Division
100 W. Randolph, 13th Floor
Chicago, Illinois 60601
[312] 917-2512

AR/ect
Enclosure
cc: Thomas J. McDaniel
John C. Berghoff, Jr.

NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
CHICAGO
60601

June 26, 1985

Mr. John C. Berghoff, Jr.
Cradwell & Kayser, Ltd.
8500 Sears Tower
Chicago, IL 60606

Mr. Richard A. Meserve
Covington & Burling
P.O. Box 7566
Washington, D.C. 20044

RE: In the Matter of Kerr-McGee Chemical Corporation (West Chicago Rare Earths Facility and Kress Creek Decontamination), Nos. 40-2061-ML, and People v. Kerr-McGee Chemical Corporation, No. 80 Cr. 298

Dear John and Dick:

Enclosed are some additional documents from the Illinois Department of Nuclear Safety responsive to discovery. Everything included here is relevant to one or both of the NRC proceedings; the May 1985 Flynn memorandum is relevant to both the NRC licensing proceeding and the state court action. While the Flynn memo was generated after the discovery requests were made, I forward it since a copy was provided to me and I know you will be interested in it.

Sincerely,

ANNE RAPPIN
Assistant Attorney General
Environmental Control Division
100 W. Randolph, 13th Floor
Chicago, Illinois 60601
(312) 917-2512

AR/ect
Enclosure
cc: Thomas J. McDaniel

NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
CHICAGO
60601

June 27, 1985

Richard A. Meserve
Covington & Burling
P.O. Box 7566
Washington, D.C. 20044

Re: Kerr-McGee Chemical Corporation
(Kress Creek Decontamination)

Dear Dick:

In a previous letter I mentioned that an INHS study, potentially pertinent to the Kress Creek matter, had come to my attention and that after I had received and reviewed it, I would forward it to you. I have now completed my review, and the study is enclosed herewith.

Sincerely,

ANNE RAPKIN
Assistant Attorney General
Environmental Control Division
100 West Randolph Street
13th Floor
Chicago, Illinois 60601
(312) 917-2512

AR/mc
Enclosure
cc: Steve Lewis (w/enc.)
Peter J. Nickles
John C. Berghoff, Jr.

(2)

July 15, 1980 memorandum to
Bill O'Connor, Office of the Governor,
from M. Fuller, IDNS

removed as privileged:
executive policy decisions
work-product

Memo dated 6/19/80 from Zuker to Wright (chief, Div of Nuclear Safety, IDPH) in re meeting with IEPA & removed as privileged - executive policy decisions

(10)

Draft notes prepared by John Cooper on 12/21/83 ~~removed~~ "Comments on Final Environmental Statement" removed as pre-decisionmaking executive privilege.

(2)

July 15, 1980 memorandum to
Bill O'Connor, Office of the Governor,
from M. Fukor, IDNS

removed as privileged:
executive policy decisions
work-product

TOM KAVANAGH
EPA

2-6760

S1

POLLUTION POTENTIAL
TO GROUND WATER

UNCONFORMABLE WITH STABILIZATION PLAN

NATION PLAN AND PERMIT ACT
NO CLW OR HLW JURISDICTION

ONLY CHEMICALS

NOT INTERESTED IN GROUND WATER STUDY

APPLICANT RESPONSIBILITY

ICPAN AGREE SHOULD UNDERTAKE THIS STUDY

TECHNICAL SITE GEOLOGICALLY

Material removed as irrelevant and privileged.

ILLINOIS DEPARTMENT OF PUBLIC HEALTH

William L. Kempiners, *Acting Director*
535 West Jefferson Street • Springfield, Illinois 62761 • Telephone: 217-782-4977

terial removed as privileged
executive policy decisions
work product

Reply to:

M E M O R A N D U M

To: Tom Cavanagh
Land Pollution Control
Environmental Protection Agency

From: Milton Zukor
Division of Nuclear Safety

Subject: Technical Meeting between IDPH and IEPA on the Kerr-McGee West Chicago Facility Decommissioning

Date: June 11, 1980.

This memo confirms our telephone conversation of June 10 arranging a meeting for Tuesday, June 17, 2:00 pm. at IEPA. The purpose of this meeting is to discuss the technical issues involved in the decommissioning of the Kerr-McGee West Chicago Rare Earth Facility and [redacted] Attending the meeting for IDPH will be Gary Wright, Bruce Meyer, and myself. Keros Cartwright from IGS will also be attending.

Milton Zukor
Milton Zukor
Division of Nuclear Safety

cc: Gary Wright
Bruce Meyer
Keros Cartwright

irrelevant material removed

3. The hot spots discovered along the river bank need not impact the STW construction unless they contribute to a violation of the criteria (unlikely). However, these areas ought to be addressed in the Kerr-McGee - Reed Kepler Park et al settlement / clean-up.

