

UNITED STATES ATOMIC ENERGY COMMISSION

In the Matter Of:

APPEAL OF MINES DEVELOPMENT, INC.

Germantown, Maryland
Place - ~~Washington, D. C.~~

Date December 28, 1959

Pages 1 thru 44

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APPEAL OF MINES DEVELOPMENT, INC. :
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Conference Room, Auditorium Building
Germantown, Maryland.

MONDAY, December 28, 1959

The above-entitled matter came on for hearing
at 10:30 o'clock a.m., pursuant to notice.

BEFORE:

SAMUEL W. JENSCH, Hearing Examiner.

APPEARANCES:

JOHN TIPPITT, ESQ., 1110 Denver Trust Bldg.,
Denver, Colorado, on behalf of Mines Development,
Inc.

H. L. HAZEN, Consultant to Mines Development, Inc.

TROY B. CONNER, JR., ESQ., Staff Counsel, Atomic
Energy Commission, Washington, D. C.

P R O C E E D I N G S

MR. JENSCH: Please come to order.

This proceeding is a prehearing conference convened in the matter of Mines Development, Inc., pursuant to a request and stipulation between the staff of the Atomic Energy Commission and Mines Development, Inc., as represented by its attorney, John Tippitt, of Denver, Colorado.

Since arriving at this conference room this morning and prior to 10:30, the Presiding Officer was telephoned by the attorney for the staff, who stated he was then meeting with Mr. Tippitt in the offices of the staff of the Commission and requested a postponement of this prehearing conference until eleven o'clock this morning at this place.

In accordance with that request, this prehearing conference is now recessed to reconvene in this room at eleven o'clock.

(Thereupon, at 10:35 a.m., the hearing was recessed, to reconvene at 11:00 a.m., same day.)

(Thereupon, at 11:00 o'clock a.m., the hearing was reconvened.)

MR. JENSCH: Please come to order.

This session of this proceeding is a resumed session of the prehearing conference in the matter of Mines Development, Inc. As the transcripts will reveal, this proceeding was convened at 10:30 and, pursuant to the request indicated by staff counsel, it was recessed until eleven o'clock at this date and place.

This prehearing conference has been convened pursuant to the understanding of the Presiding Officer that it is pursuant to a stipulation between staff counsel and counsel for Mines Development, Inc., and if that is not correct, will either counsel so indicate. If it is correct, we will proceed upon that basis.

The record will show that on December 14, 1959, notice of hearing was set in this proceeding to convene on January 7, 1960 in a courtroom of the United States District Court in Denver. There was also set a prehearing conference for that same date at 9:30 a.m.

In view of that notice of hearing, the Presiding Officer requests either staff counsel ~~for~~ counsel for Mines Development, Inc. to indicate their wishes in reference to that notice of hearing.

First of all, let me request a statement of

appearances, first on behalf of the staff.

MR. CONNER: Troy B. Conner, Jr., Washington, D.C.

MR. TIPPITT: John H. Tippitt, attorney for Mines Development, Inc., accompanied by Mr. H. L. Hazen. My address is 1110 Denver Trust Building, Denver, Colorado.

MR. JENSCH: Is it correct that this prehearing conference is pursuant to a stipulation between you and staff counsel?

MR. TIPPITT: It is.

MR. JENSCH: Staff counsel, will you indicate what you believe we may consider at this prehearing conference?

MR. CONNER: If the Presiding Officer please, perhaps if I give a statement of the fact situation as I understand it, it will simplify our future discussions as to the disposition of this case. In this respect I will give some evidence, as I understand it, on the part of the Commission and will also repeat certain things which Mr. Tippitt and Mr. Hazen have indicated to me.

If I am incorrect, I hope they will immediately call it to my attention.

The inspection of the Mines Development mill at Edgemont, South Dakota, occurred in early April of 1959. At this time we found information to the effect that the surveys for external radiation made in the mill were inadequate and that no surveys for airborne concentrations of

1 radioactivity had been made. However, since that time, I
2 am informed that the Mines Development, Inc., have made
3 quite extensive surveys for both these problems and are
4 willing to submit this data to the Commission for evaluation.
5 Inasmuch as it was the purpose of the staff's order of
6 November 2, 1959 to attempt to get the mill into compliance
7 with the Commission's regulations in section 20.201(b) of
8 10C.F.R.20, and since it further appears that the company
9 has since the date of inspection instituted a survey program,
10 it may well be that there is no issue to litigate between
11 the parties.

12 To this extent, I would suggest the following
13 course of action: that the hearing date set for January 7,
14 1960 be vacated; that the survey data obtained by Mines
15 Development, Inc., be evaluated by the staff of the Division
16 of the Licensing and Regulations; that after such evaluation
17 the staff may be in a position to find that the survey pro-
18 gram being conducted by Mines Development, Inc., is adequate
19 and that, on the basis of such information the parties may
20 be able to recommend to the Presiding Officer that the hearing
21 be dismissed.

22 I would further say that it is possible that there
23 may be minor areas of differences of opinion between the
24 adequacy of the survey program between Mines Development,
25 Inc., on the staff and that opportunity should be provided

1 for obtaining agreement between the two parties as to the
2 appropriate method of conducting these surveys on an
3 informal basis prior to returning this matter to the
4 Presiding Officer for dismissal or, of course, if we were
5 unable to reach agreement for a hearing. In the unlikely
6 event of the latter occurrence, I believe it would be on
7 a much more restricted issue than those presently presented.

8 MR. JENSCH: Is there any statement you desire
9 to make, Mr. Tippitt, in reference to the statement by staff
10 counsel?

11 MR. TIPPITT: Yes, I think so, Mr. Jensch.

12 I am in accord generally with the facts as stated
13 by Mr. Conner. I think that I would like generally,
14 however, to call to the Hearing Examiner's attention certain
15 of the facts as we understand them so that I will not contro-
16 vert the specific tones or shades of Mr. Conner's statement.

17 The Hearing Examiner will notice that in the
18 November 2 letter of the Atomic Energy Commission that there
19 are two specific violations which are alleged.

20 Mr. Jensch may notice that the second line of
21 the November 2 letter says that it appears that the plant
22 is being operated. Naturally, Mr. Jensch, we construed that
23 to mean that it is being operated in violations of the Com-
24 mission's regulations at that time, i.e., November 2, 1959.

