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RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

'85 MAY 30 A11:13

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

Kerr-McGee Chemical Corporation)

(Kress Creek Decontamination))

Docket No. 40-2061-SC

ASLSP No. 84-502-01-SC

SUPPLEMENTAL RESPONSE BY KERR-McGEE CHEMICAL CORPORATION
TO THE STATE'S FIRST SET OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS

On April 1, 1985, Kerr-McGee Chemical Corporation ("Kerr-McGee") filed its Response to the State's First Set of Interrogatories and Request for Production of Documents (hereinafter "Kerr-McGee Response"). Kerr-McGee believes that its Response is adequate and that its objections to the State's interrogatories are well founded. At the State's request, however, Kerr-McGee has agreed to file supplemental responses to provide further clarification or supplementation to its responses to certain of the interrogatories propounded by the State. The general and specific objections set forth in the Kerr-McGee Response are hereby incorporated in this supplemental response.

Supplemental Answer to Interrogatory No. 1

a) With respect to the first two listed documents and the third document (third attachment only) on p. 6 of the

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Kerr-McGee Response, Kerr-McGee has withdrawn its privilege claims and these documents have been produced.

With respect to the remainder of the third listed document and the fourth listed document on p. 6 of its Response, Kerr-McGee maintains that these documents are protected by the work-product privilege. In addition, Kerr-McGee's further review of its files has located another privileged document relating to possible remedial action at Kress Creek. Thus, the responsive privileged documents as to which Kerr-McGee now asserts a work-product privilege are as follows:

1. Selective Decontamination of Kress Creek Banks; Kerr-McGee Memorandum plus first two attachments; E. Still to G. Rice, 4/26/82.
2. Kress Creek Comments; Kerr-McGee Memorandum, E. Still to G. Rice, E. Goltra, B. Shelley, G. Sinke, 2/23/82.
3. Kress Creek, Kerr-McGee Memorandum, E. Still to G.B. Rice, 2/11/82.

The basis for Kerr-McGee's privilege claims with respect to these documents is set forth in a letter dated May 28, 1985, from R.A. Meserve to A. Rapkin, pp. 3-4.

The documents specified in the carry-over paragraph of pages 6-7 of the Kerr-McGee response are: the three privileged documents listed above, documents produced in this proceeding, and documents generated by expert consultants hired during the course of litigation to perform studies of possible remedial action at Kress Creek. With respect to the last category of documents -- the documents generated by expert

consultants -- all such documents are governed by the special discovery rules pertaining to experts that have not been identified as trial witnesses. See Fed. R. Civ. P. 26(b)(4)(B). In addition, these documents are protected by the work-product privilege and by 10 C.F.R. § 2.740(b)(2).

b) Definitive cost estimates have not yet been performed -- and indeed are not yet possible -- because the nature and extent of required remedial action, if any, has not yet been defined. Other than documents recently prepared by experts hired during the course of litigation and documents which have been produced, the only document known to contain a discussion of cost issues is: Selected Decontamination of Kress Creek Banks, Kerr-McGee Memorandum plus first two attachments, E. Still to G. Rice, 4/26/82. That document is privileged for the reasons set forth in a) above.

With respect to documents prepared by experts hired during the course of litigation to study cost issues, Kerr-McGee maintains that such documents are governed by Fed. R. Civ. P. 26(b)(4)(B) as applicable to this proceeding, and that Kerr-McGee is not required at this time to provide any further information pertaining to these documents. Kerr-McGee further maintains that documents prepared by such experts are protected by the work-product privilege and by 10 C.F.R. § 2.740(b)(2).

Supplemental Response to Interrogatory No. 4

a) As explained in the Kerr-McGee Response, off-site areas with an external gamma exposure rate of 35 uR/hr or

greater at one meter above the surface are removed until background external gamma exposure rates are reached. Frigerio et. al., Thorium Residuals in West Chicago, Illinois at 2 (1978), reports that background external gamma exposure rates in the West Chicago area generally range between 14 and 25 uR/hr. At most off-site areas targeted for remedial action, Kerr-McGee removes contaminated material until the targeted portion of the property reveals gamma radiation at or below 15 uR/hr at one meter above the surface. At a few targeted areas located in the immediate vicinity of the site, where background levels are higher than 15 uR/hr, Kerr-McGee removes contaminated material until these higher background levels are reached.

b) The gamma level referred to in the Kerr-McGee Response to subpart b) is 35 uR/hr. Offsite areas with external gamma exposure rates at this level or below easily satisfy the criteria established by 10 C.F.R. Part 20. If a survey of an offsite property reveals gamma radiation above 35 uR/hr at one meter above the surface, remedial action is triggered and contaminated material is voluntarily removed until background gamma levels are reached on that specific portion of the property. As an additional margin of safety, Kerr-McGee routinely initiates remedial action if an offsite area reveals gamma radiation above 30 uR/hr at one meter.

