



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

RELATED CORRESPONDENCE

July 17, 1985

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

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

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

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of
KERR-MCGEE CHEMICAL CORPORATION
(West Chicago Rare Earths Facility)
Docket No. 40-2061 ML, ASLBP No. 83-495-01-ML

Dear Administrative Judges:

Enclosed are copies of a report by the NRC Office of Inspector and Auditor respecting the activities of Dr. Philip Gustafson relating to the preparation of the Environmental Impact Statements for the West Chicago Rare Earths Facility. The investigation was requested by you in your order of December 24, 1984, in response to information provided by the Illinois Attorney General's office.

The OIA report concludes that there is no indication that Dr. Gustafson's contacts with the Kerr-McGee Corporation had any effect on the draft and final environmental statements for the West Chicago Rare Earths Facility. Accordingly, the NRC staff considers this matter closed.

Sincerely yours,

Stephen H. Lewis

Stephen H. Lewis
Deputy Assistant Chief Hearing Counsel

Enclosures: As stated

cc: See page 2

cc w/enclosures:

Anne Rapkin, Esq.
Peter Nickles, Esq.
Mead Hedglon, Esq.
Steven Seiple, Esq.
Thomas W. Fawell, Esq.
Atomic Safety and Licensing
Board Panel

William J. Barzano, Jr., Esq.
Richard A. Meserve, Esq.
John C. Berghoff, Esq.
Docketing and Service Section
Atomic Safety and Licensing
Appeal Board Panel



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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

May 23, 1985

MEMORANDUM FOR: Guy H. Cunningham, III
Executive Legal Director

FROM: Sharon R. Connelly, Director *Sharon R. Connelly*
Office of Inspector and Auditor

SUBJECT: ALLEGED CONFLICT OF INTEREST BY AN NRC CONTRACTOR EMPLOYEE

The attached report documents the Office of Inspector and Auditor's (OIA) investigation into information contained in a pleading filed by the Attorney General of the State of Illinois before the Atomic Safety and Licensing Board (ASLB) in the matter of the Kerr-McGee Chemical Corporation West Chicago Rare Earths Facility. As a result of the pleading, the ASLB ordered the NRC staff to investigate contacts between Kerr-McGee Chemical Corporation and Dr. Philip Gustafson, Acting Director, Division of Environmental Research, Argonne National Laboratory, that allegedly had a bearing on the Draft and Final Environmental Statements prepared by Argonne National Laboratory concerning the Kerr-McGee West Chicago Rare Earths Facility.

Our investigation disclosed that in about 1979, the NRC requested Argonne National Laboratory to prepare an environmental statement pertaining to the decommissioning of the Kerr-McGee West Chicago Rare Earths Facility. At that time, Dr. Gustafson was the Director, Environmental Impact Studies (EIS) Division, Argonne National Laboratory, and had the overall responsibility for the preparation of environmental statements. In January 1981, Gustafson left Argonne National Laboratory on a two year leave of absence to assume the position of Director of the Illinois Department of Nuclear Safety. Under the direction of William J. Hallett, who replaced Gustafson as Director of the EIS Division, Argonne National Laboratory prepared and submitted to the NRC in early May 1982, the last revision of the draft environmental statement concerning the Kerr-McGee West Chicago Facility. The draft environmental statement was issued by the NRC in late May 1982. Comments by interested parties on the draft statement were forwarded by NRC to Argonne between December 1982 and January 1983 for inclusion in the final environmental statement. Argonne forwarded its input for the final environmental statement to the NRC about February or early March 1983. In March 1983, Gustafson returned to Argonne to become Acting Director, Radiological and Environmental Research Division. In this position Gustafson had no responsibility for environmental statements. The final environmental statement concerning the West Chicago Facility was issued by the NRC in May 1983.

In April 1983, Gustafson was contacted by Ivan Denny, Manager, West Chicago Project, Kerr-McGee Chemical Corporation, who asked if Gustafson and Argonne National Laboratory would be interested in conducting a community education program for the citizens of West Chicago which would provide general, objective, information on radiation. On May 9-10, 1983, Gustafson visited

Kerr-McGee Headquarters in Oklahoma City, Oklahoma, to discuss the proposed education program with Kerr-McGee management. The West Chicago Facility environmental statements were not discussed during the meeting. In conjunction with this trip, on May 18, 1983, Gustafson submitted a claim to Kerr-McGee for reimbursement of travel expenses and attached a copy of his daughter's resume as an enclosure. Gustafson's daughter was about to receive a college degree in civil engineering and was looking for employment. Neither Gustafson nor his daughter were ever contacted by Kerr-McGee with any job offers.

During our investigation we learned that the environmental statements were primarily technical reports that analyzed and presented facts about alternative approaches to decommissioning of the West Chicago Facility. The Summary and Conclusions Chapter of the environmental statements, which documented the NRC position on what alternative was to be followed, was written by William A. Nixon, Senior Chemical Engineer, Office of Nuclear Material Safety and Safeguards, NRC. The alternative favored by the Kerr-McGee Corporation was not selected by the NRC.

Conclusion

Our investigation developed no indication that Gustafson's contacts with the Kerr-McGee Corporation had any effect on the draft and final environmental statements for the West Chicago Rare Earths Facility. The environmental statements were objective presentations of technical findings resulting from the evaluation of alternative methods for decommissioning and stabilization of the West Chicago Facility. Therefore, there was little that Gustafson could have done to influence NRC's decision on what alternative to select. Additionally, Gustafson was not working at Argonne National Laboratory when the laboratory submitted its input for the draft and final statements to NRC, and Gustafson's contacts with Kerr-McGee were subsequent to Argonne providing its final input to NRC.

Attachment:
As stated

cc: Chairman Palladino
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Commissioner Zech

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REPORT OF INVESTIGATION

TITLE: ALLEGED CONFLICT OF INTEREST BY AN
NRC CONTRACTOR EMPLOYEE

PREPARED BY: *George A. Mulley*
George A. Mulley
Investigator, OIA

DATE: 5/21/85

APPROVED BY: *George H. Messenger*
George H. Messenger
Deputy Director, OIA

DATE: 5-21-85

OFFICE OF INSPECTOR & AUDITOR
U.S. NUCLEAR REGULATORY COMMISSION

FREEDOM OF INFORMATION/PRIVACY ACT EXEMPTION (b)(5) & (7) (c)

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Background

In a January 15, 1985, memorandum for Sharon R. Connelly, Director, Office of Inspector and Auditor (OIA), NRC (Attachment 1), Guy H. Cunningham III, Executive Legal Director (ELD), NRC, requested OIA to conduct an investigation into allegations involving Dr. Philip Gustafson, an employee of Argonne National Laboratory, Argonne, Illinois. The memorandum noted that although 10 CFR Part 0, Conduct of Employees, did not apply to Gustafson, certain aspects of the allegations still warranted investigation by OIA. The ELD request was the result of a December 24, 1984, Order by the NRC Atomic Safety and Licensing Board (ASLB) which was conducting hearings in the matter of the decommissioning of the Kerr-McGee Chemical Corporation West Chicago Rare Earths Facility. The ASLB ordered the NRC staff to investigate allegations regarding contacts between Kerr-McGee and Gustafson that might of had a bearing on the Draft and Final Environmental Statements that were prepared by Argonne concerning the West Chicago Facility.

The allegations regarding Gustafson's conduct were contained in a pleading filed on December 17, 1984, by the Attorney General of the State of Illinois before the ASLB. The pleading asserted that Gustafson was formerly the Director, Environmental Impact Studies (EIS) Division, Argonne National Laboratory. The EIS Division prepared the Draft and Final Environmental Statements on the Kerr-McGee West Chicago Facility decommissioning. In January 1981, Gustafson took a leave of absence to become the Director of the Illinois Department of Nuclear Safety (IDNS). In approximately March 1983, he returned to Argonne. Dr. Gustafson's positions at both Argonne and IDNS were sensitive in connection with state and federal regulation of the Kerr-McGee West Chicago Facility. The pleading then referenced a trip that Gustafson made to Kerr-McGee Headquarters and that Gustafson forwarded his daughter's resume to the Kerr-McGee Corporation.

Summary

Robert L. Fonner, Attorney, ELD, when interviewed (Attachment 2) stated the Draft Environmental Statement (DES) concerning the decommissioning of the West Chicago Rare Earths Facility was prepared by Argonne National Laboratory, reviewed by NRC, then published for comment. The Final Environmental Statement (FES), was then prepared by Argonne, reviewed by the NRC, and published for comment. The work was requested under a Purchase Order the NRC has, through the U.S. Department of Energy (DOE), with Argonne National Laboratory. ELD considered it necessary to conduct an investigation to determine (1) what Gustafson's relationship was to the preparation of the DES/FES and (2) what Gustafson's relationship was with the Kerr-McGee Corporation. Fonner opined this was necessary because, in theory, it would be possible to word the DES/FES in such a way to favor an alternative most advantageous to Kerr-McGee.

William A. Nixon, Senior Chemical Engineer, Division of Fuel Cycle and Material Safety, Office of Nuclear Materials Safety and Safeguards, NRC, when interviewed (Attachment 3) stated that in about 1979 a Statement of Work was prepared by NRC to request Argonne to prepare an environmental impact statement for the decommissioning of the Kerr-McGee West Chicago Rare Earths Facility. Dr. Gustafson, formerly the Director, EIS Division, Argonne, was originally in charge of the Argonne report writing team. However, Nixon did not know the extent of Gustafson's actual involvement in the writing of

Argonne's input to the DES due to the fact that Gustafson was at a higher level than the team itself. Nixon noted that the DES was scheduled for publication in May 1981; however, it was postponed to May 1982 to prepare revised draft statements. The FES was issued in May 1983. Nixon opined that Gustafson was not working at Argonne when either the DES or FES were published. Nixon further explained that the environmental statements were primarily technical reports that analyze and present facts about the alternative approaches on decommissioning of the West Chicago Facility. Because of the objective nature of the information provided by Argonne, there was little that Gustafson could have done to influence the DES/FES in favor of Kerr-McGee. Additionally, the Summary and Conclusions chapter of the DES/FES which documented the NRC position on what alternative was to be followed was written by Nixon. The alternative selected by NRC was not the alternative proposed by Kerr-McGee.

Ivan L. Denny, Manager, West Chicago Project, Kerr-McGee Chemical Corporation, when interviewed (Attachment 4) stated that in early 1983, because of the nature of the questions being asked by the citizens living near the Kerr-McGee West Chicago Facility, Kerr-McGee management considered sponsoring a community education program which would provide the West Chicago, Illinois, public with general information on radiation and how it effected West Chicago. In his consideration of a person to chair the community education program, Denny decided that Gustafson, who was then Acting Division Director of the Radiological and Environmental Division at Argonne National Laboratory, would be the best person because of his expertise with radiation and his understanding of radiation levels and conditions in West Chicago.

During March-April 1983, Denny discussed the concept of a community education program with Gustafson. Denny informed Gustafson that the purpose of the program was to inform the public about radiation in general and the panel would have to be careful not to discuss the various alternatives for the disposal of radioactive waste at the West Chicago Facility. Denny inquired whether Gustafson foresaw any conflict with his chairing the community education program. Gustafson replied that he did not believe there was any conflict and that he had checked with Argonne management and they had no objection to his participation in the program.

Denny noted that, prior to leaving Argonne in early 1981 to begin employment with the State of Illinois, Gustafson worked in the division at Argonne that prepared the DES for the Kerr-McGee West Chicago Facility. The draft statement was not published by the NRC until May 1982. In early 1983, when Gustafson returned to Argonne, he became the Acting Division Director of the Radiological and Environment Division. This division was different from the division that Gustafson formerly worked in and, to the best of Denny's knowledge, had nothing directly to do with the preparation of the final environmental statement for the West Chicago Facility. Additionally, the final environmental statement was published in May 1983; therefore, when plans were being made in March-April 1983 for Gustafson to chair the community education program for Kerr-McGee, Argonne's input to the final environmental statement would have been complete. Consequently, Gustafson was not in a position to influence the writing of the final environmental statement.