25 MR. JENSCH: You are referring to the third line

1 of the very first paragraph of the letter of November 27

2 MR. TIPPITT: Yes.

3 In order that there be no misunderstanding, the
4 letter starts out:

5 "Based upon information obtained by the Commission
6 during inspections of your mill at Edgemont, South
7 Dakota, it appears that it is being operated in vio-
8 lation of the Commission's Regulation, 'Standards for
9 Protection Against Radiation', Part 20, Title 10,
10 Code of Federal Regulations, and the terms and condi-
11 tions of Source Material License No. R-174, in that
12 your company has:

13 "1. In violation of Section 20.201 (b) failed to
14 conduct surveys in mill areas which are occupied by
15 employees to determine the concentrations of airborne
16 radioactivity.

17 "2. In violation of Section 20.201 (b), failed
18 to conduct adequate surveys in mill areas which are
19 occupied by employees to determine the external radi-
20 ation levels."

21 Based upon that, Mr. Jensch, the newspapers give wide
22 publicity in that part of the country to the fact that
23 this company as well as other companies were being punished,
24 were being warned according to the various newspapers that
25 had to be reporting the incident so that it caused some very

1 bad results between not only the company and the public
2 generally, but also to the company and its employees. It
3 caused some bad results or at least some curiosity between
4 the company and some of the state agencies with whom it had
5 worked quite closely, and I refer there specifically to
6 the South Dakota State Department of Health, with whom a
7 fine relationship has grown between.

8 All of these things were disappointing to this
9 particular mill because it, Mr. Jensch, has been quite
10 aware, and we believe Mr. Conner will agree after he has
11 seen our data that we have been aware of radiation data
12 and we have undertaken as many of the improvement programs
13 as could be undertaken.

14 I refer, for instance, Mr. Jensch, to one news-
15 paper article which is from the Rapid City, South Dakota,
16 Daily Journal. It says in the headline:

17 "Edgemont Mill one of five rapped by AEC."

18 I refer to another newspaper article which appeared
19 in the Washington Post here:

20 "AEC cites five uranium firms on safety grounds."

21 Another newspaper article, the Denver Post:

22 "Certain uranium mills getting warnings."

23 These are the types of things which are regrettable
24 and we understand wholeheartedly that neither Mr. Conner
25 nor his department had this in mind when this action was

1 taken, but, nevertheless, this is the result.

2 Therefore, we feel that our action here in this
3 prehearing conference should be with the objective in mind of
4 whether or not a dispute really exists between the Atomic
5 Energy Commission and Mines Development this time on the
6 specific allegations which are made.

7 The November 2 letter cites two things: that it
8 has failed to conduct airborne radioactivity surveys and
9 the second thing is that it has not conducted adequate
10 external ^{radiation} ~~radius~~ level surveys.

11 We believe that we have the data that we can show
12 Mr. Conner's department that will satisfy him that we have
13 done both of these things in an adequate sort of way now.
14 I do think that we have a confusion on dates perhaps.

15 As Mr. Conner has pointed out to you, Mr. Jensch,
16 their letter was written on the basis of an April inspection.
17 The majority of the work that has been done by Mines
18 Development along this particular line, or rather the effec-
19 tive surveys were made after April, though there were many
20 surveys made before then, but by reason of the difficulty
21 of obtaining the dust survey equipment and several things
22 on the film badge surveys, the entire program was held up,
23 but prior to the date of the issuance of this letter, we
24 believe that we can satisfy the Atomic Energy Commission
25 that we are not guilty of these two accusations.

Based then upon these two specific specifications of issue, then a great deal of information is requested. If the Hearing Examiner please, this information which is requested we do not hold secret at all. We are quite anxious that anyone who wants it have access to it. As a matter of fact, we think that all of that information has been made available to the Atomic Energy Commission in different branches or in different departments on many occasions before now. The difficulty again unfortunately is ---

MR. JENSCH: May I interrupt you a moment?

To what departments do you refer in the Atomic Energy Commission when you say they have been informed of the subsequent activities on behalf of Mines Development, Inc.?

MR. TIPPITT: On item No. 1, there, it called for a detailed description of the organization. We feel that that was furnished at the time the license was obtained and that the license had never been obtained without a detailed description of the organization.

With reference to No. 2 and No. 3 (b) and 3 (c), all of that information has been made available to Dr. Walker of the Atomic Energy Commission and Mr. Johnson on their periodic inspections.

MR. JENSCH: When do those periodic inspections occur?

1 MR. TIPPITT: Their last inspection prior to this
2 letter was in the early part of September. I think it
3 was about September 5 or 6 when Dr. Walker came by. The
4 previous inspection was by a team consisting of Mr. Johnson.

5 MR. HAZEN: May I change one word?

6 Dr. Walker came to put AEC film badges on every
7 one of our men now to check our film badges, I presume, and
8 at that time, while he was there on the ground, I don't
9 know that he actually made any inspection.

10 MR. JENSCH: You are talking about Dr. Walker in
11 September?

12 MR. HAZEN: Yes. He rushed in to get these badges.
13 He has a large number of mills to take care of and he was
14 in a sweat and just tearing through. He brought these film
15 badges and, as a matter of fact, the boys tried to get him
16 to look at the records, but he just did not have time to
17 do it.

18 MR. TIPPITT: The point being, Mr. Jensch, that
19 it is silly really to have a difference in form, but to
20 the company it is quite important that it not be compelled
21 to furnish this information when of course the information
22 is available, but with the side newspaper publicity that
23 has been given this entire incident, it does not behoove
24 the company to be compelled to furnish information which it
25 feels has been available to the Atomic Energy Commission all

1 the time .

2 MR. JENSCH: Can you refer to a time prior to
3 September 1959 when your records were not only made avail-
4 able but were inspected by representatives of the Atomic
5 Energy Commission?

6 MR. HAZEN: I don't believe they have ever been
7 inspected by a representative of the Atomic Energy Com-
8 mission except by the Raw Materials Branch. The boys looked
9 at it. The mill men are very proud of their record and
10 they did very thorough work and particularly the engineer
11 in charge of this radiation work. The Raw Materials Branch
12 has men coming through every month and they got them over
13 to show it to them and Mr. Richards, who does the work, was
14 very much flattered because the Raw Materials man said that
15 that was the best dust survey he had seen.