EBC:wn

CC - DWPC/FOS/RU
- DWPC/CAS
- DWPC/Muni Permits
- DWPC/Grants
- Kanerva
- Busch
- John Cooper, IDNS

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

MEMORANDUM

DATE: May 4, 1983

TO: T. M. Denning, Manager, Region II

FROM: E. B. Cohen, EPE, Region II-S

SUBJECT: WEST CHICAGO STW - C 171863
NPDES #IL 0023469 (Du Page County)
USEPA Radiological Survey - April 26, 1983

On April 26, 1983 this writer observed a Radiological Survey at the West Chicago STW site, conducted by the USEPA. The following persons were present:

Charles ("Chick") Phillips - USEPA, Eastern Environmental Radiological Laboratory, P. O. Box 3009, Montgomery, Alabama (205) 272-3402

Larry Jensen - USEPA, Radiation Program - Air Mgmt. Branch, Chicago (312) 886-6175

Steve Rothblatt - USEPA, Chicago

James Hansen - USEPA, Chicago

Gary Guligron - USEPA, Chicago

Eli A. Port - Radiation Safety Services, Inc. 827 Simpson St. Evanston, IL. 60201 (312) 866-7744

Dave Derenzo - R.S.S.I.

Terry Liaboe - R.S.S.I.

Don Foster (A.M. only) - West Chicago, City Engineer

M. Botts - West Chicago, Chief Operator - STW

Irrelevant material removed

irrelevant material removed

A "surprise" was encountered during a brief survey along the west bank of the West Branch of the DuPage River, just outside the east fence line, north of outfall #001. Several hot spots were located. One of these just east of the gate yielded gonadal height readings of 3 milli Rem/hr. (gross gamma - 250,000 CPM), which is reportedly about the same as directly above the imhoff tank. This area, owned by the City of West Chicago, had not previously been surveyed, but is outside the area of any intended construction activity. The river-bank area was surveyed only to about 35 yards north of the gate. Several other areas with gonadal height counts of about 1

Letter dated July 16, 1984 from Anne Kepka to Heard Gardner removed redacted portions as work-product.

Briefing paper dated May 9, 1984 prepared by Mr. John Cooper for Sen. Stevenson and Larry K. Sachs provided as privileged relevant portions are work-product and/or executive policy discussions.

(5)

Memo from John W. Cooper to Philip F. Gustafson dated July 21, 1982, : "Reivew of Draft Environmental Statement Regarding Kerr McGee Facility" - removed as pre-decisionmaking executive privilege.

Transmittal letter from Jms. Van Der Kloot to Melanie Hamel, dated 8/24/84, removed as work-product.

(7)

Memorandum dated 1/18/84 from Slow Etcheson and Terry K. Lash to Jim Kelly, Paula Wolf, and Mark Huddle removed; relevant portions are ~~to~~ privileged as work product and executive policy decisions.

(8)

Letter dated 12/29/43 from Anne Rapkin to Jerry Lash and Dr. John Cooper, removed as privileged: work-product and atty-client.

(9)

Memo dated 6/19/80 from Zuker to Wright (chief, Div of Nuclear Safety, IE84) in re meeting with IE84 & removed as privileged: executive policy decisions

(10)

Briefing paper prepared by M. Zakon
removed as privileged : executive
policy decisions

(11)

Memo dated 7/14/80 by M. Zakor to Gary Wright (Chief, DVS, IDPH) as privileged executive policy decisions

(12)

Memorandum from J. Van der Kloot to Anne Rapkin, dated 12/14/82, removed as privileged:

Attorney/client

work-product

(13)

NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
CHICAGO
60601

June 3, 1985

Mr. Richard A. Meserve
Covington & Burling
P.O. Box 7566
Washington, D.C. 20044

RE: In the Matter of Kerr-McGee Chemical Corporation,
(Rare Earths Facility and Kress Creek Decontamination),
Nos. 40-2061-ML

Dear Dick:

Enclosed are more documents in response to Kerr-McGee's second discovery request. These materials are from my files.

I have withheld the following responsive items as privileged:

1. Undated handwritten notes of conversations between me and Robert Minning; work-product.

2. Letters from me, dated April 23, 1985 and September 6, 1984 to David Bernhardt; work-product.

3. Handwritten undated notes of my conversations with David Bernhardt; work-product.

4. Letter dated November 21, 1984 from me to Thomas Johnson; attorney-client, work-product.

5. Letter dated November 21, 1984 from me to Robert Minning; work-product.

6. Letter dated September 6, 1984 from me to Terry R. Lash; attorney-client, work-product.

The following materials are available for your review if you would like to see them; because of their bulk I have not, however, xeroxed them:

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April 17, 1985

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Anne Rapkin, Esq.
Assistant Attorney General
Environmental Control Division
160 North LaSalle Street
Room 900
Chicago, Illinois 60601

Dear Anne:

I recently received the People's Response to Kerr-McGee's First Discovery Request in the Kress Creek Proceeding, and am writing to discuss several concerns raised by the State's answers to Kerr-McGee's interrogatories. After we have received and had the opportunity to review the documents to which the answers make reference, we may have occasion to discuss certain other answers with you.