On May 9-10, 1983, at Denny's invitation, Gustafson traveled to Kerr-McGee Headquarters and discussed with Kerr-McGee management, including Dean A.

McGee, former Chairman of the Board and Chief Executive Officer of Kerr-McGee Corporation, the concept and goals of the education program. Gustafson was informed that the public should be aware that Kerr-McGee was funding the program and that the program was to be an objective, informative discussion on radiation. To the best of Denny's knowledge, the technical content and conclusions of the draft and pending final environmental statements were not discussed with Gustafson during his visit.

When Gustafson departed on May 10, 1983, Kerr-McGee intended to conduct the community education program with Gustafson as the chairperson. However, the program was not further pursued by Kerr-McGee. Denny was not able to provide a specific reason why the program was not conducted except to say that with the publication of the final environmental statement in May 1983, the Kerr-McGee staff was too busy to actively pursue other projects.

During Gustafson's visit to Kerr-McGee Headquarters, he mentioned to Denny that his daughter was about to graduate from college with a degree in engineering. Gustafson remarked that jobs were hard to find in the Chicago area and wondered if Denny knew of any employment opportunities in the Oklahoma City area. Denny replied he knew of none. Gustafson later mailed his daughter's resume to Denny. Denny handled the resume like he would any other. He forwarded a copy to the Kerr-McGee Personnel and Engineering Departments. Denny's daughter was never interviewed for employment with Kerr-McGee. Denny also forwarded the resume to Catalytic, Inc., without recommendation because that company had previously informed Denny that they were looking for engineers.

In an affidavit dated January 18, 1985 (Attachment 5), Ivan L. Denny outlined the events surrounding the selection of Gustafson to chair the Kerr-McGee community education program, Gustafson's visit to Kerr-McGee Headquarters, the Kerr-McGee decision not to pursue the program, and Denny's handling of the resume of Gustafson's daughter. Attachments to the affidavit document the objective and general nature of the proposed education program, the fact that the program would be presented by Argonne National Laboratory and funded by Kerr-McGee Corporation, and Gustafson's impressions of his trip to Kerr-McGee Headquarters.

In a June 17, 1983, letter to Mr. Richard Basso, Manager, Midwest Operations, Catalytic, Inc. (Attachment 6), Denny forwarded to Catalytic, Inc., the resume of Gustafson's daughter.

Dr. Philip Gustafson, Acting Director, Division of Environmental Research, Argonne National Laboratory, when interviewed (Attachment 7) stated that in about 1978, because of Argonne's experience with uranium mill sites and with the Kerr-McGee West Chicago Facility, the NRC asked Argonne to prepare an environmental impact statement for the decommissioning of the Kerr-McGee West Chicago Facility. In about 1978-1979, when Argonne began preparation of the draft environmental statement, Gustafson was Director of the EIS Division at Argonne. The EIS Division had overall responsibility for preparation of environmental statements. During preparation of the environmental statements, Argonne studied and analyzed various plans for decommissioning of the West Chicago Facility. As Director, EIS Division, Gustafson's direct involvement with the statement was minimal. Most of Gustafson's time was occupied with the general administrative functioning of the division. In January 1981,

Gustafson began a two year leave of absence from Argonne to become the Director, IDNS. The IDNS received a copy of the draft environmental statement from NRC for comment and on July 27, 1982, these comments were provided to NRC. The comments made by IDNS were made without any contact with Kerr-McGee.

In March 1983, Gustafson left the IDNS and returned to Argonne to become Acting Director, Radiological and Environmental Research Division. This division was involved strictly in research and had no responsibilities for environmental statements. William Hallett had become the Director, EIS Division, which still had the responsibility for preparing environmental statements. Gustafson opined that to allow the NRC sufficient time to review the information and publish the final environmental statement in May 1983, Argonne would have submitted its input for the final environmental statement to the NRC in about January or February 1983. Gustafson asserted that when he returned to Argonne in March 1983, he had no involvement with, and expressed no interest in, the preparation by Argonne of the final environmental statement for the West Chicago Facility.

In about April 1983, Gustafson was contacted by Ivan Denny who wanted to know if Gustafson was interested in conducting a community education program for the citizens of West Chicago, Illinois. During subsequent conversations, Denny asked that Argonne become involved in preparing the program and providing experts to give lectures on radiation. This request was not unique because Argonne had conducted technical training for various organizations in the past. Denny told Gustafson that Kerr-McGee would fund the program. It was also agreed that the program would provide only general information on radiation and would not address the topic of decommissioning of the West Chicago Facility. Gustafson discussed the proposed community education program with the Deputy Director of Argonne who was also responsible for the Division of Educational Programs. There were no reservations expressed about Argonne conducting an education program for Kerr-McGee. It was thought that since Gustafson was so far removed from the draft and final environmental statements for the West Chicago Facility that there would be no perception of a conflict of interest.

On May 9-10, 1983, at Denny's invitation, Gustafson traveled to Kerr-McGee Headquarters and discussed the education program with Kerr-McGee management. He also discussed the problems of petroleum and radioactive and non-radioactive waste management with Kerr-McGee specialists. While at Kerr-McGee Headquarters, Gustafson did not discuss the draft or final environmental statements with anyone.

When Gustafson departed Kerr-McGee Headquarters on May 10, 1983, he was under the impression that the education program was going to be conducted. For some reason the program never materialized, and Gustafson did not know why.

During the interview of Gustafson, it was noted by Arthur Zilberstein, General Counsel for Argonne, that although Argonne is allowed to undertake work for sponsors other than DOE, it must be first approved by DOE. Argonne is totally compensated for work performed for outside sponsors. Had Kerr-McGee decided to conduct the educational program, they would have submitted a formal proposal for Argonne to develop and present the program. Argonne would have then complied with their "Work For Others Procedures" which requires that all work conducted for sponsors other than DOE must be approved by Argonne

management and DOE. The proposed work must be consistent with the mission of the laboratory and the laboratory must recover the costs associated with performing the work. Zilberstein stated that review of the proposed work by Argonne management and DOE would have identified any appearance of conflict of interest and would have resulted in the Kerr-McGee proposal being disapproved.

While at Kerr-McGee, Gustafson told Denny that his daughter was about to receive a college degree in civil engineering and that jobs were hard to find in the Chicago area. Gustafson asked if Denny was aware of any job opportunities in Oklahoma. Denny replied he knew of none but would inquire. Gustafson subsequently provided Denny a copy of his daughter's resume as an attachment to his request for reimbursement for his trip to Kerr-McGee. Neither Gustafson nor his daughter was ever contacted by Kerr-McGee concerning any job offers.

In a May 18, 1983, letter from Gustafson to Denny (Attachment 8), Gustafson detailed his expenses during his trip to Kerr-McGee Headquarters and discussed his impressions from his conversations with Kerr-McGee management. Gustafson commented that it would be possible to present a program dealing with radiation and its effects in understandable terms which would allow the people in West Chicago to place the issues in a reasonable perspective. Gustafson enclosed a resume for his daughter who was searching for a job. Gustafson also commented that Argonne had no problem with his consulting with Kerr-McGee on this matter.

"Argonne National Laboratory R&D Work For Sponsors Other than the DOE Policies and Procedures" (Attachment 9) directs that work conducted for sponsors other than DOE must first be approved by Argonne management and DOE. A review of the proposed work is the basis for these approvals. Additionally, the proposed work should be consistent with the mission and role of Argonne as approved by DOE. The procedures also stipulate that DOE approves the rate used by Argonne to recover the cost associated with performing work for organizations other than DOE. The basis for this approval is a review of the proposed work by DOE.

William J. Hallett, Office International Energy Development Programs, Argonne National Laboratory, when interviewed (Attachment 10) stated that in about 1978-1979, when Argonne began preparation of the draft environmental statement for the Kerr-McGee West Chicago Facility, Gustafson was the Director, EIS Division, and Hallett was the Deputy Director. As Deputy Director, Hallett was primarily responsible for the Division's workers and products. As Division Director, Gustafson did not involve himself in the daily routine or preparation of environmental statements. This was Hallett's primary responsibility. In January 1981, Gustafson took a two year leave of absence to become the Director, Illinois Department of Nuclear Safety. At that time, Hallett became Director of the EIS Division.

Between January 1981 and May 1982, a lot of work was done by the EIS Division in revising and preparing different versions of the draft environmental statement for the Kerr-McGee West Chicago Facility. On May 3, 1982, Argonne submitted its last revision of the draft environmental statement to William Nixon, Office of Nuclear Materials Safety and Safeguards, NRC. The draft environmental statement was issued by the NRC in late May 1982. Comments by interested parties were forwarded by NRC to Argonne between

December 1982 and January 1983, and were responded to by Argonne in the final environmental statement. Hallett opined that Argonne provided its input for the final environmental statement to the NRC around February or early March 1983. The "Summary and Conclusions" chapter of the final environmental statement was then prepared by Nixon.

In about March 1983, Gustafson returned to Argonne from his position with the State of Illinois. When Gustafson returned to Argonne, he became Acting Director, Radiological and Environmental Research Division. In this position, Gustafson had no responsibility for environmental statements. Gustafson did not involve himself in any way with the Kerr-McGee West Chicago Facility final environmental statement.

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ATTACHMENTS

1. Memo, Subject: Request for Investigation, dated January 15, 1985.
2. Report of Interview - Robert L. Fonner, dated January 25, 1985.
3. Report of Interview - William A. Nixon, dated February 14, 1985.
4. Report of Interview - Ivan L. Denny, dated February 20, 1985.
5. Affidavit - Ivan L. Denny, dated January 18, 1985.
6. Letter to Mr. Richard Basso from I.L. Denny, dated June 17, 1983.
7. Report of Interview - Philip Gustafson, dated March 21, 1985.
8. Letter to Ivan L. Denny from Philip F. Gustafson, dated May 18, 1983.
9. Argonne National Laboratory "R&D Work For Sponsors Other Than The DOE Policies and Procedures."
10. Report of Interview - William J. Hallett, dated March 6, 1985.

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WASHINGTON, D. C. 20555

JAN 15 1985

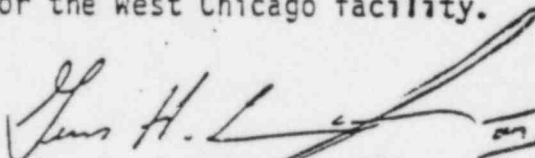
MEMORANDUM FOR: Sharon R. Connelly, Director
Office of Inspector and Auditor

FROM: Guy H. Cunningham, III
Executive Legal Director

SUBJECT: REQUEST FOR INVESTIGATION

On behalf of the NRC staff we are requesting your office to conduct an investigation into the factual basis for the allegations regarding Dr. Philip Gustavson contained in a pleading filed by the Illinois Attorney General in the Matter of Kerr-McGee Chemical Corporation (West Chicago Rare Earths Facility) Docket No. 40-2061-ML, ASLBP No. 83-495-01-ML. We enclose copies of the relevant page of the pleading, an order of the licensing board requesting an investigation, a memorandum to the General Counsel, and a reply from the General Counsel's office. The latter states that 10 CFR Part 0 does not apply to Dr. Gustavson, but agrees that the matter warrants investigation by your office.

This matter has been raised in connection with an ongoing adjudicatory hearing, and because the results of the investigation may bear significantly on further proceedings, we request prompt investigation of the allegations and the impact, if any, of Dr. Gustavson's conduct on the preparation of the draft and final environmental impact statements for the West Chicago facility.