16 MR. JENSCH: Who was the man of the Atomic Energy
17 Commission by whom Mr. Richards was flattered?

18 MR. HAZEN: I think it was Mr. Facer, but there
19 are quite a number of them who go through. I think Mr. Facer
20 handles that area. I am not quite sure, but it is easy enough
21 to find out.

22 MR. JENSCH: Can you refer to any specific date
23 with respect to an inspection by the Raw Materials Division?

24 MR. HAZEN: No, sir; I can't. They come through
25 every month. The Raw Materials Branch has certain mills

1 assigned to certain men and they make their rounds regularly.

2 MR. JENSCH: Excuse me for interrupting. Will
3 you proceed, Mr. Tippitt?

4 MR. TIPPITT: I do not wish to belabor that point,
5 but I trust you will see we are not trying to withhold any
6 information and we are anxious that the Atomic Energy
7 Commission know all of these facts and have all of the data
8 and information, but it is the manner in which it is requested
9 which has reacted to the disadvantage of the company.

10 The last thing on the letter of November 2 which
11 the Hearing Examiner may notice is that based upon the defi-
12 ciencies which are claimed, certain information is requested
13 which we have referred to, and then lastly, it is requested
14 that a list of deficiencies be prepared and that steps be
15 taken on some monthly basis to show what has been done to
16 correct these deficiencies.

17 Mr. Jensch, this is a matter which Mr. Connor
18 and Mr. Hazen and I were discussing as we came down here.
19 It seems to me that it is most unfair to require Mines
20 Development to prepare a list of deficiencies. There may
21 be an honest-to-goodness misinterpretation or variance of
22 opinion as between Mines Development Company and the
23 Atomic Energy Commission as to what a deficiency is and
24 whether or not it is present or not. If we do not list that
25 deficiency, then we are in violation of an order of the

Commission. Not only are we in violation of the regulation for allowing the deficiency to exist, but then we have violated an order of the Commission, too.

It seems to me it is somewhat like a motorist who might commit a minor traffic violation and then have the state require him to state all of the deficiencies of his driving and to report to the state every time what he has done about correcting them or every time that he gets careless in the future.

It seems to me that it is requiring too much to have the Mines Development Company police itself, so to speak.

It seems to me also, Mr. Jensch, that the authority for that probably comes from, I believe, section 2.201 of the rules of practice where, under revocations of license and suspension proceedings, that action of this kind may be taken. But the thing we have here is not in that category. I do not think that it is that serious and I believe that Mr. Conner will agree.

It seems to me what has happened here is that this very stringent provision for requiring this list of deficiencies has been picked up out of the drastic recommendations that are given the Atomic Energy Commission with respect to revocation of licenses and that it should not be held here where we are, of course, in quite close contact with

1 other branches at least of the AEC to know of our deficiencies
2 and we are working with them to try to correct them at all
3 times.

4 It seems to me, Mr. Jensch, that what has happened
5 here, if we can oversimplify the issue, is that the Commission
6 has ceased upon two things to base or preface its request
7 for a lot of information that we are willing to furnish and
8 have furnished to the Atomic Energy Commission for some
9 time. If that is the case, it seems to me we have placed
10 this company under an undue disadvantage, because that
11 information could have been gotten without the necessity
12 of making these accusations which have been carried up in
13 the newspapers. It could have been gotten very easily.

14 It would seem for that reason if the primary
15 purpose of all of this is to get all of this information
16 that certainly we should not have to base it on the accusa-
17 tions of violations of regulations.

18 I would like to take just a very short bit of
19 time more, Mr. Jensch, to tell you generally about the
20 Mines Development Company's radiation program.

21 The first problem that they really faced was a
22 problem of the discharge of the clear fluids from the tailing
23 ponds. To give you an awareness of this particular company
24 of this particular problem, it worked with the South Dakota
25 State Department of Health months before the plant was ever

1 built in order to try to solve some of these programs and
2 at considerable time and money on the part of top management
3 of the company. The problem received pretty generally a
4 pretty clean bill of health and also from the United States
5 Public Health Service as well as the State Department of Health.

6 The Atomic Energy people I think were in on that
7 also and kept advised of what was going on.

8 The discharge from this particular plant goes
9 into a stream which is called the Cheyenne River which flows
10 at times and does not flow at times. Even though the problem
11 looked like it had been satisfactorily solved on its own
12 initiative and without being forced at all and under no
13 compulsion, this particular licensee went out and spent
14 something over one hundred thousand dollars to take this
15 water and recycle it through the mill process.

16 It was because of this that I think the company
17 has established a very, very fine relationship with the
18 people in that part of the country because it received some
19 publicity, and even more so with the South Dakota State
20 Department of Health.

21 That again is why this action on the part of the
22 Atomic Energy Commission has hurt.

23 So much for generalities, Mr. Jensch. I do hope
24 that I have created in your mind the idea that this particular
25 company is not trying to escape one single obligation or

1 requirement under the regulations. It is anxious to do
2 and has done everything they know to do. Mr. Hazen has
3 been to every conference that he knows has been held on
4 this subject and so have the people directly in charge at
5 the mill.

6 MR. JENSCH: What is Mr. Hazen's connection with
7 the company?

8 MR. TIPPITT: Mr. Hazen is an outside consultant.
9 He is not an employee of the company. He is a metallurgist.
10 He is one of the early workers with the Atomic Energy
11 Commission and formerly had been associated with it as a
12 consultant, as I recall.

13 MR. HAZEN: I think that is the best definition.

14 MR. TIPPITT: Mr. Hazen does have a nationwide
15 and respected reputation in this particular line.

16 Since this April inspection, apparently occurred
17 on which the November letter was based, I might report to
18 you, Mr. Jensch, that under Mr. Hazen's direction dust
19 survey equipment has been purchased. It was actually pur-
20 chased prior to the April inspection. It was there in the
21 plant at the time and it was waiting to be used.

22 Since that April inspection, a very, very thorough
23 air sampling program has been undertaken and I would say
24 that it was not undertaken prior to that time because really,
25 in most of the conferences that Mr. Hazen had with the people

1 who knew best in this situation that there was a great
2 deal of divergence of opinion as to the proper way to conduct
3 these surveys.