The following general statements apply to several of the State's responses:

1. The State has objected to numerous interrogatories on the ground that they call for a legal conclusion. See, e.g., Answer to Interrogatories Nos. 2(i),(j), 4, 5, 6, 7, 11, and 24. Kerr-McGee does not believe this to be the case. In these interrogatories, Kerr-McGee has simply requested that the State indicate whether it is making certain allegations, and, if so, Kerr-McGee has requested that the State provide the factual basis for such allegations. Consistent with the rules of discovery and basic fairness, Kerr-McGee believes it has a right to know the proponents' allegations and their basis so that it can adequately prepare a defense. See Moore's Federal Practice § 33.17(2); B-H Transportation Co. v. Great Atlantic & Pacific Tea Co., 44 F.R.D. 436 (N.D.N.Y. 1968).

2. In numerous interrogatories, Kerr-McGee asked the State to set forth the basis for its answers. In many

cases, the State's responses are inadequate. See, e.g., Answers to Interrogatories Nos. 1(a), 2(b), 3(a), 8(a), 15(a) and 16. In such responses, the State does not provide any explanation for its answers, but instead makes vague reference to inadequately identified documents without explaining how the documents are alleged to support the State's position. Kerr-McGee requests that the State explain, with specificity, the facts that are alleged to underly its answers.

3. In several interrogatories, Kerr-McGee asked the State to identify documents relating to its answers. The State did not object to Kerr-McGee's instructions with regard to document identification, and is therefore bound to follow them. In many answers, however, the State's identification of documents is so vague that Kerr-McGee is unable to determine the documents on which the State relies, and may not be able to make this determination even after documents are produced. See, e.g., Answers to Interrogatories Nos. 1(c), 3(b), 15(d), 17, 19(j), 20(j), 21(e), and 22. In some answers, the State refers to "documents produced by Kerr-McGee," without any indication of which of the tens of thousands of documents that were produced are being relied upon. With respect to these documents, Kerr-McGee requests that the State specify which documents it has relied upon in answering the interrogatories. The absence of such information, combined with the State's failure to provide the basis for its answers, serves to make ascertainment of the facts that are alleged to support the State's allegations very difficult.

In addition to these general statements, Kerr-McGee has the following specific comments about the State's answers:

Interrogatory 1

This interrogatory asks the People to state the basis for its contention (Revised Contention 1(a)) that the materials involved in this proceeding may be contaminated with residual process chemicals, and requests the State in 1(b) to 1(f) to flesh out its contention with relevant factual information. The State's response to Interrogatory 1(a) merely refers to the original allegation contained in the People's Petition for Leave to Intervene, without any further elaboration. Yet, in its answer to Interrogatory 1(c), the State asserts that numerous unspecified documents relate to this issue, thereby indicating that such further elaboration is possible. Accordingly, Kerr-McGee requests that the State provide the factual basis for its contention as requested in 1(a) through 1(f). Moreover, the State's identification of the documents is inadequate, and Kerr-McGee requests that the State identify with specificity the Kerr-McGee documents that are alleged to relate to the contention. See General Statement 3, above. Finally,

the State's objection to Interrogatory 1(d) is unfounded. In light of the State's allegation that the materials in Kress Creek and the West Branch of the DuPage River ("the Creek") may be contaminated from sources other than the site, see Answer to Interrogatory No. 2(b), an inquiry into the origin of any chemicals found in the Creek is clearly relevant.

Interrogatory 2

The People contend that the materials allegedly found in the Creek may be contaminated from sources other than the site, but in answer to Interrogatory 2(b) provide absolutely no factual basis for this contention. Does the State have any facts to support its contention? If so, Kerr-McGee requests that they be provided. With respect to the State's answers to 2(i) and (j), see General Statement 1 above. Further, the State's objection to 2(k) on the ground that the question is tautological involves several unsupportable assumptions. The State has assumed, without any apparent basis, that any non-thorium materials that may be found in the Creek are (1) inherently hazardous and (2) present in sufficient quantities to constitute a danger to the public. Without any specification of the nature and quantities of the constituents alleged to be in the Creek, estimation of the risks that would be posed by such hypothetical contamination is impossible. In short, Kerr-McGee is entitled to detailed information as to the State's foundation for its contention 1(b).

Interrogatory 3

a) See General Statement No. 2 above.

b) See General Statement No. 3 above.