Guy H. Cunningham, III
Executive Legal Director

Attachments:

cc: R. Cunningham, NMSS
R. Page, NMSS
W. Nixon, NMSS
Regional Administrator, Region III
James A. Fitzgerald, OGC
West Chicago (Rare Earths' Facility) Service List

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

January 8, 1985

MEMORANDUM FOR: Guy H. Cunningham, III
Executive Legal Director

FROM: James A. Fitzgerald *JAF*
Assistant General Counsel

SUBJECT: CONFLICT OF INTEREST

This responds to your letter of January 2, 1985 in which you brought to our attention allegations regarding the activities of Dr. Philip Gustavson. OGC agrees with your recommendation that the matter should be referred to the Office of Inspector and Auditor. More information needs to be obtained before any determination can be made whether there has been wrongdoing.

We note that Dr. Gustavson is the employee of an NRC contractor. 10 CFR Part 0 applies only to NRC employees and special government employees. Accordingly, the legal issues raised appear to fall within the purview of your office. If you have further questions on this matter, please do not hesitate to contact me.

CONTACT:
Trip Rothschild
4-1465

Fonner

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
KERR MCGEE CHEMICAL CORPORATION)	Docket No. 40-2061-ML
(West Chicago Rare Earths Facility))	ASLEP No. 83-495-01-ML

NRC STAFF PRELIMINARY RESPONSE TO BOARD ORDER

In its order of December 24, 1984, the Board requested the NRC Staff to undertake an investigation of the conduct of Dr. Philip Gustavson as it relates to Kerr-McGee Chemical Corporation and the preparation of the DES and FES for storage of the waste at the West Chicago site.

The NRC Staff has forwarded the relevant material to the General Counsel for review, with a recommendation that the Office of Inspector and Auditor conduct an investigation (memorandum attached). This course of action is responsive to codified NRC regulations assigning functions pertaining to allegations of conflict of interest. See 10 CFR §§1.30 and 1.32.

The NRC Staff will keep the Board advised of all further agency action in this matter.

Robert L. Fonner

Robert L. Fonner
Attorney for NRC Staff

Bethesda, Maryland
January 3, 1985

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JAN 2 1985

MEMORANDUM FOR: Herzel Plaine, General Counsel
Office of the General Counsel

FROM: Guy H. Cunningham, III
Executive Legal Director

SUBJECT: CONFLICT OF INTEREST

Attached is page 3 from a pleading filed December 17, 1984, by the Illinois Attorney General in the Matter of Kerr-McGee Chemical Corporation (West Chicago Rare Earths Facility), Docket No. 40-2061-ML, ASLBP No. 83-495-01-ML. The principal paragraph on this page alleges activities of Dr. Philip Gustavson that may raise a question of an appearance or actual conflict of interest involving a NRC contractor (Argonne National Laboratory) and a licensee (Kerr McGee Chemical Corporation). The draft and final environmental impact statements for the West Chicago facility were prepared at Argonne National Laboratory. The DES was published in May 1982, and the FES in May 1983. It is not clear when the activities of Dr. Gustavson took place.

The Licensing Board has also issued a memorandum and order (attached), dated December 24, 1984, that calls upon the Staff, "to investigate the allegations bearing on the DES and FES and furnish the Board with the results of its investigation as well as its conclusions regarding any possible improprieties." It is the Staff's intention to notify the Board that the matter has been referred to your office, as the office in NRC charged with resolving conflict of interest questions. In response to the Board's order we recommend an investigation by the Office of Inspector and Auditor. We believe this to be the proper course of action under current Commission rules and policies regarding matters of this nature. We believe it would be appropriate that your report on this matter indicate the factual basis of the alleged conduct, and whether it had any influence on the preparation of the DES and FES.

Please advise me promptly whether or not this course of action is acceptable to you.

Original signed by
Guy H. Cunningham, III

Guy H. Cunningham, III
Executive Legal Director

team at the meetings of the West Chicago City Council. Detailed instructions and work sheets instruct the employees, at least one of whom apparently is present at each council meeting, how to record the statements, mood, and attitudes toward Kerr-McGee of the Mayor and each council member. Completed work sheets covering at least two years of council meetings are among the documents.

The documents also reflect a variety of contacts with Dr. Philip Gustavson. On information and belief, Dr. Gustavson was head of Argonne National Laboratory's EIS division at the time he took a leave of absence from Argonne to become director of the Illinois Department of Nuclear Safety ("IDNS") in approximately January 1981. In approximately March 1983 he left IDNS to return to his position at Argonne. Dr. Gustavson's positions at both IDNS and Argonne (which prepared the draft and final EISS on the Kerr-McGee decommissioning) were obviously sensitive ones in connection with state and federal regulation of the Kerr-McGee site. The Kerr-McGee documents involving Dr. Gustavson include a letter from him to Kerr-McGee thanking the company for a recent trip to Oklahoma City and attaching transportation receipts for reimbursement. Dr. Gustavson remarked that the high point of his trip was meeting Mr. McGee himself and that, as discussed, he was enclosing the resume of his daughter who had just received an engineering degree. Another letter from Dr. Gustavson to the company indicated that Argonne did not object to his contracting with Kerr-McGee independently of his position at Argonne.

The Kerr-McGee documents contain profiles of each of the three Administrative Law Judges sitting on this Licensing Board.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before Administrative Judges:
John H. Frye, III, Chairman
Dr. James H. Carpenter
Dr. Peter A. Morris

In the Matter of

KERR-McGEE CHEMICAL CORPORATION

(West Chicago Rare Earths Facility)

Docket No. 40-2061-ML

ASLEP No. 83-495-01-ML

December 24, 1984

MEMORANDUM AND ORDER

On December 19, this Board scheduled a prehearing conference to consider discovery disputes which currently exist between Kerr-McGee and the People. Our action was prompted by a "Motion for Emergency Ruling" filed by the People.

On December 21, Kerr-McGee responded to the People's motion by turning over all but 92 documents which it claims to be privileged under the attorney-client or work product doctrines. Counsel for Kerr-McGee and the People have advised the Board that in their opinion this development obviates the need for the prehearing conference; we concur. The remaining disputes may be resolved on the basis of the papers presently before the Board. Consequently the December 26 prehearing conference is cancelled.


We note that the People attached a so-called confidential memorandum in support of their Motion for Emergency Ruling. This document was served but has not been filed in the Commission's official docket or placed in the public document room. In our opinion, nothing

in this document is confidential and no reason exists to withhold it from the public. In the absence of objection received by the Board no later than January 4, we shall transmit a copy to the Secretary for the Commission's public records.

This confidential memorandum does contain certain allegations regarding contact between Kerr-McGee and a Dr. Gustavson who apparently has served as head of Argonne National Laboratory's EIS division. The memorandum points out that Argonne prepared the DES and FES for this proceeding. Staff is to investigate the allegations bearing on the DES and FES and furnish the Board with the results of its investigation as well as its conclusions regarding any possible improprieties.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


John H. Frye, III, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
December 24, 1984

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

ASLBP No. 84-495-01-ML

Atomic Safety and Licensing
Board Panel*
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555


Atomic Safety and Licensing
Appeal Board Panel*
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

John C. Berghoff, Esq.
Chadwell & Kayser, Ltd.
8500 Sears Tower
Chicago, Illinois 60606

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

Docketing and Service Section*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mead Hedglon, Esq.
Kerr-McGee Corporation
Kerr-McGee Center
Oklahoma City, Oklahoma 73215



Robert L. Fonner
Counsel for NRC Staff

U.S. NUCLEAR REGULATORY COMMISSION
Office of Inspector and Auditor

Date of transcription January 25, 1985

Report of Interview

Robert L. Fonner, Attorney, Office of the Executive Legal Director (ELD), upon interview concerning an allegation involving possible impropriety on the part of an employee of Argonne National Laboratory while performing contract work for the NRC, provided the following information:

He did not know what part, if any, Dr. Phillip Gustavson had in preparing the Draft Environmental Statement (DES) and Final Environmental Statement (FES) for the NRC. The DES was prepared at Argonne National Laboratory, reviewed by the NRC and then published for comment. The FES was then prepared by Argonne, reviewed by the NRC, and published for comment. The work was requested under a Purchase Order the NRC has through the U.S. Department of Energy with the Laboratory.

The "People" referenced in the Board Order of December 24, 1984, is in reference to the people of the State of Illinois as represented by the state Attorney General.

Fonner understands that recently more documents have been forwarded by the Attorney General to OGC (he thought Irwin B. Rothschild, III, Attorney), but he is not sure. He has no more information other than that provided with the January 2, 1985 ELD memo to OGC and subsequently provided to OIA via ELD's January 15, 1985, memo to Sharon R. Connelly, Director, OIA.

When asked in what way an altered DES or FES could impact on the Board proceedings, Fonner offered that Kerr-McGee Chemical Corporation was required to provide an alternate site for nuclear waste. Therefore, in theory, it would be possible to word the DES/FES in such a way as to favor the site most advantageous to Kerr-McGee. However, he did not know or have reason to believe that that was the case. Rather, ELD viewed investigation necessary to determine (1) what was Gustavson's relation to the preparation of the DES/FES, and (2) what was Gustavson's relationship with Kerr McGee.

Investigation on January 24, 1985 at Bethesda, Md. File # Ino. 85-13

by Ronald M. Smith, Senior Investigator, OIA Date dictated January 24, 1985

U.S. NUCLEAR REGULATORY COMMISSION
Office of Inspector and Auditor

Date of transcription February 14, 1985

Report of Interview

William A. Nixon, Senior Chemical Engineer, Uranium Process Licensing Section, Division of Fuel Cycle and Material Safety, Office of Nuclear Materials Safety and Safeguards, NRC, was interviewed concerning his knowledge of the preparation of the draft and final environmental statements on the Kerr-McGee West Chicago Rare Earths Facility by Argonne National Laboratory.

Nixon became the Project Manager for the Kerr-McGee West Chicago Rare Earths Facility in 1980. Because Argonne National Laboratory had done previous work for NRC concerning the West Chicago Facility, in about 1979 a Statement of Work had been prepared by the NRC to request Argonne to prepare an environmental impact statement for the decommissioning of the facility. This statement of work was essentially an expansion of earlier contracts between the NRC and Argonne involving the Kerr-McGee West Chicago Facility.

Concerning preparation of the draft environmental statement for the West Chicago Facility, Nixon related that Dr. Philip Gustafson, formerly the Director, Environmental Impact Studies Division, Argonne National Laboratory, was originally in charge of the Argonne report writing team. However, Nixon did not know the extent of Dr. Gustafson's actual involvement in the writing of Argonne's input to the draft environment statement due to the fact that Gustafson was at a higher level than the team itself. Nixon noted that the draft environmental statement was scheduled for publication in May 1981; however, it was postponed to May 1982 to prepare revised draft statements. The final environmental statement was issued in May 1983. Nixon opined that Dr. Gustafson was not working with Argonne National Laboratory when either the draft or final environmental statements for the West Chicago Facility were published.

The environmental impact statements are primarily technical reports that analyze and present facts about the alternative approaches on decommissioning of the West Chicago Facility. As such the input to the environmental statements by Argonne was an objective presentation of technical findings pertaining to the evaluation of alternative methods for decommissioning and stabilization of the West Chicago Facility. Because of the objective nature of the information provided by Argonne National Laboratory, there was little that Dr. Gustafson could have done to influence the report in favor of Kerr-McGee.

Nixon also noted that based on the technical input from Argonne, the NRC decided on the best alternative for decommissioning of the facility. The Summary and Conclusions chapter of the draft and final environmental statements which documented the NRC position on what alternative was to be followed was written by Nixon.