4 I cite to you one example which you are quite
5 well aware of; in the early days of this, urinalysis ~~of~~
6 ~~this~~ was quite heavily stressed. As the time has gone on
7 it has gotten off of that and gone on to other surveys. Also,
8 since this April date we have had very complete urinalysis
9 surveys. Those were conducted in May and June. Since that
10 date we have had two one-week film badge surveys and the
11 Atomic Energy Commission has conducted its own survey. That
12 was conducted by an outside company, incidentally, and a
13 good one which was selected after much study on the part
14 of Mr. Hazen. It was Tracer Labos.

15 MR. JENSCH: Is this a film badge survey program
16 undertaken after April 1959?

17 MR. TIPPITT: Actually, it was started before
18 April, but it was not as comprehensive in scope before April
19 as it was after April. The program was undertaken in earnest
20 in July of 1959.

21 MR. JENSCH: Was that reported to the Atomic
22 Energy Commission?

23 MR. TIPPITT: It was reported.

24 There is no requirement that it be reported, but
25 it was reported to this extent: On the September trip of

1 Dr. Walker there, he was informed that this survey had
2 commenced and he was told that the records were available
3 for his inspection.

4 MR. JENSCH: What report did you receive from the
5 Atomic Energy Commission following the April 1959 inspection?

6 MR. TIPPITT: I don't know that we received any.

7 MR. HAZEN: The letter dated November 2 is the first
8 thing we have had from them.

9 MR. JENSCH: Is there any report or summary of
10 what the inspection Division discovered at your plant in
11 April and any recommendation made by them after April 1959
12 concerning the operations of the plant?

13 MR. HAZEN: Not that I know of.

14 MR. TIPPITT: I don't have any written record of
15 it. It is possible it was reported on a verbal basis, but I
16 think Mr. Hazen would have known, but I can find no written
17 report on that.

18 MR. CONNER: I can clear this up.

19 In accordance with existing policy, the inspectors
20 at the time of their inspection will comment to the people
21 at a given location, in this case the officials of the mill,
22 as to the areas which appear to be in noncompliance and this
23 then is reported to the Division of Licensing and Regulation.
24 The division then issues whatever is appropriate, which may
25 be merely a letter indicating that the inspection was

1 conducted and no significant items of noncompliance were
2 filed, a notice of alleged violation may be issued, or
3 in an appropriate circumstance, an order may be issued, so
4 I am quite certain that the first written information furn-
5 ished Mines Development with respect to the April inspection
6 was the order of November 2.

7 MR. JENSCH: Was there any oral communication
8 about April 1959 between the inspection Division and the
9 officials of Mines Development and, if so, what was the
10 realm of it?

11 MR. CONNER: I am sure Dr. Walker discussed the
12 noncompliance area. I think we are trying to get the facts
13 here.

14 MR. JENSCH: Pardon me for interrupting, but I
15 think it is important that we get these facts.

16 MR. CONNER: To furnish the background, I might say
17 this:

18 The first inspection of this mill occurred on
19 February 6, 1953. This was processed and forwarded into
20 the Division of Licensing and Regulation. Then an alleged
21 violation was sent to the company which referred to the fact
22 that surveys of the facility had not been made by the
23 licensee. This letter was acknowledged by the Mines Develop-
24 ment, Inc., on July 7, 1958. In substance they said, "We will
25 get into compliance."

1 Dr. Walker went back there ---

2 MR. JENSCH: He is of the Atomic Energy Commission?

3 MR. CONNER: Yes, sir; Division of Inspection.

4 He went back there on April 14 and 15, 1959.

5 At this time, according to the information available to me and
6 what I would expect him to testify to, he found that in the
7 fourteen-month period between the initial inspection and
8 this second inspection, that there were no records of air
9 sampling to determine the concentration of airborne radio-
10 activity and that the only records with respect to surveys
11 for external radiation involved some surveys made on
12 October 8, 1959, when four areas of the facilities were
13 surveyed for external beta-gamma radiation levels.

14 During the week of September 1, 1958, and in that
15 week only, film badges were used both on the employees and
16 placed in strategic locations throughout the plant.

17 MR. JENSCH: Those matters to which you have now
18 referred with respect to the airborne circulation and so
19 forth, is that a report made in July based upon the preceding
20 February 8, 1958 inspection.

21 In other words, is this a continuation of the
22 same situation that was discovered in February of 1958?

23 MR. CONNER: Yes, sir.

24 Let me be exactly accurate if I may here, sir.

25 MR. JENSCH: While you are looking for that, I recall

1 a statement by Mr. Tippitt to the effect that there was
2 some doubt as to how the survey should be conducted and
3 he referred to urinalysis as being an acceptable mode
4 generally considered satisfactory at that time.

5 MR. HAZEN: At the start it was considered superior
6 because there was supposed to be a relation between air-
7 borne uranium and the amount that got in the body This
8 was supposed to measure how much that guy got in his lungs.

9 MR. JENSCH: When did the airborne survey by the
10 instruments become the accepted mode?

11 MR. CONNER: I think it has always been an accepted
12 mode. Whether or not it ever achieved a superior rating as
13 contrasted with others, I cannot say, but it has been sampling
14 through filters which has always been in effect.

15 MR. HAZEN: That is correct, and all of the labora-
16 tories have had that in effect. They had a seminar a year ago
17 last October in New York and all of the doctors and health
18 men connected with the different laboratories were there.
19 They gave their talks and they were trying to correlate the
20 results of dust-borne with urinalysis. It was obviously
21 so much better if you could say John Doe had so much radiation
22 in his body rather than he was working in an atmosphere
23 with so much in it. Then it has fallen into disrepute as to
24 whether there is any proven connection between the two.

25 I have advised my clients not to bother with urinalysis

1 any longer.

2 MR. JENSCH: That is after October 1958?

3 MR. HAZEN: No, at that time some of the doctors
4 felt it was just the thing to do, but along in April, I
5 believe it was, of the following year when Dr. Beard --

6 MR. CONNER: I think you mean Dr. Victor Beard.

7 MR. HAZEN: At that time it was obvious the
8 AEC favored the airborne dust detection system rather
9 than urinalysis so that is when we were all swinging over
10 to the dust surveys.