Interrogatory 4

See General Statement No. 1 above. If the State is alleging that Kerr-McGee has violated a license requirement, Kerr-McGee is entitled to know the requirements it is alleged to have violated, the nature of such violations, and the documents relating to such violations. If the State does not allege that any license requirements were violated, it is requested to say so.

Interrogatory 5

See General Statement No. 1 above. The State and the NRC Staff have now asserted that this proceeding is not based on UMTRCA, but that Kerr-McGee has violated some pre-UMTRCA requirement. Again, Kerr-McGee has a right to know the statutes and/or regulatory provisions that it is accused of violating,

the nature of such alleged violations, and any documents relating thereto. Kerr-McGee is not asking the State to reveal its legal strategy, but simply to set forth its allegations and the factual basis for such allegations.

Interrogatories 6 and 7

See General Statement No. 1. Kerr-McGee's comments on the State's answer to Interrogatory No. 5 also apply here.

Interrogatory 8

a) See General Statement No. 2.

Interrogatory 11

This interrogatory asks whether the State asserts that the material in the Creek poses significant risks. The significance of the risks presented by the alleged material in the Creek is clearly relevant, as Kerr-McGee's Averment raising the issue is, by Board order, a part of this proceeding. See Memorandum and Order (Ruling on Kerr-McGee's Motion for Reconsideration) at 5 (Mar. 22, 1985) ("We view Kerr-McGee's averment that the proponents must show a specific, significant risk as also relevant. . . ."). Further, the word "significant" is not vague, but has a specific legal meaning. See Kerr-McGee's Response to State Interrogatory No. 12 (Kress Creek). The State's objections are therefore unfounded, and this interrogatory should be answered.

Interrogatory 15

a) See General Statement No. 2.

d) See General Statement No. 3.

Interrogatory 16

Kerr-McGee asks in this interrogatory whether the People assert that there is "source material" found in the Creek. The State's answer is evasive -- it responds that it does not assert that there is source material, but that such material "may or may not be present." Does the State's representation that it does not "assert" that there is source material in the Creek mean that the State will introduce no evidence and make no argument in support of the proposition that there is such material present? Does the statement that such material "may or may not" be present mean that the State does not know whether such material is present? Without further clarification, the State's answer is inadequate.

Interrogatory 17

This interrogatory requests the State to identify correspondence between the State and certain other entities concerning the alleged contamination in the Creek. The State objects on the ground that the interrogatory is vague, overbroad, and calls for "potentially irrelevant" material, but the State then represents that non-privileged documents responsive to the request will be produced. Information concerning the alleged contamination is relevant as it bears on a central issue in the proceeding, and Kerr-McGee is entitled to discovery of correspondence concerning it. Kerr-McGee expects that all non-privileged responsive documents will be produced, regardless of whether the State views them as "potentially irrelevant." If the State claims privilege for any correspondence, it is required by Kerr-McGee's instructions to identify the privileged documents and to set forth the basis for each assertion of privilege so that its validity can be examined.

Interrogatory 18

This interrogatory requests the State to identify and describe discussions and meetings between the State and certain other entities regarding the Creek. Again, the State objects that the interrogatory is vague, overbroad, and calls for "potentially irrelevant" material. Kerr-McGee's comments on the State's answer to Interrogatory 17 apply here as well. Kerr-McGee also notes that the State has requested Kerr-McGee to answer similar interrogatories. See, e.g., State's First Set of Interrogatories (Kress Creek), Interrogatory No. 2.

Interrogatory 19

This interrogatory asks for specific and detailed information regarding the State's sampling efforts in or near the Creek. The State does not respond except by saying that it will produce non-privileged documents. The presence of responsive documents indicates that the State has engaged in some sampling, but the specific questions relating to such sampling are not answered.

Interrogatory 20

See Kerr-McGee's Comments on the State's Answer to Interrogatory 19, above.

Interrogatory 21

This interrogatory asks for information known by the State regarding sampling at the Creek performed by non-NRC or

non-State persons. The State replies that the USEPA "may have conducted sampling in the area. . ., but the People do not have any details." How does the State know that the USEPA "may have" conducted sampling, and does the State have any "non-detailed" information on such activity? Kerr-McGee is entitled to discovery of all such information.

Interrogatory 22

This interrogatory asks the State to "identify all studies, reports, surveys and other documents prepared or used by the State" concerning certain aspects of the Creek and surrounding areas. The State objects that the word "used" is vague and may call for privileged material. To clarify, by "used" Kerr-McGee means documents that were not prepared by the State, but that are viewed by the State as containing relevant information on any of the particular matters raised in parts (a)-(d) of the interrogatory. Any such non-privileged documents should be produced. If the State claims that any such documents are privileged, it must set forth the basis of such privilege claim with particularity as requested by the Kerr-McGee instructions.