Investigation on February 12, 1985 at Bethesda, MD File # 85-18
by George A. Mulley Jr., Investigator, OIA Date dictated February 14, 1985

Kerr-McGee favored Alternative I which stipulated "on-site" permanent disposal of all contaminated materials. The site would remain Kerr-McGee property under license for a period of 25 years. During this period, Kerr-McGee would be responsible for monitoring the site and for performing any required maintenance. If, at the end of the 25 year period, the site met safe performance criteria, title to the site would be transferred to the federal or state government. However, for reasons which were discussed in the Final Environmental Statement, the NRC selected Alternative II as the preferred alternative. This alternative proposed that Kerr-McGee store the contaminated material onsite for an indeterminate period. The materials would be stabilized in a manner similar but more secure than proposed in Alternative I. The decision in the ultimate disposal of the radioactive wastes would be deferred, and the Kerr-McGee license would be renewed to permit stabilization activities.

U.S. NUCLEAR REGULATORY COMMISSION
Office of Inspector and Auditor

Date of transcription February 20, 1985

Report of Interview

Mr. Ivan L. Denny, Manager, West Chicago Project, Kerr-McGee Chemical Corporation, Kerr-McGee Center, Oklahoma City, Oklahoma was interviewed concerning the relationship between Kerr-McGee Chemical Corporation and Philip Gustafson of the Argonne National Laboratory and its possible impact on the draft and final environmental statements for the Kerr-McGee West Chicago Rare Earths Facility. Also present during the interview was Peter J. Nickles, Counsel for Kerr-McGee Chemical Corporation, with the firm of Covington and Burling, Washington, D.C. During the interview, Mr. Denny provided the following information:

In early 1983, because of the nature of the questions being asked by the citizens living near the area near the Kerr-McGee West Chicago Rare Earths Facility, Kerr-McGee management considered sponsoring a community education program made up of a panel of independent experts which would provide the West Chicago public with information about radiation and how it effected West Chicago. The objective of the program was to provide, in laymen's terms, authoritative, objective, general information on radiation -- its sources, uses and effects. Denny informed Kerr-McGee management that he would look into development of this program.

In his consideration of a person to chair the community education program, Denny decided that Dr. Philip F. Gustafson, who was then the Acting Division Director of the Radiological and Environment Division of Argonne National Laboratory, would be the best person because of his expertise with radiation, his credibility with the West Chicago public, his understanding of radiation levels and conditions in West Chicago, and his ability to communicate with the general public. Denny had met and worked with Gustafson while Gustafson was the Director, Department of Nuclear Safety, State of Illinois, and had been impressed with Gustafson's professionalism and his ability to communicate with the West Chicago public about their concerns. Although unable to recall specifically, Denny thought he may have also met Gustafson at NRC conferences with Kerr-McGee and Argonne National Laboratory during preparation of the draft environmental statement on the West Chicago facility by Argonne. However, at that time, Gustafson was employed at Argonne in an upper management position in the division of Argonne that prepared the draft impact statement; therefore, Gustafson did not have much interaction with Kerr-McGee. Denny was aware of no other person who would be more suited than Gustafson to chair the West Chicago community education program.

In about March 1983, Denny discussed the concept of a community education program with Gustafson during several telephone conversations. Additionally, because Denny was the Manager of the West Chicago Project for Kerr-McGee, he

Investigation on February 19, 1985 at Oklahoma City, OK File # 85-18
by George A. Mulley Jr., Investigator, OIA Date dictated February 20, 1985

made frequent trips to the West Chicago Facility. During several of these trips, he visited Gustafson at Argonne and discussed the community education program and its guidelines with him. Gustafson thought the concept of educating the public about radiation was good, and, in fact, he had seen such a need while working for the State of Illinois as Director, Department of Nuclear Safety. Denny informed Gustafson that the purpose of the program would be to inform the public about radiation in general and that the panel would have to be careful not to discuss any alternatives or positions concerning the advantages/disadvantages of on-site disposal versus off-site disposal of radioactive waste at the West Chicago Facility. It was thought that once the public was fully informed, it could then make a knowledgeable decision on its own.

During preliminary conversations with Gustafson, Denny inquired whether Gustafson foresaw any conflicts with his chairing the community education program. Gustafson replied that he did not believe there was any conflict and that he had checked with Argonne management and they had no objection to his participation in the program. Denny noted that, prior to leaving Argonne in early 1981 to begin employment with the State of Illinois, Gustafson worked in the division at Argonne that was responsible for preparing the Draft Environmental Statement. The draft statement was not published until May 1982. In early 1983, when Gustafson returned to Argonne after spending two years as Director, Illinois Department of Nuclear Safety, he assumed the position as Acting Division Director of the Radiological and Environment Division. This division was different from the division that Gustafson worked in prior to his employment with the State of Illinois, and to the best of Denny's knowledge, the Radiological and Environment Division had nothing directly to do with preparation of the Final Environmental Statement for the West Chicago Facility. Additionally, the NRC Final Environmental Statement was published in May 1983; therefore, when plans were being made in March-April 1983 for Gustafson to chair the community education program for Kerr-McGee, Argonne's input to the Final Environmental Statement would have been finished. Consequently, even had Gustafson been in a position to influence the writing of the Final Environmental Statement at the time he was discussing chairing the community education program with Denny, it would have been too late.

When Denny recommended to James L. Rainey, President, Kerr-McGee Chemical Corporation, that Gustafson chair the West Chicago community education program, Rainey offered no objection. They decided that Kerr-McGee would finance the program and that this fact would be made public. However, once Gustafson took control of the program, he would be free to satisfy program objectives in any manner he chose. Gustafson would be responsible for selecting the panel members and for organizing and directing the program. Denny noted that by the time Gustafson's name was presented to Kerr-McGee management as a likely chairperson for the program the question of possible conflict of interest had already been settled. Denny advised Kerr-McGee management that conflict of interest would not be a problem because the program was to be impartial and that Gustafson and Argonne saw no problem with Gustafson's participation in the program.

Subsequent to Gustafson's selection being agreed to by Rainey, Denny invited Gustafson to come to Kerr-McGee Headquarters in Oklahoma City to discuss the program with Kerr-McGee management and to hear directly from Kerr-McGee management what the objective of the program was to be. This also allowed

Gustafson to directly question Kerr-McGee management about any concerns he might of had. On May 9, 10, 1983, Gustafson traveled to Kerr-McGee Headquarters at Kerr-McGee expense, and while at Headquarters, he reviewed with Kerr-McGee management, including Dean A. McGee, former Chairman of the Board and Chief Executive Officer of Kerr-McGee Corporation, and James Rainey, the concept and overall goals of the education program. Gustafson was instructed that the public should be aware that Kerr-McGee was funding the program and that the program was to be an objective, informative discussion on radiation and how it effected the people of West Chicago. Gustafson was free to pursue program goals in whatever manner he thought best. After meeting with Kerr-McGee management, Gustafson and Denny discussed the general outline of the program and the composition of the panel. Denny suggested Dr. Eli Port, a consultant on radiation for the City of West Chicago, as well as a medical doctor as being possible panel members. However, the selection of panel members and how they handled the subject remained at Gustafson's discretion. Denny noted that he did not discuss payment of panel members by Kerr-McGee with Gustafson, although they were both aware that Kerr-McGee would reimburse Gustafson for his direct expenses for his trip to Kerr-McGee Headquarters. Although not discussed, Denny assumed that Kerr-McGee would pay the direct expenses incurred by the panel members. The payment of any honorarium to Gustafson or any panel members was also not discussed. Kerr-McGee funding of the program was intended to pay for the expenses of holding the program itself, i.e., public relations, advertising, etc. To the best of Denny's knowledge, the technical content or conclusions of the draft and pending final environmental statements were not discussed with Gustafson during his visit. The only reference to the statements would have been the mention of some technical terms used in the statements that should be explained during the education program. Denny noted that Kerr-McGee specifically did not want the draft and final environmental reports discussed during the program. The program was intended to educate the public about radiation and not to create controversy about the problems at the West Chicago Facility.

When Gustafson departed Kerr-McGee Headquarters on May 10, 1983, he was under the impression that the community education program would be held and that he was the chairperson. However, the program was not further pursued by Kerr-McGee. Denny was unable to provide a specific decision or reason why the program never took place other than a conjecture that, with the publication of the Final Environmental Statement in May 1983, the Kerr-McGee staff was too busy to actively pursue other projects. Denny asserted that, other than workload, there was no relationship between publication of the Final Environmental Statement and the fact that the community education program was not conducted. Denny was also unable to state exactly how Gustafson was made aware that the program was not going to be held.

In review, Denny repeated that the purpose of the community education program was to provide general, impartial facts about radiation and its effects on the citizens of West Chicago. Although the program was part of an overall plan to improve the image of Kerr-McGee among the citizens of West Chicago, the program itself was only intended to provide the West Chicago community with a better understanding of radiation and its effects. By educating the public and minimizing confusion caused by misleading and/or erroneous information about radiation, Kerr-McGee hoped the public would understand the issues and be better able to knowledgeably assess and choose between the alternatives

associated with the decommissioning of the West Chicago Facility. Denny opined that awareness that Kerr-McGee was funding the community education program would of had both a positive and negative public relations impact. Some people would have considered that Kerr-McGee was doing the community a service by sponsoring a community education program while others would have viewed Kerr-McGee's involvement as an attempt to buy public support.

During Gustafson's visit to Kerr-McGee's Headquarters on May 10, 1983, he mentioned to Denny that his daughter was about to graduate from college with a degree in civil engineering. Gustafson remarked that jobs were hard to find in the Chicago area and wondered if Denny knew of any employment opportunities in the Oklahoma City area. Denny replied that he knew of none. Denny did not ask for a resume from Gustafson's daughter and did not recall if Gustafson volunteered to send him one. Gustafson subsequently mailed a resume to Denny as an enclosure to his letter seeking reimbursement for his expenses in connection with his trip to Oklahoma City. Denny handled the resume as he would any other. He forwarded a copy to the Kerr-McGee Personnel Department and to the Engineering Department. Denny voiced no special interest in the resume, and Gustafson's daughter was never interviewed for employment with Kerr-McGee. Denny also forwarded a copy of the resume to Catalytic, Inc., Oakbrook, Illinois, without recommendation. Denny had done this before with other resumes because Catalytic, Inc. had previously informed Denny that their office was growing and was looking for good engineers. To Denny's knowledge, Gustafson's daughter was not contacted by anyone from Catalytic.

AFFIDAVIT OF IVAN L. DENNY

I, Ivan L. Denny, being first duly sworn, hereby depose and say as follows:

1. I am Manager-West Chicago Project for the Kerr-McGee Chemical Corporation ("Kerr-McGee"). I have been associated with Kerr-McGee's efforts to decommission its West Chicago Rare Earths Facility since October 2, 1979, and have been working full time on the project since October 2, 1979.

2. In the spring of 1983, I suggested that Kerr-McGee consider sponsoring a community education program that would bring scientists, scholars, and other independent, outside experts to West Chicago to answer questions posed by local citizens about radiation and its sources, uses, and effects. The aim of such a program was to provide a forum through which experts having neither employment nor consultancy ties to Kerr-McGee could respond thoughtfully and knowledgeably to concerns in the West Chicago community about radiation. A document from the Kerr-McGee files describing the company's preliminary planning for such a program is set out as Attachment A.

3. I considered Dr. Philip F. Gustafson, who was then the Acting Division Director of the Radiological and Environment Division of Argonne National Laboratory ("Argonne"), to be a leading candidate to chair the program because of his familiarity with radiation and the West Chicago community. Dr. Howard E. Kremers, a Kerr-McGee consultant, and I had several telephone conversations with Dr. Gustafson about the program.