11 MR. JENSCH: In July of 1958, did the AEC say adopt
12 airborne sampling devices?

13 MR. CONNER: No, sir.

14 If I may make a mild correction of my own, that letter
15 was sent out June 11, 1958. I now have it before me.

16 MR. JENSCH: Did that refer to the necessity of
17 airborne sampling devices?

18 MR. CONNER: No, sir.

19 Of course, it is available for any examination,
20 but the pertinent part is that the corporation has not
21 conducted surveys to determine compliance with the regulations
22 C section 20.201 (b) surveys.

23 As your Honor knows, that section provides you must
24 make such surveys as are necessary to comply with this regu-
25 lation, which of course includes external radiation,

airborne surveys, discharge of effluents, et cetera, but that is all it said as part of the violation.

The letter concludes, however, in the final paragraph:

"Attached for your information are circulars entitled 'Radiation Surveys for Uranium Ore Processing Mill' and 'Air Sampling', which you may find helpful in enabling you to comply with the regulations in part 20 referred to herein. The methods for surveying and sampling as described in these circulars are not intended to be mandatory but rather to suggest useful ways to insure safe operating conditions. Other methods of course may be equally effective." That is the extent of the letter.

MR. JENSCH: What was the disposition of that alleged violation?

MR. CONNER: The company replied by letter. There are two letters here. I am wondering if both of them don't apply.

The file reflects a letter of July 1, 1958, from Mines Development, Inc., from Mr. Allen D. Gray, Executive Vice President, and a second letter alike in every respect except that it is dated July 7, 1958.

MR. JENSCH: What was the sequence by the Commission

1 on either of those two letters?

2 MR. CONNERS: In response to either one or both
3 of the letters, the Commission replied in its standard
4 form -- it is not exactly a standard form letter, but
5 in a regular letter acknowledging receipt, and we state in
6 this letter:

7 "It appears that you are taking appropriate action
8 to correct those deficiencies in your source material
9 program which were brought to your attention in our
10 letter of July 11, 1958."

11 We further state ---

12 MR. JENSCH: Should that be June 11, 1958.

13 MR. CONNER: The correct date is June 11, 1958, not
14 July.

15 There is another paragraph in this letter which
16 relates that I can read if you like.

17 MR. JENSCH: The violation in 1958 is beyond the
18 scope of this proceeding and it appears that the Commission
19 was satisfied, is that correct, of the activity undertaken
20 by Mines Development following the June 1958 letter?

21 MR. CONNER: We felt at that time that they were
22 taking appropriate action. Perhaps I had better read this
23 paragraph here to get the quoting.

24 "As stated in section 20.201, surveys are required
25 to determine compliance with applicable sections of

1 this regulation such as release of effluents to
2 unrestricted areas, exposure of personnel to radiation
3 and concentrations of radioactive material in the area.
4 Once this determination has been made and operation
5 standardized, if possible, further surveys would not
6 be required unless conditions are subject to change.
7 If it is not possible or practical to comply with
8 particular sections of this regulation, provisions are
9 included in the regulation (section 20.201) for obtain-
10 ing exemption or approval of alternate methods and
11 limits."

12 I cite that to point out that we did say that
13 surveys are necessary and I think you will find that this
14 paragraph clearly indicates the Commission's position that
15 we will do everything possible to cooperate in getting
16 people into compliance, but this is our purpose.

17 I cite this to indicate that the Commission did
18 not indicate it had signed off completely with this mill.
19 The taking of surveys is a continuous matter.

20 MR. JENSCH: Insofar as the prior June 1958
21 letter was concerned, the Commission was no longer concerned
22 with that situation according to this later letter?

23 MR. CONNER: That is right.

24 MR. JENSCH: Does that supply the additional facts.
25 If not, we will ask Mr. Tippitt to proceed further.

1 MR. TIPPITT: I think it was productive time.

2 Our position here entirely, Mr. Jensch, is that
3 the violations that we are accused of now are violations
4 which were occurring, as far as we can tell, on November 2.
5 I think we have shown Mr. Conner this morning that we can
6 give him the results of our surveys so that on November 2
7 we were really not in violations of the specification of
8 issues stated.

9 That being the case, Mr. Jensch, it would appear
10 if Mr. Conner's people are satisfied with the fact that we
11 have conducted these surveys and are not specifically guilty
12 of these two specifications, that there is no necessity for
13 a formal hearing.

14 Speaking quite candidly, Mr. Jensch, we would welcome
15 a hearing because we think that we stand quite well to show
16 that we have done the things that we are accused of not doing
17 in accordance with these specifications. So, in a way, it
18 would redound to our benefit to go through the public hearing
19 or the formal hearing and then to let it be shown that we are
20 in compliance with the regulation at least with respect to
21 these two specifications.

22 However, that does seem like a fairly nonsensical
23 thing to do if Mr. Conner's people are convinced of the
24 fact that we have conducted the survey.

25 Mr. Jensch: It is my impression that there is not

any classified material involved in this proceeding, so therefore, this proceeding would be a public hearing.

I don't know whether you have spent quite a bit of time pointing out how the newspapers have made statements which you feel are adverse to the interests of the company. It occurs to me, assuming that you confer with the different divisions here represented by Mr. Connor, and if you are able to effect an agreement or an understanding that you are now in compliance, whether you would desire to at least, say, meet in Denver and read such stipulation or arrange an understanding so that all could be present and hear your statement, and if the staff of the Atomic Energy Commission did not oppose the presentation you there made, it could thereby be indicated to the public at large that you have fully complied with the allegations or have eliminated the basis for the allegations, my thought being whether you desire to consider that from the point of view of publicity, it might be helpful to the company.

I am sure Mr. Connor will agree it is not the purpose of the Atomic Energy Commission in any of its activities to let harmful publicity or any adverse comment of any kind befall a licensee of the Commission which is endeavoring and in the course of negotiations are able to work out improving means to comply with regulations.

I only thought whatever would be your agreement

1 and your relationships in negotiations with the different
2 divisions here represented by Mr. Conner that a public
3 presentation, however brief it would be, would be helpful
4 to your company and I am sure it would be the feeling of
5 the Atomic Energy Commission that you should be afforded
6 that opportunity so that the public record and the public
7 presentation could be known to all.