Interrogatory 24

This interrogatory asks for information about other allegedly contaminated areas which the State views as relevant to this proceeding. The State objects on the ground that "the Interrogatory calls for a legal conclusion and legal strategy." To the contrary, Kerr-McGee is merely asking the State to reveal facts that it deems relevant to this proceeding. The purpose of discovery is to make such information available to other parties. If the State has a privilege claim with respect to any documents related to this issue, the claim must be spelled out with particularity.

Interrogatories 27 through 34

These interrogatories call for identification of and information about certain witnesses expected to be called by the State, together with a description of their intended testimony. The State objects to the request for information about non-expert witnesses, and represents that it has not yet decided what expert witnesses will be called. Kerr-McGee anticipates that it will receive responsive answers at a later date.

* * * * *

Kerr-McGee requests that the State supplement its answers to remedy the deficiencies that are discussed above.

Sincerely,

Richard A. Meserve
Counsel for Kerr-McGee
Chemical Corporation

cc: Thomas J. McDaniel, Esq.
John C. Berghoff, Jr., Esq.

NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS

May 24, 1985

Mr. Richard A. Meserve
Covington & Burling
P.O. Box 7566
Washington, D.C. 20044

RE: In the Matter of Kerr-McGee Chemical Corporation
(Kress Creek Decontamination), No. 40-2061-ML

Dear Dick:

This responds to your letter of 4/17/85 concerning the People's answers to Kerr-McGee's interrogatories. I take your points in order.

General Objection 1. With reference to certain interrogatories you contend that you have a right to legal opinions or conclusions, and you refer to Moore's Federal Practice, Vol. 4A, §33.17(a), and B-H Transportation Co. v. Great Atlantic & Pacific Tea Co., 44 F.R.D. 436 (N.D.N.Y. 1968). I do not see how the latter supports your right to propound the interrogatories at issue here. In that case the court held that "Defendant clearly is entitled to know the factual basis of the allegations charging it with statutory violations". 44 F.R.D. at 439. Moore distinguishes between permissible "legal conclusions" which apply law to the facts of the case and impermissible "legal conclusions" which relate not to facts but to the law of the case. Interrogatories going to legal strategy are also outside the scope of discovery. As your interrogatories are drafted, they are, I believe, objectionable as improperly calling for legal conclusions, theories, and strategy.

Regarding the specific interrogatory answers you refer to:

Interrogatory 2(i). The first problem here is that the interrogatory is hard to understand. It charges us with making a contention not made ("... Kerr-McGee would be required to make an

affirmative showing as to contaminants not generated at its facility") and then asks for a legal justification for that contention. Further, it goes to the law of the case.

Interrogatory 2(j). I am willing to supplement this interrogatory response, insofar as the interrogatory serves the purpose of a motion to make more specific or a demand for a bill of particulars.

Interrogatory 4. This interrogatory asks whether the People contend Kerr-McGee violated an NRC license requirement. I will supplement this interrogatory, insofar as it is in the nature of a motion to make more specific or a demand for a bill of particulars.

Interrogatory 5. This interrogatory again charges us with making a contention we have not made--that Kerr-McGee violated USEPA's radium-in-soil standards. In any event, I will supplement part (a) for the same reason I will supplement Interrogatories 2(j) and 4; I will also, accordingly, supplement parts (b) and (d). Our objection to part (c) however, stands, since that interrogatory concerns itself with legal matters unrelated to the facts and with the law of the case.

Interrogatory 6. This interrogatory asks whether we contend Kerr-McGee violated any state laws in regard to the contamination of Kress Creek. I cannot see what relevance state law has to this proceeding, at least in its present posture.

Interrogatory 7. This interrogatory also concerns itself with state law, and is also irrelevant.

Interrogatory 11. My objection to Interrogatory 11 was not on the ground that it calls for a legal conclusion.

Interrogatory 24. This interrogatory asks what studies "the State intends to refer [to] as being relevant with respect to the admitted contentions." The interrogatory could not more plainly ask for our trial strategy, and is therefore objectionable.

General Objection 2. You state that our responses to Interrogatories 1(a), 2(b), 3(a), 8(a), 15(a) and 16 do not adequately set forth the bases for our answers. Since you treat 1, 2, and 16 in more detail later in your letter, I will respond on 3(a), 8(a), and 15(a) here.

Interrogatory 3(a). This interrogatory asks us to "[i]dentify with specificity" the basis for our contention that the Kress Creek contaminants originated at the Kerr-McGee facility. In response the People refer to the Show Cause Order, the FES, and Kerr-McGee's own documents and interrogatory answers. I gather you are displeased that we did not specify which particular interrogatory answers and which particular documents among the thousands you produced indicate that the

contaminants originated at the Kerr-McGee facility. First, I do not see that a party is required to explain to its opponent which documents or information in the opponent's possession prove the party's case. That would be an abuse of the discovery process, by requiring the party "to put on a dress rehearsal of the trial." Moore's Federal Practice, Vol. 4A, ¶33.12. Moreover, I should think that the purpose of discovery is to enable a party to learn what relevant factual material the other side has beyond what is in the party's own knowledge and possession. It so happens here that the clearest and most compelling evidence of the source of the Kress Creek contamination comes from Kerr-McGee's own files and admissions; and our answer to Interrogatory 3 indicates that, at least at this time, we rely primarily on that. I do not consider myself obliged, however, to send you an outline of the case we will put on at hearing.