Supplemental Response to Interrogatory No. 10

One means of eliminating adverse impacts associated with cleanup is to leave the Creek in its current condition.

Further, as Kerr-McGee states in response to Interrogatory No. 9, "the risks associated with cleanup can be reduced by requiring a less extensive cleanup program than one that would be necessary to achieve the radium-in-soil levels stated in the Order to Show Cause at all locations along the Creek and river." Beyond this, until the nature, scope and method of required remedial action, if any, are determined, Kerr-McGee is unable to say what specific "engineering or other means" might be used in conjunction with such a program to reduce adverse impacts associated with that program.

Supplemental Response to Interrogatory No. 13

Kerr-McGee has produced all documents relating to the "actual risks" to health and safety and to the environment from cleaning up Kress Creek except for one privileged document and documents prepared by outside experts hired during the course of litigation. The privileged document discussing this issue is Selected Decontamination of Kress Creek Banks, Kerr-McGee Memorandum plus first two attachments, E. Still to G. Rice, 4/26/82. The basis for Kerr-McGee's claim of privilege with respect to this document is set forth in Supplemental Response to Interrogatory 1 a) above.

The "further studies of this matter" referred to in the Kerr-McGee Response are being performed by experts hired during the course of litigation. For the reasons explained in Supplemental Response to Interrogatory No. 1 a) above, these documents are being withheld pursuant to Fed. R. Civ.

P. 26(b)(4)(B), as applicable to this proceeding, and Kerr-McGee is not required at this time to provide any further information pertaining to these documents. In addition, Kerr-McGee maintains that these documents are protected by the work-product privilege and by 10 C.F.R. § 2.740(b)(2).

Supplemental Response to Interrogatory No. 14

See Supplemental Response to Interrogatory No. 13.

Supplemental Response to Interrogatory No. 15

Kerr-McGee has produced all documents responsive to this interrogatory except for the three privileged documents listed in Supplemental Response to Interrogatory No. 1 a) above and documents prepared by experts hired during the course of litigation. The basis for Kerr-McGee's privilege claims is explained in Supplemental Response to Interrogatory No. 1 a), as are Kerr-McGee's reasons for withholding information about documents prepared by experts.

Supplemental Response to Interrogatory No. 20

Other than outside experts hired during the course of litigation, whose work product and identity are being withheld pursuant to Fed. R. Civ. P. 26(b)(4)(B) as applicable to this proceeding, and persons identified on p. 6 of the Kerr-McGee Response or in documents recently produced, Kerr-McGee is unaware of persons that have engaged in cost calculations or studies of the health impacts or risks associated with remedial action. Kerr-McGee notes that at this time, no person has

"knowledge" of the costs and risks associated with remedial action because the nature, method, and scope of such action, if any, have not yet been defined.

Supplemental Response to Interrogatory No. 26

i) The documents relating to releases from the holding tanks were mailed to the State along with the Kerr-McGee Response or have been made available for inspection in West Chicago. In addition, one document responsive to this interrogatory was recently mailed to the State.

k) Treatment has been provided only for collected stormwater.

Supplemental Response to Interrogatory No. 29

The sampling methods described in the Health Physics Manual referred to in the Kerr-McGee Response have been used by Kerr-McGee personnel beginning in October, 1979, up to the present. The Manual was prepared in 1981 at the request of the NRC, and simply sets forth the sampling methods that had been used since October, 1979.

Kerr-McGee's knowledge of the sampling methods used prior to October 1979 is very incomplete. Kerr-McGee has no knowledge of sampling that may have occurred prior to 1945. The State was recently provided a memorandum reflecting one employee's unaided recollection of the sampling methodology that may have been applied for some periods prior to 1973. Kerr-McGee has not been able to verify the accuracy of these

recollections concerning sampling by reference to documentation.