8 I have no doubt that the Denver papers are follow-
9 ing this hearing and the notice having been set for January 7,
10 and if it not be held on January 7 a formal order of postpone-
11 ment can be issued and a later date selected, at which you
12 could make your public presentation.

13 I just call that to your attention.

14 MR. TIPPITT: We appreciate your consideration in
15 that respect, Mr. Jensch. We do not wish you to think that
16 we are overly concerned about this particular element, but it
17 is important, as you can quite well understand.

18 MR. JENSCH: Yes, I have no doubt about that.

19 MR. TIPPITT: We would hope very much that Mr. Conner
20 could see his way clear, if we do prove to his satisfaction
21 that we are not guilty as of November 2 of any of these
22 things -- certainly at some time in the past I am sure we
23 were guilty of some infractions, but I hope we are correcting
24 them -- but if Mr. Conner could see clear to see to it that
25 that impression is corrected, it would be greatly to our benefit

1 and also to that of the Atomic Energy Commission, because
2 you then have a licensee that has the respect and confidence
3 of the public among whom it is working.

4 MR. JENSCH: At a public hearing, even though it
5 may be brief, it might afford an excellent opportunity for
6 such correction as you might desire.

7 MR. CONNER: I would like to interject one point
8 here before we get deeper into this.

9 From our experience in dealing with the mills, and
10 I certainly do not mean to include Mines Development mill
11 necessarily, we have found that survey programs will only
12 turn up items which are also subject to correction and that
13 frequently it takes an extended period of time before companies
14 can add additional machinery or do whatever they have to do
15 to get into compliance with rule 20, and I am not sure that
16 even under the most auspicious conditions the staff could
17 do more than say the measures which have been undertaken by
18 this company appear to be adequate to comply with section
19 20. I do not think we would be in a position until we have
20 exhausted every question that a mill is or is not in com-
21 plete compliance.

22 I would not want you to feel that we could be
23 committed to something like that.

24 MR. JENSCH: I think you are correct insaying that
25 that is as far as the staff wants to go.

1 MR. TIPPITT: I have one thought on that.

2 I would certainly not expect Mr. Conner's depart-
3 ment to say that our surveys were adequate and we had
4 corrected all deficiencies, but the question is whether we
5 have violated these two specifications, and only on those
6 two. That is the only thing before you right now.

7 MR. JENSCH: What this hearing will consider is
8 what has been set forth by the Commission in its November
9 30 order, and while this in part refers to the November 2
10 order, the Commission has specified for consideration these
11 matters for the hearing:

12 One, whether the respondent in violation of section
13 20.201 (b) 10 C.F.R. failed to conduct surveys in mill areas
14 which are occupied by employees to determine the concentra-
15 tions of airborne radioactivity; and,

16 Two, whether the respondent in violation of section
17 20.201 (b), 10 C.F.R. failed to conduct adequate surveys in
18 mill areas which are occupied by employees to determine
19 the external radiation levels; and,

20 Three, whether the order dated November 2 directing
21 the respondent to take certain action with respect to the
22 operation of its mill should be sustained.

23 So, we really have a little broader scope perhaps
24 than the November 2 letter.

25 MR. TIPPITT: Yes, I think that is true, Mr. Jensch.

1 May I just say this one thing: If that formal
2 order is sufficient in your mind to go back and find any
3 deficiency from the inception of the mill, which is one way
4 of looking at it, you could do so.

5 Then it seems to me we are getting into something
6 that I am sure Mr. Conner does not mean --- and I am quite
7 positive that the Atomic Energy would not countenance ---
8 that is, that it is a punitive expedition. There is not
9 one single mill that you can go back to say in March of 1955
10 or 1956 or 1957, that we were not doing what should be done
11 and the Commission could rap them.

12 But it seems to me the important thing is that we
13 are trying to conform.

14 MR. CONNER: If I may try to put this in perspective
15 on the record for everybody's understanding, this order in
16 your case was really the first step.

17 The Commission's desire in this matter is to bring
18 all the mills and everything else into compliance with
19 part 20. If surveys have not been made, then there is no
20 information available, but the real issue with all the mills
21 is, are the people in these mills subjected to concentrations
22 in excess of part 20? Is the Commission doing its job and
23 is its licensee doing its job to protect the health and safety
24 of these people? This is the real issue.

25 Making the survey is just the first step of it.

1 As I have indicated to you before, Mr. Tippitt,
2 we have found in other cases where some surveys had been made
3 that the levels far exceed maximum permissible concentrations.
4 In such cases, the orders from the Commission have said
5 not only must you make better surveys, if that happened
6 to be one of the items, but you must tell us what you are
7 going to do to reduce the levels of airborne radiation, for
8 example, in your mill, and they must come in to us on a
9 continuing basis.

10 Orders like that had already been issued and this
11 is the program that the Commission is undertaking, to bring
12 all of the mills in compliance with part 20.

13 MR. TIPPITT: It seems to me those are new orders.

14 The order that we are faced with now still is whether
15 or not we conducted these surveys. If the surveys show a
16 deficiency, then that would be the subject of a new order,
17 so it seems to me that we do not have to worry about that
18 phase of it now. The only thing we have to worry about is,
19 as you have read the specifications there, we have failed
20 to conduct the survey and we will feel that Mr. Conner will
21 agree with us that we have and that is why we do not feel that
22 a formal hearing will be necessary.

23 MR. JENSCH: As I view this proceeding and the
24 process that the Commission has described, the Commission
25 is interested in a record to be prepared in reference to

1 the matters to be considered at the hearing.

2 Now, whether that is done by stipulation or by
3 agreement or by, let me say, a postponement of this pro-
4 ceeding so that the company and the staff can confer respect-
5 ing what the factual situation was and what the proposals
6 are for future, I don't know. I think that that is something
7 we can explore at a prehearing conference as to how we
8 can best present a public record to the Commission.

9 If more time than January 7 is advisable for
10 that purpose, as I think both of you gentlemen have indicated,
11 a postponement of this hearing would be in order.

12 My own thought about licensee activities is that
13 the review somehow extends over a considerable period because
14 the licensee acts continuously under, if I may use the
15 term, the license as a continuing privilege, and it is
16 subject to renewal, and what the Commission decides to do
17 with a renewal or the continuation of an existing license
18 may depend upon what has transpired and how the licensee
19 is undertaking, if the regulations so require on specific
20 orders, to conform to the regulations and the terms of the
21 license.