Interrogatory 8(a). This interrogatory asks the basis for the People's contention that the Kress Creek contaminants present a hazardous condition. The basis, as we state in our interrogatory answer, is the Staff's Show Cause Order, the Frigerio report, and the ORAU study, all of which documents indicate that the contamination at the streams is not only much in excess of background but also much in excess of the USEPA standards. I do not see how this answer is inadequate.

Interrogatory 15(a). This interrogatory is effectively identical to Interrogatory 3(a), which is discussed above.

General Objection 3. You again express concern about our identification of relevant documents, and discuss the fact that we don't tell Kerr-McGee which of its own documents prove the People's case. This matter has been discussed above. The interrogatory answers you specifically refer to are discussed in greater detail below.

With respect to particular interrogatory answers you criticize, I offer the following:

Interrogatory 1. This interrogatory asks us to provide the factual basis for our Pevised Contention 1(a), which asserts that the waste materials along Kress Creek and West Branch DuPage River may, like the waste materials remaining at the site, be contaminated with residual process chemicals. I must say I find the interrogatory rather disingenuous. At any rate, the basis is set out, as we say in answer to 1(a), at ¶5, p.3, of the People's July 10, 1984 intervention petition:

> This proceeding involves clean-up of areas contaminated with materials which originated at the Kerr-McGee West Chicago site ("site") which is the subject of the decommissioning proceeding pending before this same Board. The radiologically contaminated soils at Kress Creek and West Branch DuPage River are therefore likely to contain the same chemical constituents as the wastes onsite. ...

This is the reasoning behind Revised Contention 1(a), and we have nothing else that we can say to you on the subject. Kerr-McGee may have the audacity (to put it charitably) to deny that the Kress Creek contaminants originated at the site. But if they did originate at the site it is only reasonable to suppose that they are chemically similar to the wastes remaining onsite (unless, of course, all the chemical contaminants have leached out; that, however, is for Kerr-McGee, not the Staff or intervenor, to prove).

I fail to understand your complaints about our answers to parts (b)-(f). 1(c) has already been discussed; you don't suggest what is wrong with our answer to parts (b), (e), and (f); and you do not explain the relevance of part (d) other than to assert that it is relevant.

Interrogatory 2. This interrogatory asks for the factual basis for Revised Contention 1(b), which alleges that the thorium wastes at Kress Creek and West Branch DuPage River may be contaminated from sources other than the Kerr-McGee facility. Like Contention 1(a), this contention is based on common sense. As we said in describing the basis for the contention, "[o]ther entities than Kerr-McGee may have discharged contaminants into Kress Creek or West Branch DuPage River." That is the extent of our knowledge about the matter. Since Kerr-McGee will eventually exhume and dispose of these materials, Kerr-McGee will need to know their chemical composition. As for part 2(k) of this interrogatory, it is not well-drafted, and I still do not understand it except as a tautology.

Interrogatory 3. This interrogatory has been discussed in connection with your General Objections 2 and 3.

Interrogatory 4. I have already agreed to supplement portions of the answer to this interrogatory.

Interrogatory 5. I have already agreed to supplement portions of the answer to this interrogatory.

Interrogatories 6 and 7. These have been discussed above.

Interrogatory 11. This interrogatory asks whether we contend that the Kress Creek contaminants pose "significant risks". I have objected, first, on relevance grounds, and stand on that objection. Second, and more importantly, you have never

defined what you mean by "significant". (You say that it has "specific legal meaning" but fail to mention what that is.) Since Kerr-McGee imported this bogus issue into the proceeding, I warmly suggest that you define the term "significant" in some quantitative fashion, rather than leave us to guess what you are talking about.

Interrogatory 15. This interrogatory has been discussed above.

Interrogatory 16. We will supplement the answer to this interrogatory.

Interrogatory 17. I do not understand your unhappiness with our answer. You ask for the identity of all correspondence the State has ever had with virtually anyone in the world about Kress Creek, and then complain when we object on vagueness and overbreadth grounds. Merely because a letter--or any utterance, for that matter--refers to the contamination at Kress Creek, does not mean it is relevant to any contention raised in this proceeding by any party. Everything in the Illinois Department of Nuclear Safety's and the Attorney General's files that is relevant to any contention and is not privileged is being produced. If you believe I am incapable of correctly distinguishing relevant from nonrelevant documents in our file, then provide me with guidelines by specifying the subject matters with which you are concerned.