Subsequently, I invited Dr. Gustafson to come to Kerr-McGee's headquarters in Oklahoma City at Kerr-McGee's expense to discuss the project further with Kerr-McGee management. I undertood at the time that Dr. Gustafson had discussed the proposed program with officials at Argonne, and that Argonne had no objection to Dr. Gustafson's participation.

4. Dr. Gustafson visited Kerr-McGee's headquarters on May 10, 1983. During the day, he met with various Kerr-McGee officials, including Dean A. McGee, former Chairman of the Board and Chief Executive Officer of Kerr-McGee Corporation, and James L. Rainey, the President of Kerr-McGee Chemical Corporation. To the best of my recollection, I accompanied Dr. Gustafson throughout the day. The meetings were to discuss the proposed educational program and Dr. Gustafson's potential role in it.

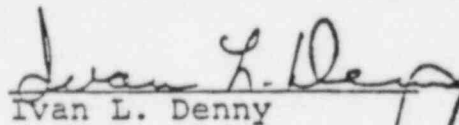
5. I subsequently received a letter from Dr. Gustafson forwarding his travel and hotel expenses for the trip and discussing certain other matters. Attachment 2, Letter from P. F. Gustafson to I. L. Denny (May 18, 1983). Dr. Gustafson was reimbursed by Kerr-McGee in the amount of \$428.20 for the travel and hotel expenses that he incurred. Kerr-McGee has never made any other reimbursements (or payments of any kind) to Dr. Gustafson.

6. During the visit on May 10, Dr. Gustafson mentioned to me that his daughter had recently graduated from college with a degree in civil engineering and that job

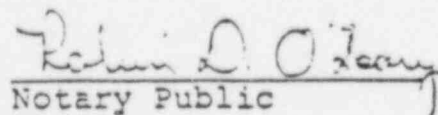
openings were then scarce in the Chicago area. He asked if I might know of any employment opportunities in the Oklahoma City area and he subsequently sent her resume to me with his May 18 letter. Although I forwarded the resume to the Kerr-McGee personnel department, Dr. Gustafson's daughter was neither interviewed for a position nor employed at any Kerr-McGee facility. I also forwarded the resume to Mr. Richard Basso at Catalytic, Inc., in Oakbrook, Illinois. Mr. Basso has recently informed me that no one at Catalytic, Inc. contacted Dr. Gustafson's daughter.

7. I sent a letter to Dr. Gustafson on June 2, 1983, providing further information on the proposal for an education program. See attachment 3. Attachments 2 and 3 to this affidavit are the only written communications that Kerr-McGee has located to date to or from Dr. Gustafson with regard to the program or any services he might provide Kerr-McGee.

8. Kerr-McGee ultimately decided not to pursue the community education program. Kerr-McGee has never entered into a contract or any other arrangement with Dr. Gustafson with regard to the educational program or any other matter.


Ivan L. Denny

Subscribed and sworn to before me the 18th day of
January, 1985.


Notary Public

My commission expires:

May 7, 1985

RADIATION. . .AND WEST CHICAGO

A Public Information Program for the Community

OBJECTIVES

1. To present authoritative, non-company information on radiation-- what it is, what it does, where it comes from, its effects, its uses, its sources and quantities (high level, low level, etc.). Audiovisual presentation such as film "Radiation. . .Naturally" suggested to begin the program.
2. To provide authoritative, non-company information on radiation in West Chicago--its sources, levels, effects, etc.
3. To answer questions the citizens have on the film and on the radiation situation in West Chicago, but NOT the company's plan for stabilization and restoration of its property. The West Chicago Facility will be discussed ONLY in the context of the ore/materials processed there as they constitute a low-level radiation source.

No discussion will take place on the advantages/disadvantages of on-site disposal versus off-site disposal.

4. To assist the citizens of West Chicago in understanding radiation generally and that in West Chicago specifically; NOT to publicize "West Chicago's radiation problem" outside the city; NOT to provide a forum for anti-nuclear debate; NOT to offer an opportunity to discuss/argue radwaste disposal controversies.

METHODOLOGY

1. Argonne National Laboratory will present the program. Dr. Phil Gustafson will moderate, as well as assemble the other experts (with NMCC approval), and be responsible for details such as arranging the place and setting up equipment, etc.

Suggested experts are Dr. Eli Port, the City of West Chicago consultant on radiation; a medical doctor serving as chief radiologist at a local hospital; a radiation expert (such as Dr. Robley Evans) who is familiar with the radiation situation in West Chicago.

Each of these experts will be informed in advance of the objectives and scope of the program. Each will also be aware that this is a LAYMEN'S EDUCATION/INFORMATION program; therefore, laymen's terms are to be used rather than radiologists' terms. Each expert is to have "everyday" comparisons in mind so that he can equate radiation levels with such KNOWN exposures as smoking cigarettes, jet airplane travel, drinking beer, dental/medical x-rays, etc.

Gustafson will exercise the direction necessary to confine the discussion within the scope of the objectives. He will direct the Q & A portion, making sure the appropriate expert fields questions in his line of expertise, but not necessarily curtailing comment from other experts. (The importance of this is to be certain the medical radiologist responds on health effects, for example, because citizens have more confidence in a doctor's reassurances than a scientist's.)

Prior to the Q & A session, Gustafson will either lead a brief discussion involving the experts contrasting what has been shown in the audiovisual presentation with the West Chicago situation. . .or he may choose to have Q & A on the film, then lead a discussion on the West Chicago

situation, with Q & A on West Chicago to follow.

2. News media will not be invited by either ANL or KMCC. The program is NOT a "media event" to obtain publicity. The media will become aware of the program, however, if publicity is successful. Therefore, the media will certainly not be refused admission but will attend as any other citizens, ANL personnel, and KMCC personnel--not in their respective professional capacities but as members of the general public.

No media cameras (including TV) will be allowed to be in use during the meeting. Experts and citizens can be photographed or videotaped before or after the program if they so desire.

The program will be videotaped by a private cameraman (provided by KMCC or ANL as deemed best) who will be acknowledged by Gustafson at the outset of the program as being there to record the program to provide guidance on possible future public information programs and to obtain answers for questions other citizens may ask who are not present. Gustafson will indicate that the camera will film only the experts and will not be directed at the citizens. He will also make it clear that the purpose is NOT to publicize the West Chicago situation and that the tape will NOT be used in public.

3. Publicity (funded by KMCC) will be restricted to the West Chicago area and will include posters to be displayed at public places; letter(s) to citizens; and ads in the West Chicago Press.

If a local group--such as the local League of Women Voters, ministerial alliance, civic organization, medical association--wishes to assist with publicizing the program to its (their) members, KMCC will

(
facilitate this by duplicating letter(s) from the leader(s) of the group(s) and mailing them to the membership as provided to NMCC by the group(s).

NMCC public relations personnel will certainly cooperate with ANL public relations personnel and others as appropriate on publicity, including use of outside graphic arts services, if preferred.

4. Copies of "Radiation--A Fact of Life" or other appropriate, non-company pamphlet on radiation will be provided by NMCC as a passout for those who attend to take with them. They will be available AFTER the program, not beforehand.

Do not Fil

(copy)

RADIATION. . .AND WEST CHICAGO
A Public Information Program for the Community

PRESENTED BY ARGONNE NATIONAL LABORATORY

Dr. Philip F. Gustafson, Argonne present title, and former Director of the Illinois Department of Nuclear Safety will moderate the program. Program participants:

Dr. Eli Port, _____

Dr. John Doe, _____

Dr. Jane Doe, _____

will describe and answer questions on:

West Chicago's radiation sources. . .exposure levels. . .differences from
other radiation sources. . .health effects. . .environmental impacts

WEST CHICAGO COMMUNITY HIGH SCHOOL AUDITORIUM

Tuesday

May/June XX

7:30 p.m.

The cost of presenting this program has been contributed by Kerr-McGee Chemical Corporation as a community service to the citizens of West Chicago.

PHILIP F. GUSTAFSON
413 ADDISON ROAD
RIVERSIDE, ILLINOIS 60546

May 18, 1983

Mr. Ivan L. Denny
Manager
Special Projects
Kerr-McGee Chemical Corporation
P. O. Box 25861
Oklahoma City, Okla. 73125

Dear Ivan:

My visit with you and the others at Kerr-McGee last week was thoroughly enjoyable, and most profitable to me. I really appreciated the agenda that you arranged; the high-light of which was meeting Mr. McGee himself.

I feel we can put together a program dealing with radioactivity, radiation, and radiation effects, presented in understandable terms, which will allow the people in West Chicago to place the issues in a reasonable perspective. In addition the panel members have agreed to answer further questions or comments by phone or letter subsequent to the meeting itself. Information on the health physics "hot line" and how to access it may also help in this regard.

During our discussions last week on the broader subject of toxic waste management I began to see more clearly where Argonne might effectively interact with industry. A key area is site selection/characterization perhaps done in the role of technical experts identifying a number of sites within a region suitable for toxic waste disposal.

Attached is a listing of my time and expenses (along with receipts where appropriate). I may have gone into too much detail. As I mentioned before, the Laboratory has no problem with my consulting with Kerr-McGee on this matter. Also enclosed is a resume for my daughter Cindy who recently graduated from the Illinois Institute of Technology with a BS in Civil Engineering, and is now job hunting for something in structural engineering.

Thank you again for your hospitality, and I look forward to the program in West Chicago. With best personal regards.

Sincerely yours,

Phil
Philip F. Gustafson

PHILIP F. GUSTAFSON
413 ADDISON ROAD
RIVERSIDE, ILLINOIS 60546

May 18, 1983

Expense Accounting

Program planning, phone calls, writing, and
personal interviews prior to May 10 meeting, 3 hours.

Trip to Oklahoma City May 9 and 10.

Left home by personal auto for O'Hare 5:30pm May 9.

Mileage to airport 21 mi. @ 20¢/mile = \$4.20

Departed O'Hare 6:45pm, arrived OKC 9:15pm.

Limo to motel \$5.75

Motel \$63.90 (phone call was to home, and I will pay)

Taxi to airport \$10.90

Left OKC 6:15pm, arrived O'Hare 8:30pm

Parking at O'Hare \$8.25

Arrived home 9:15pm

Mileage to home 21 mi. @ 20¢/mile = \$4.20

Airline ticket Chicago-OKC RT \$326.00

Philip F. Gustafson
Philip F. Gustafson

TOTAL TRAVEL EXPENSE

\$428.20

o.k. & 17

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WEST CHICAGO PROJECT	
KERR-MCGEE CHEMICAL CORPORATION	
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PAID	
APPROVED BY: <i>N.L.O.</i>	DATE: 6-10-83

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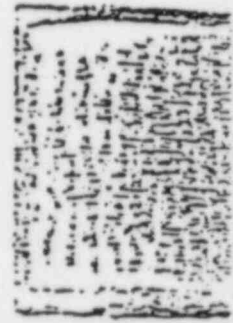
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SIGNATURE
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LAST BALANCE IS AMOUNT DUE

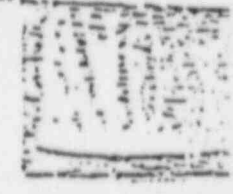
Where do you think you're going?

There's nothing a Sheriff can't do. Let our men take care of your problems.



228 Sheriff Miller

1/10/90



THE FOLLOWING
DOCUMENTS ARE OF
POOR QUALITY

PAGE COUNT

NATIONAL AIR CARRIER ASSOCIATION AIRLINE PASSENGER CONTRACT		See below for Airline Form, Serial Number	
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DO NOT MARK OR WRITE IN THE WHITE AREA ABOVE			

Chicago O'Hare International Airport
 Department of Aviation, City of Chicago

Thank you!

Receipt

ITAL PRINTING SYSTEMS,
 SAN GABRIEL, CA.

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Resume of Dr. Gustafson's daughter, withheld under 10 C.F.R.
§ 2.790(a)(6) and (a)(7)(iii).