22 If, as you have indicated, Mr. Tippit, the company
23 has endeavored to respond to every suggestion of the
24 Inspection Division or the other representatives of the
25 Atomic Energy Commission, I think those are matters of

1 record that the Commission would well desire to be informed
2 about so that its judgment could then be formed upon the
3 basis of such a continuing and negotiating and, if I may
4 use the term, improving relationship between the Commission
5 and the licensee. That is my only thought, that somehow we
6 like to limit ourselves to a precise date, but I think a
7 licensee's relationship with the Commission which is obligated
8 to carry out the Atomic Energy Act necessarily has a little
9 larger scope than a specific date.

10 There might be an extenuating circumstance where
11 observing the situation in November might be different
12 than it was in April. I think we have to look at April
13 and November in a continuing review. Maybe the situation
14 for the previous year and in 1958 is worth looking at to
15 show that you have improved the situation or have endeavored
16 in every instance to comply and conform with the Commission
17 changing, if it may, supervision as to reducing the level of
18 concentration, for instance, in a mill.

19 Don't you feel that way, Mr. Tippitt?

20 MR. TIPPITT: Yes, and I agree with the scope of
21 the Atomic Energy's interest.

22 With reference to this particular hearing, Mr.
23 Jensch, it seems to be the objective of Mr. Conner's argument
24 that the surveys are being performed and that objective we
25 think that we can show him has been accomplished.

1 That being the case, we feel quite certain that
2 Mr. Conner's department does not desire to take punitive
3 or be accusative to the licensee regulationwise, and that
4 is why it is to our interest to try to narrow this investi-
5 gation to the point of time at which these accusations were
6 made, at least they were made in the public mind as of
7 November.

8 It is not quite fair to the licensee to be, so to
9 speak, nailed to something that happened a year ago which
10 he in good faith has corrected since because it still leaves
11 a bad impression on the public.

12 MR. JENSCH: Certainly the newspaper articles from
13 which you have read have indicated a newspaper comment
14 that is adverse to your company.

15 I would just like to say this: Whatever review
16 Mr. Conner's department decides in reference to these past
17 activities and your proposed future conduct under the license
18 may well be matters that you would like to state even briefly
19 in a public hearing for a public record so that if any
20 adverse effect has befallen the company, it may be eliminated
21 by such a public presentation.

22 It is certainly my direction by the Atomic Energy
23 Commission that the full public record be made available,
24 and likewise the company, which is the subject of this pro-
25 ceeding, have the fullest opportunity to publicly present

1 its position.

2 Would you indicate how you feel with respect to
3 such negotiations?

4 Is there any necessity of having any further pre-
5 hearing conferences or is it your thought that you are
6 joining with Mr. Tippitt now for a request of a postponement
7 of this proceeding to a date later to be determined after a
8 report by you and Mr. Tippitt as to the result of your
9 negotiations?

10 MR. CONNER: That is correct.

11 MR. TIPPITT: Yes, that is correct.

12 MR. JENSCH: Are you able to indicate when you think
13 you might either complete your negotiations or would be
14 desirous of having the public hearing convened or disposed of
15 in some way by a public record?

16 How long do you think it will take?

17 MR. CONNER: The problem here stems partially from
18 the point that I do not know exactly in what form the records
19 of these surveys have been kept by Mines Development. I
20 understand that they are contained in that voluminous notebook
21 Mr. Tippitt has in front of him. It is not, in other words,
22 as I understand, in the form of a report to the Commission.
23 Hence I assume that there is no direct correlation between
24 the data that they have presently available and the require-
25 ments of our November 2 order.

1 Consequently, it may be that if this data is
2 left with us now, this will require a preliminary review
3 on our part and perhaps --- I do not know this for sure ---
4 but perhaps there will be areas that we will have to handle
5 by correspondence. There is no use speculating on examples
6 but, for example, as I understand Mr. Hazen's reports, they
7 refer to surveys in 159 areas which are correlated to various
8 areas and plant.

9 It may be that we might say we are not quite sure
10 whether area 120 is in this position or in the second
11 position; will you advise us?

12 Due to these possible uncertainties, I hesitate to
13 attempt to fix a date. Certainly one month would be required,
14 it seems to me.

15 MR. JENSCH: Do you have any objection to that length
16 of time, Mr. Tippitt?

17 MR. HAZEN: I don't think so.

18 Allen admires the AEC and he does not want to be
19 put in a bad position, but he also does not want to put the
20 AEC in a bad position and there is a little dilemma there.
21 I do not see any objection.

22 MR. TIPPITT: I would think that a month would be
23 satisfactory.

24 MR. JENSCH: Would it be your thought that we could
25 fix a date now and if that is not sufficient again postpone

1 it, but in any event keep it within a realm of certainty
2 rather than leaving it in some uncertain state.

3 MR. CONNERS: We have not examined any of this
4 data so we can't tell.

5 If it is all there, one week would be adequate,
6 assuming the trained people are available and are able to
7 look it over. On the other hand, if correspondence is
8 required, this necessarily will result in delays, so I
9 find it difficult to estimate a date.

10 MR. JENSCH: Do you prefer a definite date, Mr.
11 Tippitt?

12 MR. TIPPITT: I don't prefer one. I think either
13 way is satisfactory.

14 I think as a general matter it is better to fix a
15 date and postpone that date, but I can see Mr. Conner's
16 dilemma so I would suggest we leave it open.

17 MR. JENSCH: My thought was if we kept it in a
18 definite state, while it may seem longer than may necessarily
19 be required or as circumstances prove, in any event the public
20 record would show a fixed time. It may be difficult to
21 move it up and if you do not have any objection to the desig-
22 nation of a specific date, and if Mines Development, Inc.
23 can ride along with this amount of time without feeling that
24 it is being prejudiced by having this later date designated,
25 I think in the interest of a public record and of public notice

1 that a specific date might better serve the interests of
2 the licensee.

3 Do you feel that way, Mr. Tippitt?

4 MR. TIPPITT: Yes, I do.

5 MR. JENSCH: Let us fix as much as six weeks --
6 do you feel that would be adequate under almost any circum-
7 stances, Mr. Conner?