Interrogatory 18. This interrogatory takes the cake. It asks for the identity and description of "discussions" at "all private and public meetings" (what is a "private meeting"--words exchanged at the water cooler?) at which Kress Creek was "discussed" (and what constitutes a "discussion"--a reference to an upcoming pre-hearing conference?), such "meetings" to include those with newspaper reporters, citizens, and employees of any state or federal agency. And you are surprised that we object?

Please see my discussion of Interrogatory 17. Let me also point out that government offices serve the public, and as a result they receive countless requests, visits, and phone calls every week from local residents, other citizens, newspaper and radio reporters, and anyone else you care to think of. To ask us to identify and describe all such communications, regardless of their relevance to any material issue in this proceeding, is unfair and, indeed, well-nigh impossible.

If you are looking for the identities of persons with knowledge of relevant facts, then ask us, and we will supply them. What the proponents suspect, however, is that Kerr-McGee is fishing for the substance of conversations among ourselves concerning the various joint briefs that have been submitted in this proceeding. This proponent also suspects that Kerr-McGee is fishing for internal State policy discussions. A more focused interrogatory would dispel these suspicions.

Finally, you state that the People have propounded similar interrogatories, and refer to our Interrogatory 2. That interrogatory dealt with a particular subject matter--the hot spot clean-up--and Kerr-McGee did not find it impossible to respond. Your Interrogatory 18, at least as I understand it, is on a different footing.

Interrogatory 19. Here Kerr-McGee asks for information about any sampling which the People have conducted near Kress Creek or West Branch DuPage River. We have answered by producing documents, in accordance with F.R.C.P. 33(c). Whatever information we have without undertaking the same type of inquiries and organizational efforts Kerr-McGee would have to undertake to answer the interrogatory is contained in the documents.

Interrogatory 20. See discussion of Interrogatory 19.

Interrogatory 21. This interrogatory asks whether we know about any sampling conducted other than by the State or NRC. We have responded that USEPA may have conducted samples but we have no details. The person who answered the interrogatory is on vacation until the end of May. I remember, however, that his belief that USEPA may have conducted sampling came from USEPA documents in Kerr-McGee's own files. Therefore, we know nothing more than you know; and it is apparent that you know considerably more than we know, since Kerr-McGee has FOIAed USEPA for all its Kress Creek documents. Given that fact, I do find your present criticisms of our interrogatory answer rather disingenuous.

Interrogatory 22. The People have not "used" (as you now define that word--i.e., have knowledge of) documents relating to the subject matters described in parts (a), (c), and (d). With respect to (b), I am aware that a state agency has conducted a study that may be responsive. Although under the Board's order of January , 9, 1985 we are not required to produce that document, I will produce it if, after I obtain and review it, I find that it is in fact responsive.

Interrogatory 24. This interrogatory has been discussed above. Contrary to your characterization of it now, it does, as drafted, ask for legal strategy. In any event, the People have not conducted any such studies except as may be found in the documents we produce (and I do not believe any such studies will

be found there), and are aware of only such studies as may be found in Kerr-McGee's discovery documents. I will supplement our interrogatory response to say that.

Sincerely,

ANNE RAPKIN
Assistant Attorney General
Environmental Control Division
100 West Randolph Street
13th Floor
Chicago, Illinois 60601
[312] 917-2512

AR/ect

cc: Steve Lewis
Mead Hedglon
John Berghoff

NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
CHICAGO
60601

May 29, 1985

Mr. Richard A. Meserve
Covington and Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044

Dear Dick:

Enclosed are our supplemental responses to Kerr-McGee's interrogatories in the Kress Creek proceeding. You will see that, contrary to my letter of May 24, I have not supplemented 2(j), since it relates to an interrogatory, I do not understand and, in any event, ask for an impermissible legal conclusion.

Sincerely,

Anne Rapkin
Assistant Attorney General
Environmental Control Division
100 West Randolph - 13th Floor
Chicago, Illinois 60601
(312) 917-2512

AR/ct

cc: Thomas J. McDaniel
John C. Berghoff

Encl.

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-SC
(Kress Creek Decontamination)	ASLBP No. 84-502-01-SC

PEOPLE'S SUPPLEMENTAL RESPONSE TO
KERR-McGEE'S FIRST DISCOVERY REQUEST

Interrogatory 4

2. Does the State contend that Kerr-McGee violated any requirement imposed by its NRC (or AEC) license with respect to mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River? If so:

(a) State the license requirement that was allegedly violated, and the date such requirement was incorporated into Kerr-McGee's license.

(b) State when such violation or violations occurred, and describe the nature of such violation or violations with particularity.

(c) Identify all documents relating to such violation or violations.