ATTACHMENT 3

**KERR-MCGEE CHEMICAL CORPORATION**

KERR-MCGEE CENTER • OKLAHOMA CITY, OKLAHOMA 73128

June 2, 1983

Dr. Phil P. Gustafson
Acting Director of Radiology and
Environmental Research
Argonne National Laboratory
9700 S. Cass Avenue, Bldg. 203
Argonne, IL 60439

Dear Phil:

Per our telephone conversation today, I am enclosing a copy of a letter to the editor that appeared in today's Suburban Trib. It is an example of the type of questions that are of concern to some individuals. The educational program could serve to clear up some of this kind of confusion.

Also, go ahead with contacting Howard Kremers to establish time schedules for promotional activities for the upcoming educational meeting. This will keep the schedule moving toward conducting the meeting yet this month.

Should you have other questions or suggestions, please call me any time.

Sincerely,

I. L. Denny
Manager, Special Projects

ms
Enclosure

cc: H. E. Kremers/no enc.
D. E. McFarland/no enc.
J. L. Rainey/no enc.



KERR-MCGEE CHEMICAL CORPORATION

KERR-MCGEE CENTER • OKLAHOMA CITY, OKLAHOMA 73125

June 17, 1983

Mr. Richard Basso
Manager, Midwest Operations
Catalytic, Inc.
2001 Spring Road
Suite 530
Oak Brook, IL 60521

Dear Dick:

Last week I mentioned to you that I had received a resume' from Cindy Gustafson. She is the daughter of Dr. Phil Gustafson who is the Director of Radiology and Environmental Research at Argonne National Laboratory. Phil was the first Director of the Illinois Department of Nuclear Safety and has just returned to ANL.

I was going to give you a copy of Miss Gustafson's resume' when we were together this week and I forgot to bring it to our meeting. Therefore, I am enclosing her resume'.

I thoroughly enjoyed our dinner and conversation Wednesday night with you and Dave Caum. Thank you for your continued close interest in carrying out this challenging project.

Sincerely,

I. L. Denny
Manager, Special Projects

ms
Enclosure

Resume of Dr. Gustafson's daughter, withheld as previously indicated.

U.S. NUCLEAR REGULATORY COMMISSION
Office of Inspector and Auditor

DATE OF TRANSCRIPTION March 21, 1985

Report of Interview

Dr. Philip Gustafson, Acting Director, Division of Environmental Research, Argonne National Laboratory, Argonne, Illinois, was interviewed concerning his relationship with the Kerr-McGee Chemical Corporation, Oklahoma City, Oklahoma, and its possible impact on the draft and final environmental statements for the Kerr-McGee West Chicago Rare Earths Facility prepared by Argonne. Also present during the interview was Arthur Zilberstein, General Counsel for Argonne National Laboratory. During the interview, Dr. Gustafson provided the following information:

Because of Argonne's experience with uranium mill sites, which were similar to the West Chicago Facility, and Argonne's previous experience with the West Chicago Facility and the NRC, in about 1978 the NRC asked Argonne to prepare an environmental impact statement for the decommissioning of the Kerr-McGee West Chicago Facility. In about 1978-1979, Argonne began preparation of the draft environmental impact statement. At that time Gustafson was Director of the Environmental Impact Studies (EIS) Division at Argonne and had overall responsibility for the preparation of impact statements. The Environmental Impact Studies Division assembled a team to review the Kerr-McGee environmental report concerning the West Chicago Facility and then to prepare the impact statement. The team leader was Dr. Louis Saguinsin who reported to Gustafson through William J. Hallett, then Associate Division Director for EIS. Because the impact statement was being prepared for NRC, the Argonne team worked very closely with the NRC Project Manager. Numerous meetings between Argonne and NRC employees were held at Argonne, the West Chicago Facility, and Washington, D.C.

During preparation of the impact statement, the Argonne team studied and analyzed the various plans presented by Kerr-McGee for decommissioning the facility. The team was responsible for verifying that the information provided by Kerr-McGee in their environmental report was accurate and for ascertaining the reliability of the methods used by Kerr-McGee to make measurements. As Director, EIS, Gustafson's direct involvement with the environmental impact statement for the West Chicago Facility was minimal. Most of Gustafson's time was occupied with the general administrative functioning of the division and with sorting out budget and personnel problems. Gustafson did not get involved with any technical problems with the impact statement because none developed. Additionally, during preparation of the impact statement for the West Chicago Facility, EIS had about 30-35 impact statements in various stages of preparation. This allowed Gustafson little time to concentrate on one particular impact statement. Gustafson noted that since NRC has a standard format for preparing and presenting environmental impact statements, Argonne just followed the format during its presentation of the technical information required to complete the statement.

Investigation on February 21, 1985 at Argonne National Lab File # 85-18

by George A. Mulley Jr., Investigator, OIA DATE DICTATED March 21, 1985

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During preparation of the draft impact statement, Gustafson visited the West Chicago Facility with the team on one occasion for a walk through of the site. There was essentially no communication between Gustafson and Kerr-McGee Headquarters while the statement was being prepared.

When completed, the draft impact statement was provided the NRC. The NRC studied the draft impact statement and, based on Argonne's analysis, determined which alternative was best. Copies of the draft impact statement, which was issued by NRC in mid 1982, were made available to the public, other concerned agencies, and Kerr-McGee for comment.

In January 1981, Gustafson began a two year leave of absence from Argonne National Laboratory to assume the position as Director, Illinois Department of Nuclear Safety (IDNS). Because of the location of the Kerr-McGee facility, the Illinois Department of Nuclear Safety received a copy of the draft environmental statement from the NRC for comment. Gustafson and John Cooper, who was in charge of Radioactive Waste Management Activities, IDNS, both reviewed the draft statement and on July 27, 1982, provided their comments to NRC. Their comments were addressed in the final impact statement. Gustafson noted that several other Illinois state agencies in addition to IDNS, i.e., Attorney General and Illinois Environmental Protection Agency, also received a copy of the draft impact statement and were allowed to comment directly to NRC without first coordinating with the Governor's office. Additionally, the comments that were made by IDNS were those of Gustafson and Cooper and were made without any contact with Kerr-McGee.

While Gustafson was Director, IDNS, he had one meeting with Kerr-McGee. Although decommissioning of the West Chicago Facility was a federal matter, the state of Illinois was concerned with radioactivity located in the area surrounding the facility. The state was concerned with radioactivity already in the city of West Chicago as the result of an incident in 1976 involving the West Chicago Facility.

In March 1983, at the end of his two year leave of absence from Argonne National Laboratory, Gustafson left his position with Illinois and returned to Argonne to become the Acting Director, Radiological and Environmental Research Division. This division was involved strictly in research and had no responsibilities for environmental impact statements. William Hallett had become the Director of the Environmental Impact Studies Division which still had the responsibility for preparing final environmental impact statements for NRC. Gustafson opined that Argonne submitted its input for the final impact statement to the NRC in about January or February 1983 to allow NRC sufficient time to review the information and publish the Final Environmental Statement in May 1983. Gustafson asserted that when he returned to Argonne National Laboratory in March 1983, he had no involvement, and expressed no interest, in the preparation by Argonne of the final environmental statement for the West Chicago Facility.

While Gustafson was working with the state of Illinois, he became involved with the West Chicago community and talked to residents about their views on the various alternatives for decommissioning of the Kerr-McGee West Chicago Facility. Gustafson then recognized the need for a community education program concerning radiation and nuclear energy. In about April 1983, after Gustafson returned to Argonne National Laboratory, he was contacted by

Ivan Denny, the Manager of the West Chicago Project for the Kerr-McGee Chemical Corporation. Denny wanted to know if Gustafson was interested in pursuing the idea of a community education program for the citizens of West Chicago. Gustafson was interested in the idea but wanted the program to provide only general information about radiation and not become involved with the issues surrounding the decommissioning of the West Chicago Facility. Denny agreed to this stipulation. During subsequent telephone conversations in April 1983, Denny asked that Argonne National Laboratory become involved in preparing the program and providing experts to give lectures on radiation. This request was not unique because Argonne had conducted technical training for various organizations in the past. Gustafson told Denny that Argonne National Laboratory had to be paid the time used to develop the program. Denny indicated that Kerr-McGee was willing to fund the program by way of a contract, work order, or grant. Denny also discussed the possibility of having joint sponsors for the program, i.e., Argonne National Laboratory and The League of Women Voters. During conversations between Denny and Gustafson, it was agreed that the only constraint on how the program was to be conducted was that it would provide only general information on radiation and would not address the topic of decommissioning of the West Chicago Facility. Two speakers were also discussed. They were Andy Stehney, from Argonne National Laboratory, and Eli Port, a health physics consultant for the City of West Chicago. Gustafson noted that neither of these men had any expertise in decommissioning. These men were experts on how radiation effects humans.

Gustafson noted that one time in April 1983, while Denny was in West Chicago, he came to Argonne and discussed the content of the community education program and who would participate with Gustafson.

Gustafson discussed the proposed community education program with Eric Beckjord, who was at that time Deputy Director of Argonne National Laboratory and was responsible for the Argonne Division of Educational Programs. Beckjord expressed no reservations about Argonne conducting an education program for Kerr-McGee, and, in fact, thought Argonne had a responsibility to educate the public. Gustafson opined that Denny did not go directly to the Division of Educational Programs with his request because he was aware of Gustafson's interest and experience with the West Chicago community due to his past employment with the state. Gustafson and Denny had met on one occasion while Gustafson was Director, IDNS, when Kerr-McGee was considering how to clean up radiation hot spots in West Chicago. Gustafson remarked that he and Denny may have met during hearings, meetings, or conferences concerning the cleaning up of hot spots or decommissioning of the West Chicago Facility; however, Gustafson did not specifically recall any such meetings.

Sometime during the end of April or first of May 1983, Denny invited Gustafson to Kerr-McGee Chemical Corporation Headquarters in Oklahoma City, Oklahoma, to discuss the community education program and Kerr-McGee problems with toxic waste management. Gustafson wanted Kerr-McGee to become involved in toxic waste management research because it was a national problem. Gustafson had previously contacted Monsanto Corporation in St. Louis, Missouri, and the 3M Corporation in Minneapolis, Minnesota, concerning waste management research. While discussing arrangements for Gustafson's trip to Kerr-McGee Headquarters, Denny told Gustafson that Kerr-McGee would reimburse him for his direct expenses resulting from the trip.

On May 9-10, 1983, Gustafson traveled to Kerr-McGee Headquarters and went over the community education program with Denny. He also discussed the problem of petroleum and radioactive waste management with William Shelly, and problems with non-radioactive waste with two Kerr-McGee environmental specialists. Gustafson also met with James L. Rainey the President of Kerr-McGee Chemical Corporation and discussed in general the community education program and the possibility of waste management research by Kerr-McGee. Gustafson noted that discussions concerning waste management were general in nature and directed at industry wide problems. Any work that Argonne would do concerning waste management would have to be from an industry wide or Federal government perspective. Gustafson also briefly met with Dean A. McGee, Former Chairman of the Board of the Kerr-McGee Corporation. Gustafson and McGee discussed only general topics. While at Kerr-McGee Headquarters, Gustafson did not discuss the draft or final environmental statements with anyone.

During his May 9-10, 1983 meeting with Denny, Gustafson and Denny discussed how to reimburse people from outside Argonne who would participate in the education program. Gustafson's suggestion of an honorarium drew no objections from Denny. They also discussed Kerr-McGee's reimbursement to Argonne for presentation and development of the program. Gustafson thought it would take approximately \$2,500-\$3,000 for Argonne to develop the program. Gustafson and Denny did not discuss the payment by Kerr-McGee of direct expenses incurred by the program participants. During their talks, it was made clear that the topic of the West Chicago Facility decommissioning would not be discussed and that Kerr-McGee funding of the program would be made public.