8 MR. CONNER: MNo, sir; I would not want to say
9 that. I am not referring to this particular case, but I
10 can only go on what experience I have had thus far. You
11 just cannot understand some of these mechanical processes
12 without a great deal of correspondence between the parties
13 and even conferences, so I think six weeks would be adequate and
14 certainly that is a date to shoot for, but I don't want you to
15 feel that I am in the position of saying we will have it done
16 that way.

17 MR. JENSCH: You should not feel, nor should Mr.
18 Tippitt feel, that if this date is not satisfactory as circum-
19 stances prove themselves to be that either one should hesitate
20 to request a postponement to expedite the case if a postpone-
21 ment will produce it.

22 Let us fix February 16.

23 MR. HAZEN: I am on an AIME panel in New York. The
24 American Institute of Mining Engineers have a panel on the
25 15th and I have to be on it.

1 MR. JENSCH: How long will you be on that panel?

2 MR. HAZEN: Two days.

3 MR. JENSCH: How would February 17 in Denver be?

4 MR. HAZEN: Fine.

5 MR. JENSCH: Let us fix the date of February 17
6 and I will prepare a public notice which will be prepared
7 in the Federal Register postponing this proceeding for the
8 purpose of in effect the presentation of evidence for this
9 hearing by way of stipulation or agreement as to the nature
10 of the surveys.

11 Would that not be correct, that it would really be
12 an aid in expediting the proceeding for that type of evidence?
13 Do you feel that way, Mr. Tippitt?

14 MR. TIPPITT: Yes.

15 I was wondering about the exact wording. I would
16 like to avoid any wording in the Federal Register of notifi-
17 cation ----

18 MR. JENSCH: That you are not prepared with evidence?

19 MR. TIPPITT: Yes.

20 MR. JENSCH: Let us keep that thought in mind and
21 select words other than that.

22 In any event, it will be postponed from the date
23 of January 7 until February 17, 1960.

24 MR. TIPPITT: When does that have to be published?

25 MR. JENSCH: I will try to get it out right away

1 so that it can be published prior to the January 7, 1960 date
2 which is now set for the prehearing conference.

3 MR. TIPPITT: I wonder if this data is in such
4 form that perhaps much to Mr. Conner's surprise ---

5 MR. JENSCH: Let us recess at this time until
6 4:30 this afternoon and perhaps during the day you can
7 better determine whether you are going to need a week or
8 six weeks and let's not fix the date at this time, and let
9 us recess this proceeding until 4:30 this afternoon, at which
10 time we can meet very shortly and decide what time you think
11 will be necessary.

12 Would you like to go for January 7 if possible?

13 MR. TIPPITT: Only from the standpoint any time a
14 newspaper says the case against Mines Development is post-
15 poned for another month, it puts another nail in the plank
16 that Mines Development Company stands accused.

17 MR. JENSCH: Would the staff object to a statement
18 in an order of postponement at the request of the staff for
19 the purpose of examining survey records which have been
20 tendered by Mines Development Company?

21 MR. CONNER: I can't think of any.

22 MR. TIPPITT: That would certainly be much better.

23 MR. JENSCH: It makes the request because the staff
24 is anxious to cooperate and review the evidence you apparently
25 have available, and if it will undertake the burden of the

postponement, it might relieve the company of any reflection.

MR. TIPPITT: It is necessary, I presume, under your rules that this be published? Is it necessary that any notice of the postponement be given?

MR. JENSCH: A notice of prehearing conference has been given so I feel any public notice of this kind should be published.

MR. TIPPITT: May I ask that Mr. Hazen be excused from our conference this afternoon. He has other clients that he must serve beginning in the morning back in Denver so he has to get back.

MR. JENSCH: I certainly don't seek to detain him and I think it is entirely between you and Mr. Conner if you are able during the day to indicate how long you think the Commission would need to review the evidence that you have brought here today, and let us meet at 4:30 to see if we can pick another date.

MR. CONNER: I cannot state with any degree of accuracy whether or not I have the proper technical people available.

MR. JENSCH: I understand that. We will see what we can do. If that does not suffice, we will try to pick a date.

MR. TIPPITT: Would it be satisfactory if we do not have anything very earth-shaking that we require a formal

1 reconvening of this meeting, would it be possible and
2 would it save you time and the reporters time if perhaps
3 Mr. Conner reported to you in the morning and then you would
4 not have to be committing your afternoon to waiting? In
5 that event, whatever we do, it might be that I could go
6 ahead and go back to Denver tonight and you could report
7 to Mr. Jensch in the morning.

8 MR. JENSCH: I don't like to have a communication
9 with an attorney in a proceeding unless the other one is
10 there unless it is solely on procedural matters, and I
11 take it you would recognize that to be a solely procedural
12 matter.

13 MR. TIPPITT: Yes, I would.

14 MR. JENSCH: Since this is just a prehearing con-
15 ference and does not require a date to be fixed here, we will
16 conclude this prehearing conference at this time and I will
17 hear from Mr. Conner in the morning if he is able to indicate
18 how much time is necessary. Maybe two or three weeks would
19 be necessary. Perhaps prior to that time he can telephone
20 you to ascertain your schedule and find a time convenient to
21 you and to him. Therefore, this prehearing conference is
22 ended.

23 (Thereupon, at 12:20 p.m., the hearing was recessed,
24 to reconvene at a later date to be determined by
25 the Examiner.)

MEMO ROUTE SLIP Form AEC-93 (Rev. May 14, 1947)		See me about this. Note and return.	For conference. For signature.	For action. For information.
TO (Name and unit) R. C. Hageman, CH	INITIALS <i>RCH</i> DATE 1/13/60	REMARKS RE: TRANSCRIPT IN THE MATTER OF "APPEAL OF MINES DEVELOPMENT, INC." LICENSE NO. R-174, 10 CFR 40 Attached is your copy of the above transcript		
TO (Name and unit)	INITIALS DATE	REMARKS which I promised to send you. ID has been furnished a separate copy for their files. <i>Dave</i>		
TO (Name and unit)	INITIALS DATE	REMARKS		
FROM (Name and unit) L. D. LOW INC. <i>[Signature]</i>	REMARKS			
PHONE NO. 3336	DATE 1/6/60			

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