Answer

(a) The People do not contend at this time that Kerr-McGee or its predecessors violated a specific requirement of its license except that Kerr-McGee and its predecessors violated

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their legal responsibility as licensees under the Atomic Energy Act to possess and use licensed material so as to protect the public health and safety.

(b) The People assume the violations began when thorium milling operations began at the site; the People do not know when or whether the releases, and as a result the violations, ceased. The violations consist of causing or allowing radioactive materials to be released from the site in such a manner as to cause a hazard to the public health and safety.

(c) The Staff's Show Cause Order; the ORAU study; the FES; documents provided by Kerr-McGee in the Rare Earths Facility proceeding, and Kerr-McGee's answers to Interrogatories in this proceeding.

Interrogatory 5

5. Does the State contend that Kerr-McGee violated any statutory or regulatory requirement imposed by the Atomic Energy Act, as amended, or any regulations promulgated thereunder, other than the radium-in-soil standard set forth in the Order to Show Cause in this proceeding, with respect to mill tailings allegedly found in Kress Creek or the West Branch of the DuPage River? If so:

(a) State the statutory or regulatory provisions that were allegedly violated, and the date when such provisions were enacted or promulgated.

(b) State when such violation or violations occurred, and describe the nature of such violation or violations with particularity.

(c) Identify all statutory provisions and regulations, other than those promulgated pursuant to the Uranium Mill Tailings Radiation Control Act (UMTRCA), if any, that provide the NRC with authority to order cleanup by Kerr-McGee of off-site tailings allegedly found in Kress Creek or the West Branch of the DuPage River, and state with specificity the level of cleanup required by such provisions.

(d) Identify all documents relating to any violation or violations identified in (a) and (b), and all documents relating to your response to (c).

Answer

(a) The People contend that Kerr-McGee and its predecessors violated the Atomic Energy Act and Part 40 of 10 CFR insofar as those provisions impose a duty, implemented through Sec. 161(b) of the Act and the Commission's show cause provisions, to use and possess licensed material so as to protect the public health and safety. The remainder of Interrogatory 5(a) is objectionable as calling for a legal conclusion.

(b) See answer to Interrogatory 4(b).

(d) See answer to Interrogatory 4(c).

Interrogatory 16

16. Does the State assert that "source material," as defined in the Atomic Energy Act and in regulations promulgated thereunder, is found in Kress Creek or the West Branch of the DuPage River? If so:

(a) State the basis for the assertion.

(b) Identify all documents relating to the presence of source material in Kress Creek or the West Branch of the DuPage River.

Answer

Yes.

(a) Thorium is present along Kress Creek and the West Branch of the DuPage River.

(b) The Staff's Show Cause Order; the 1978 Frigerio Report; the ORAU study.

Interrogatory 24

24. Has the State conducted, caused to be conducted, or participated in, or is the State aware of any studies of geographic areas other than Kress Creek or the West Branch of the DuPage River, whether formal or informal, of adverse or potentially adverse effects on health or the environment resulting from releases or alleged releases of contaminants similar to those at issue in this proceeding, to which the State intends to refer as being relevant with respect to the admitted contentions? If your response is other than an unqualified negative,

(a) Identify the person(s) who conducted or participated in such studies;

(b) Describe the methodologies used;

(c) State the date or time period during which such studies took place; and

(d) Identify all documents relating to or reflecting such studies.

Answer

The People have not conducted any such studies except as may be found in the documents we produce, and are aware of only such studies as may be found in Kerr-McGee's discovery documents.

PEOPLE OF THE STATE OF ILLINOIS

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Attorney General

BY: _____
ANNE RAPKIN

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PROOF OF SERVICE

I, DONNA R. WARD, having been sworn and under oath do state that I have this 29th day of May, 1985, served a copy of the foregoing People's Supplemental Response to Kerr-McGee's First Discovery Request, upon the persons listed on the attached Service List, by placing same in envelopes addressed to said persons, by first class mail, postage prepaid, and depositing same with the United States Postal Service located at 160 North LaSalle Street, Chicago, Illinois 60601.

Donna R. Ward

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 29th DAY
OF MAY, 1985.

NOTARY PUBLIC

SERVICE LIST

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion by Kerr-McGee Chemical Corporation to Compel Production of Documents and Answers to Interrogatories by the State have been served by first-class mail, postage prepaid, on this 3rd day of July, 1985, as follows:

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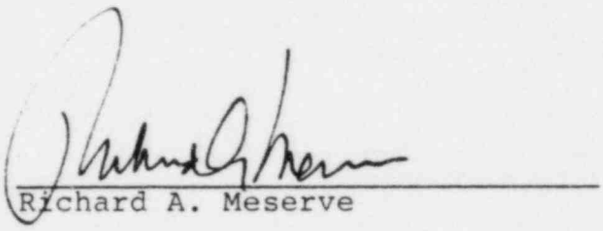

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