For the period between 1973 and October, 1979, Kerr-McGee has no knowledge that routine surface water, storm sewer, floor drain, sump or outfall sampling was conducted. With respect to spot sampling that may have occurred during this period, if any, Kerr-McGee has no knowledge of the methods that may have been used.

Supplemental Response to Interrogatory No. 30

For some portion of the period from 1945 to 1973, Mr. Ed Maryniw recalls having collected samples, although Kerr-McGee has not been able to verify his recollection by reference to documentation. For the period from 1973 to October, 1979, Kerr-McGee is unaware of the identity of individuals, if any, who may have conducted sampling.

Supplemental Response to Interrogatory No. 31

According to Mr. Maryniw's recollection, for portions of the period from 1945 to 1973, sampling was performed under the supervision of, in chronological order, Drs. Kremers, Woyski, Healy and Silvernail and Mr. G. Sinke. These individuals may have participated in formulating the sampling methodology used during their tenure, although Kerr-McGee has not been able to verify their involvement by reference to documentation. Kerr-McGee has no knowledge of individuals, if any, who may have supervised and/or defined the methodology for sampling that may have occurred between 1973 and October, 1979.

Supplemental Response to Interrogatory No. 36

Each response to the People's interrogatories was prepared as a result of consultation among a number of people, each of whom has been identified. An attempt to allocate the answers to specific individuals would be unduly burdensome and essentially meaningless.

Supplement to Document Request General Objection and Response No. 1

Without waiving its objection, Kerr-McGee states that all documents responsive to this request were either mailed to the People along with the Kerr-McGee Response, produced in connection with the Rare Earths proceeding, made available for the People's inspection in Oklahoma City on May 15 and 16, 1985, provided along with a letter dated May 28, 1985, from R.A. Meserve to A. Rapkin, or made available for upcoming inspection in West Chicago.

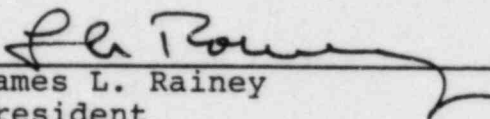
Supplement to Document Request General Objection and Response No. 4

All responsive privileged documents have either been identified herein or identified with markers placed in files previously inspected or to be inspected in West Chicago.

Supplement to Response to Request No. 4

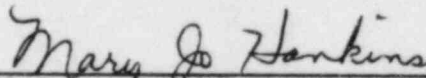
Without waiving its objection, Kerr-McGee states that all documents responsive to this request were either produced in connection with the Rare Earths proceeding or made available for the People's inspection in Oklahoma City and in West

Chicago, with the exception of privileged documents and those protected by Fed. R. Civ. P. 26(b)(4)(B) as applicable to this proceeding. All privileged documents responsive to this request have been identified with markers placed in files either previously inspected or made available for inspection.


James L. Rainey
President
Kerr-McGee Chemical Corporation
123 Robert S. Kerr Avenue
Oklahoma City, Oklahoma 73125

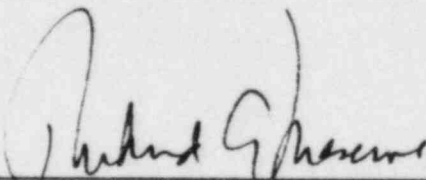
State of Oklahoma
County of Oklahoma

Subscribed and sworn to on this 28th day of MAY,
1985.


Mary Jo Hankins
Notary Public

My Commission expires: April 15, 1989

As to objections:


Peter J. Nickles
Richard A. Meserve

COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044

Attorneys for Kerr-McGee
Chemical Corporation

Dated: May 28, 1985

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing
Supplemental Response by Kerr-McGee Chemical Corporation to the
State's First Set of Interrogatories and Request for Production
of Documents have been served by first-class mail, postage
prepaid, on this 28th day of May, 1985, as follows:

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

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

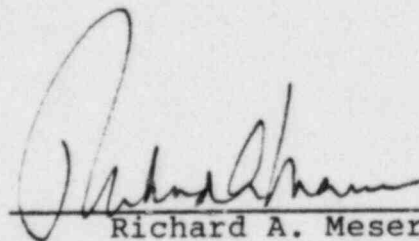
Dr. Peter A. Morris
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Chief, Docketing & Service Section (3)
Office of the Secretary
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

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

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

Stephen H. Lewis, Esq.
Lillian Cuoco, Esq.
Office of the Executive Legal Director
Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555



Richard A. Meserve