When Gustafson departed Kerr-McGee Headquarters on May 10, 1983, he was under the impression that the community education program was going to be conducted. For some reason the program never materialized, and Gustafson did not know why. Gustafson was not certain how he became aware that the program was not going to be conducted except that Denny never telephoned to give final approval and Kerr-McGee never submitted any paperwork to Argonne.

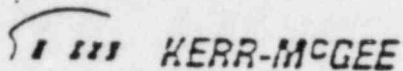
Gustafson commented that the topic of a potential conflict of interest involving his participation with the community education program was never discussed with Denny. Gustafson and Beckjord discussed conflict of interest; however, Beckjord decided that Gustafson was far enough removed from both the draft and final environmental statements for the West Chicago Facility that there would be no perception of a conflict of interest. Any potential conflict of interest from the fact that Argonne prepared the environmental statements for the Kerr-McGee West Chicago Facility and would also prepare and present the community education program for Kerr-McGee was not discussed. At the time in question, Argonne National Laboratory employed approximately 4,200 people and about 60 people were involved with environmental impact statements. This large number of employees precluded any appearance of a conflict of interest between people preparing the environmental statements and people preparing the community education program.

While at Kerr-McGee Headquarters, Gustafson and Denny had lunch together and discussed their families. Gustafson told Denny that his daughter was about to receive a college degree in civil engineering. Gustafson told Denny that jobs were hard to find in the Chicago, Illinois, area and asked if Denny was aware of any job opportunities in Oklahoma. Denny replied to Gustafson that he knew of none but he would inquire. When Gustafson subsequently submitted his

voucher to Denny for his trip to Kerr-McGee Headquarters, he attached a copy of his daughter's resume'. Neither Gustafson nor his daughter was ever contacted by Denny or Kerr-McGee concerning any job offers. Gustafson's daughter eventually found a job on her own.

At the conclusion of the interview with Gustafson, Arthur Zilberstein made several remarks that were relevant to the matter under investigation. Zilberstein noted that Argonne National Laboratory is a government-owned contractor operated laboratory that is engaged in work primarily for the Department of Energy (DOE). Argonne is allowed to undertake work for sponsors other than DOE; however, DOE must give prior approval. Any agreements governing the work also require DOE approval. Work done for outside sponsors may be a technical service or research and development. Argonne National Laboratory is totally compensated for work performed for outside sponsors. DOE has specific funds for Argonne to put on educational programs and Argonne has put on educational programs in the past. Zilberstein explained that had Kerr-McGee decided to conduct the education program and submitted a formal proposal for Argonne to participate in the development and presentation of the program, then Argonne management would have complied with their "Work for Others" procedure. This procedure requires that all work conducted for sponsors other than DOE must be approved by Argonne management (Division Director/Program Manager, Associate Laboratory Director, and the Work for Others Office) and the DOE. Among the criteria on which approval is based is that the proposed work is consistent with the mission and role of the laboratory as approved by DOE. DOE also approves the rate used by Argonne National Laboratory to recover the costs associated with performing work for organizations other than DOE. Concerning the question of appearance of conflict of interest with either Gustafson or Argonne National Laboratory conducting the community education program for Kerr-McGee, Zilberstein stated that review of the work proposal by Argonne management and DOE would have identified any appearance of conflict of interest and would have resulted in the Kerr-McGee proposal being disapproved.

Pages which already appear earlier in the report not reproduced here.
Composed of Dr. Gustafson's May 18, 1983 letter to Mr. Denny, with
enclosures. One enclosure (resume of Dr. Gustafson's daughter) also
withheld, as previously indicated.



MADE IN THE U.S.A. BY KERR-MCGEE, INC., DALLAS, TEXAS

June 21, 1982

• Mr. Philip F. Gustafson, Director
Department of Nuclear Safety
State of Illinois
1035 Outer Park Drive
Springfield, Illinois 62704

Dear Phil:

I enjoyed our brief meeting last week, and I appreciate your having taken time to come to West Chicago to meet with Ivan and me.

Do not hesitate to call me if at any time you wish to discuss the West Chicago matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J. L. Rainey', with a stylized flourish at the end.

J. L. Rainey

JLR:be

cc: I. L. Denny

RECEIVED

JUN 21 1982

L. L. Denny


(KERR-MCGEE DIVISION OR SUBSIDIARY)

BEST FOR DISBURSEMENT ~~XXXXXXXX~~

DUPLICATE CHECK FOR OF	NAME	Philip F. Gustafson	DATE	June 17, 1983
	ADDRESS	413 Addison Road	AMOUNT	
	CITY & STATE	Riverside, Illinois 60546	\$ 428.20	

Reimbursement for travel expenses -see attached

OK 4220 - 5050

TO DRAW CHECK ON		REQUESTED BY M. Switzer
<input type="checkbox"/> RETURN <input checked="" type="checkbox"/> CHECK TO		APPROVED Ivan Denny <div style="text-align: right;">  Ce-11-87 </div>
NAME		ROOM NO.
Ivan Denny		MT 1503

FOR ACCOUNTING DISTRIBUTION ONLY

ACCOUNT NO.	PROJ.	FEAT.	SUF.	E B	DIST.	STATE	AFE NO.	A/P OR A/R NUMBER	AMOUNT		DESCRIPTION
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ARGONNE NATIONAL LABORATORY
R&D WORK FOR SPONSORS OTHER
THAN THE DOE
POLICIES AND PROCEDURES

OFFICE OF THE LABORATORY DIRECTOR
WORK FOR OTHERS OFFICE

I. WORK FOR SPONSORS OTHER THAN THE DOE

Argonne National Laboratory (ANL) is a government-owned contractor operated laboratory engaged in work primarily for the United States Department of Energy (DOE). However, ANL may undertake work for sponsors other than the DOE with the prior approval of the DOE. The agreements governing the work also require DOE approval.

Work for sponsors other than the DOE may be a technical service or a research and development effort. Requests for technical services are coordinated and prepared by the Laboratory's Procurement Department. The preparation and submittal of proposals for research and development efforts is coordinated by the Work for Others Office, which is part of the Office of the Laboratory Director.

The work may be for federal agencies, state and local governments, universities and colleges, domestic private organizations, or foreign government and private organizations. The Laboratory is totally compensated for work performed for these sponsors.

II. POLICIES

The Laboratory's policies regarding work for sponsors other than the DOE are based upon the DOE Orders issued on this subject, which are included in a separate section of this document. In addition, the Laboratory has criteria which must be taken into account when undertaking work for sponsors other than the DOE.

A. Approval to Undertake the Work

Work may be conducted for sponsors other than the DOE with the approval of Laboratory management (Division Director/Program Manager, Associate Laboratory Director, and the Work for Others Office) and the DOE. A review of the proposed work is the basis for these approvals.

B. ANL Criteria

Requirements

- ° Proposed work should be consistent with the mission and role of ANL as approved by DOE.
- ° Proposed work should be complementary to programs which are included in the current, approved ANL Institutional Plan.

- The proposed work should be research and/or development in nature; this can include technical or economic assessments.
- The proposed work must be based on specialized scientific or technical capability and/or special facilities which exist at ANL. Additional capability or facilities may not be acquired with funds from the sponsor unless specified in the approved Institutional Plan or otherwise approved by DOE.

To be Avoided

- Program or contract management in which R&D is not the major part of work scope.
- Commitments to add staff or facilities which are not contemplated in the Institutional Plan.
- Work which interferes with DOE commitments.
- Classified work, except in special cases with the Laboratory Director's approval.
- Work which can be performed effectively in private industry.

C. PRICING

The DOE approves the rate used by ANL to recover the costs associated with performing work for organizations other than the DOE. The basis for this approval is a review by the DOE of the proposed work.

Costs may be recovered either at the federal rate or the full cost recovery rate. The federal rate is the ANL internal rate. The full cost rate is the ANL internal rate plus depreciation of DOE facilities and DOE added factors.

Work for federal agencies and requests for assistance from organizations performing work for the DOE is conducted at the federal rate.

The Federal rate may be requested for these sponsors:

- EPRI and GRI.
- Not for profit organizations engaged in activities promoting public health, safety, welfare, etc., who decline the class waiver by DOE of patent and data rights.

- Organizations performing work for a federal agency other than the DOE and requesting assistance from ANL who decline the class waiver by DOE of patent and data rights.
- Foreign entities who decline the class waiver by DOE of patent and data rights.
- State and local governments who decline the class waiver by DOE of patent and data rights.

The request is granted by DOE if benefit to DOE programs is realized. The Laboratory must substantiate the benefit to DOE programs. This is accomplished by completing the DOE Work for Others Proposal Information Questionnaire which accompanies each proposal submitted to the DOE for review. Approval to recover costs at the federal rate is granted by DOE-HQ, except in the case of organizations requesting assistance from ANL when performing work for federal agencies other than the DOE. In this case the decision will be made by the field office (DOE-CH).

Work for all other sponsors is conducted at the full cost recovery rate.

D. Advance Payments

An advance payments schedule must be established when performing work for non-federal government sponsors.

Sponsors who are exempt:

- Other federal agencies.
- Sponsors prohibited by specific law from providing payments in advance of work.
- organizations performing work for the DOE who request assistance from ANL.

A request may be made to DOE to exempt sponsors other than those shown above; however, the exemption must be approved by DOE-HQ.

E. Class Waiver by DOE of Patent and Data Rights Associated With Work Performed for Organizations Other than the DOE.

The Laboratory must inform eligible sponsors that they may request the benefit of a class waiver by DOE of patent and data rights associated with the work they sponsor at ANL. They must acknowledge in writing to ANL that they have been made aware of the availability

of the waiver and they must specify whether or not they are requesting the benefit of a class waiver for patent and data rights associated with the work sponsored at ANL. DOE has requested that this letter accompany the Laboratory's submittal of the proposal to DOE.

The class waiver by DOE of patent and data rights provides patent and data rights to the sponsor:

- ° Patent rights - the sponsor has patent rights and grants a non-exclusive license to the DOE (ANL); ANL may use the invention in programmatic work.
- ° Data Rights - in the course of conducting work for a sponsor technical data may be generated; the sponsor will be given the opportunity to label this data as proprietary and remove it from the Laboratory; the Laboratory will have no rights to this data.

Eligible sponsors for the class waiver are:

- ° Domestic, private firms, entities and organizations funding work with non-DOE money.
- ° EPRI and GRI.
- ° State and local governments - existing agreements or memorandums of understanding take precedence; such documents must be reviewed before ANL discusses the class waiver with the sponsor.
- ° Foreign government sponsors and entities and organizations which are part of foreign governments - A memorandum of understanding must exist between the foreign government and DOE before ANL can contract with a foreign government sponsor; this existing document takes precedence and must be reviewed before ANL discusses the class waiver with the sponsor.
- ° Foreign private sponsors funding work with non-DOE money-ANL can contract directly with the sponsor.

III. PROCEDURES

A. Undertaking Work for Sponsors Other than the DOE

The following is a list of activities (events) arranged in chronological order which generally must occur in order to undertake work for sponsors other than the DOE.

Discussions between Principal Investigator and Potential Sponsor.

- Establish nature and scope of work.
- Discuss patent and data rights: Domestic and foreign non U.S. government entities are eligible to request a waiver by DOE of the patent and data rights associated with work they sponsor at ANL. Refer to "POLICIES" for a description of the rights and the effect upon work performed.
- Advance payments: Advance payments are required for work performed for domestic and foreign non U.S. government entities. Other federal agencies, organizations performing work for the DOE who request assistance from ANL and those sponsors prohibited by law from providing payments in advance of work are exempt from this requirement. Refer to "POLICIES" for a description of the advance payments policy.

Discussions with Work for Other Office

- Discuss nature of work.
- Identify potential sponsor, situation, and relationships among participating parties.
- Discuss patent and data rights.
- Discuss advance payments.
- Establish rate of cost recovery.
- Discuss completion of DOE Questionnaire.

Prepare Proposal Package

- Contact the Work for Others Office for a four digit "P" number which identifies the proposal (ext. 6797).

- ° Prepare proposal, include:

- Introduction/background

- Work scope

- Deliverables

- Schedule of work

- Estimated budget

- ° Prepare DOE Questionnaire

- Emphasis on Section B, Questions 2 and 3 (uniqueness of ANL to perform the work).

- Emphasis on Section E, Question 1 (benefit/relationship to DOE is a determining factor in the decision to allow ANL to recover costs at the federal or full cost rate; work for other federal agencies and organizations performing work for the DOE who request assistance from ANL is conducted at the federal rate).

- ° Prepare letters transmitting proposal package to DOE and the Potential Sponsor.

Budget office reviews proposed budget.

- ° Determination that the estimated budget will allow ANL to recover the costs associated with the effort shown in the proposal.

- ° Memo issued by Budget Office to Principal Investigator, Division (program) performing the work, and the Work for Others Office summarizing their review of this estimated budget, and indicating the required funding at the federal and full cost recovery rate necessary to provide the effort shown in the proposal.

Proposal Package Review by Division.

- ° The Director of the Division (Program) proposing to undertake the work, reviews the proposal package.

- ° Proposal package transmitted to cognizant ALD.

Proposal Package Review by ALD

- The cognizant ALD reviews the proposal package.
- Proposal package with memo approving the submittal of the proposal package to DOE and the Potential Sponsor transmitted to the Work for Others Office.

Proposal Package Submitted to DOE and Potential Sponsor

- Proposal package reviewed by Work for Others Office.
- Transmittal letters, DOE Questionnaire, and in some instances the proposal, endorsed by the Director, Strategic Planning and Evaluation.

Review by DOE and Sponsor Complete

Negotiate Agreement

- DOE negotiates agreements for work for other federal agencies; funding is provided by means of an interagency agreement between the federal agency and DOE.
- ANL/Procurement or ANL/Legal negotiate agreements for EPRI, GRI and domestic and foreign organizations; funding is provided by means of an ANL agreement.

Agreement Reviewed by DOE

- All agreements into which ANL enters into require the prior review and approval of DOE.

Agreement Executed by all parties.

Begin Work.

B. Undertaking Work for Non-Federal Organizations Estimated to Cost no More Than \$50,000 at the Full Cost Recovery Rate.

ANL may undertake work for non-federal organizations estimated to cost no more than \$50,000 (at the full cost recovery rate) without prior review and approval by DOE/CH of the proposal and the subsequent agreement governing the work so long as the work is priced at the full cost recovery rate, and the work is performed under an agreement which is a standardized document specifically approved by DOE/CH for this purpose.

There are two exceptions to this procedure. First, the Laboratory must submit all proposals for international work to DOE/CH for review and transmittal to DOE/HQ for review and approval.

The second exception are amendments which raise the total estimated cost of the work above \$50,000 (at the full cost recovery rate). These will require DOE/CH review.

Work for non-federal sponsors estimated to cost no more than \$50,000 (at the full cost recovery rate) will continue to be processed through the Laboratory in the current manner.

In lieu of the evaluation by DOE/CH, the Work for Others Office will evaluate R&D proposals and then transmit the proposal to the Potential Sponsor. Review of the proposed budget by the ANL Budget Office, completion of the DOE Work for Others Proposal Information Questionnaire, and the preparation of the letter transmitting the proposal to the Potential Sponsor are still required. The Work for Others Office will distribute the proposal package within the Laboratory. A complete proposal package will be sent to the Manager, Outside Services (PRO) who handles the funding arrangements for work sponsored by non-federal organizations. The Manager, Outside Services will submit copies of the proposal package to DOE/CH Office of Patent Counsel when the agreement is finalized and to DOE/CH when the agreement is executed.

The Manager, Outside Services processes requests for technical services and will submit copies of the request and the agreement to DOE/CH Office of Patent Counsel when the agreement is finalized and to DOE/CH when the agreement is executed.

All other proposals for work for sponsors other than the DOE will continue to be processed in the current manner.

IV. DOE ORDERS PERTAINING TO WORK FOR ORGANIZATIONS OTHER THAN THE DOE

Included for reference are the following DOE Orders:

4300.2 (dated 10-8-81) - Research and Development Work Performed for Others by Government-Owned, Contractor - Operated Facilities.

2110.1 (dated 2-16-84) - Pricing of Departmental Materials and Services.

2100.1 (Dated 10-17-83) Reimbursable (Funds-In) Policy and Procedures.

SPONSOR	ELIGIBLE FOR CLASS WAIVER	RECOVERY RATE WITHOUT CLASS WAIVER	RECOVERY RATE WITH CLASS WAIVER	ADVANCE PAYMENTS*
EPRI AND GRI	YES	-	ELIGIBLE TO REQUEST FEDERAL RATE-DETERMINATION BY DOE-HQ**	YES
STATE/LOCAL GOVERNMENTS	YES	ELIGIBLE TO REQUEST FEDERAL RATE-DETERMINATION BY DOE-HQ	FULL COST	YES
NOT FOR PROFIT ORGANIZATIONS ENGAGED IN ACTIVITY PROMOTING PUBLIC SAFETY, HEALTH, OR WELFARE	YES	ELIGIBLE TO REQUEST FEDERAL RATE-DETERMINATION BY DOE-HQ	FULL COST	YES

*ORGANIZATIONS PROHIBITED BY SPECIFIC LAW AND ORGANIZATIONS PERFORMING WORK IN FULFILLMENT OF A DOE FUNDED CONTRACT ARE EXEMPT FROM THE ADVANCE PAYMENT REQUIREMENT. AN EXEMPTION FOR ANY OTHER SPONSOR MAY BE REQUESTED. HOWEVER, THE DETERMINATION IS MADE BY DOE-HQ, NOT DOE-CH.

**DOE-HQ MAY GRANT AUTHORITY TO DOE-CH TO MAKE THE PRICING DETERMINATION.

SPONSOR	ELIGIBLE FOR CLASS WAIVER	RECOVERY RATE WITHOUT CLASS WAIVER	RECOVERY RATE WITH CLASS WAIVER	ADVANCE PAYMENTS*
PRIVATE ORGANIZATION	YES	FULL COST	FULL COST	YES
FOREIGN GOVERNMENTS AND ORGANIZATIONS	YES**	ELIGIBLE TO REQUEST FEDERAL RATE-DETERMINATION BY DOE-HQ	FULL COST	YES

* ORGANIZATIONS PROHIBITED BY SPECIFIC LAW AND ORGANIZATIONS PERFORMING WORK IN FULFILLMENT OF A DOE FUNDED CONTRACT ARE EXEMPT FROM THE ADVANCE PAYMENTS REQUIREMENTS. AN EXEMPTION FOR ANY OTHER SPONSOR MAY BE REQUESTED. HOWEVER, THE DETERMINATION IS MADE BY DOE-HQ, NOT DOE-CH.

**PATENT AND DATA RIGHTS PROVISIONS INCLUDED IN AGREEMENTS BETWEEN FOREIGN GOVERNMENTS OR ORGANIZATIONS AND DOE HAVE PRECEDENCE.

U.S. NUCLEAR REGULATORY COMMISSION
Office of Inspector and Auditor

Date of transcription March 6, 1985

Report of Interview

William J. Hallett, Office of International Energy Development Programs, Argonne National Laboratory, 1611 North Kent Street, Suite 201, Arlington, VA 22209, was interviewed concerning his knowledge of Dr. Philip Gustafson's involvement with the preparation by Argonne of the draft and final environmental statements for the Kerr-McGee West Chicago Rare Earth's Facility. During the interview, Hallett provided the following information:

In about 1978-1979, when Argonne began preparation of the draft environmental statement for the West Chicago Facility, Dr. Gustafson was the Director, Environmental Studies Impact (EIS) Division at Argonne and Hallett was the Deputy Director. The EIS Division had responsibility for the preparation of impact statements. As Deputy Director, EIS Division, Hallett functioned essentially as an operations officer. Hallett was primarily responsible for the Division's workers and product, and he reviewed all reports that were issued by the Division. Hallett was also responsible for quality control review, and if he disagreed with a division specialist he would comment back to the specialist. Hallett noted, however, that conclusions made by the division technical specialist were not overridden by division management. They may have been questioned for the sake of clarity or if the conclusions were not sufficiently supported; however, this was only done to ensure the documents issued by the division could stand on their own.

As Division Director, Dr. Gustafson did not involve himself in the daily routine or preparation of environmental impact statements which was Hallett's primary responsibility.

In January 1981, Dr. Gustafson took a two year leave of absence from Argonne and assumed the position as Director, Illinois Department of Nuclear Safety. At that time, Hallett became the Director, EIS Division.

Between January 1981 and May 1982, a lot of work was done by the EIS Division involving revising and preparing different versions of the draft environmental statement for the Kerr-McGee West Chicago Facility. On May 3, 1982, Argonne submitted its last revision of the draft environmental statement to William Nixon, Office of Nuclear Materials Safety and Safeguards, NRC. The draft environmental statement was issued by the NRC in late May 1982. After the draft statement was issued by the NRC, interested parties commented on the report. These comments were forwarded by the NRC to Argonne between December 1982 and January 1983, and were responded to by Argonne during preparation of the final environmental statement. Hallett opined that Argonne provided its input for the final environmental statement to the NRC around February or early March 1983. Hallett noted that the Summary and Conclusions chapter of the Final Environmental Statement was prepared by William Nixon.

Investigation on February 27, 1985 at Rossllyn, VA File # 85-18
by George A. Mulley, Jr., Investigator, OIA Date dictated March 6, 1985

In about March 1983, Dr. Gustafson returned to Argonne National Laboratory from his position with the State of Illinois. When Gustafson returned to Argonne, he became the Acting Director, Radiological and Environmental Research Division. In this position, Gustafson had no responsibility for environmental statements. The Radiological and Environmental Research Division was involved strictly in research. Dr. Gustafson did not involve himself at all with the Kerr-McGee West Chicago Facility final environmental statement, and, in fact, the EIS Division was located in a building about a half a mile away from the Radiological and Environmental Research Division Building. Hallett was not aware of any interest, influence or involvement by Dr. Gustafson in the Final Environmental Statement for the Kerr-McGee West Chicago Facility.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

July 2, 1985

MEMORANDUM FOR: Robert L. Fonner, Attorney
Office of the Executive Legal Director

FROM: Sharon R. Connelly, Director *Sharon R. Connelly*
Office of Inspector and Auditor

SUBJECT: RELEASE OF OIA INVESTIGATION

The Office of Inspector and Auditor (OIA) has no objection with your office providing a copy of OIA Report of Investigation "Alleged Conflict of Interest by an NRC Contractor Employee," dated May 21, 1985, to the Atomic Safety and Licensing Board for use in the matter of the Kerr-McGee Chemical Corporation West Chicago Rare Earths Facility.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

July 17, 1985

MEMORANDUM FOR: George A. Mulley, Jr.
Office of Inspector and Auditor

FROM: Stephen H. Lewis, Deputy Assistant
Chief Hearing Counsel
Office of the Executive Legal Director

SUBJECT: RELEASE OF OIA REPORT OF INVESTIGATION

This will document our discussion of July 15, 1985 in which we agreed that the resume of Dr. Gustafson's daughter, which was included in three places in the report, should be withheld from public disclosure under 10 C.F.R. § 2.790(a)(6) and (a)(7)(iii).

Stephen H. Lewis
Stephen H. Lewis