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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before Administrative Judges:

John H Frye, III, Chairman
Dr. James H. Carpenter
Dr. Peter A. Morris



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In the Matter of
KERR-McGEE CHEMICAL CORPORATION
(Kress Creek Decontamination)

Docket No. 40-2061-SC
ASLBP No. 84-502-01-SC
November 6, 1985

MEMORANDUM AND ORDER TO SHOW CAUSE

This Memorandum and Order is issued in response to the October 31, 1985 motion filed by Kerr-McGee requesting an extension of time in which to file requests for admissions in the Kress Creek decontamination proceeding. The motion also requested that the Board defer the deposition schedule provided for in the Board's unpublished Memorandum and Order of September 26.

Kerr-McGee argues in the motion that the extension of time is necessary because the People have not yet complied with our discovery orders of September 26 entered in this proceeding.¹ Kerr-McGee complains it cannot compile its admission requests without complete

¹ LBP-85-38, 22 NRC _____. We note that although Kerr-McGee wishes a change in the schedule for filing requests for admissions, we set no schedule in this regard. Nonetheless, because failure to adhere to our discovery orders threatens the schedule we did set, this Order is necessary.

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responses to its interrogatories. Moreover, Kerr-McGee asserts it would be difficult to submit comprehensive and meaningful admission requests without the benefit of deposition discovery. Kerr-McGee relies on essentially the same reasoning for the difficulty it is encountering in identifying its witnesses and formulating its responses to the contentions. Although the ordered discovery was due only on October 30, the fact that witnesses are to be identified by November 8 gives these arguments weight.

In the companion case concerning the West Chicago Rare Earths Facility, the People have moved the Board for a stay until the related trial in Illinois Circuit Court is completed. The People's Motion to Stay was served after the Board issued the order requiring compliance with certain of Kerr-McGee's discovery requests in both the West Chicago and Kress Creek proceedings. Although the People only request a stay in the West Chicago action, claiming compliance with our discovery order is not feasible in that case, Kerr-McGee argues there is no indication that the People will meet their discovery obligations in Kress Creek.

In light of the fact that the People's Motion to Stay did not include the Kress Creek proceeding, this case should be progressing as we directed. We have adopted a schedule leading to a hearing commencing January 6. Witness lists are to be exchanged November 8. Depositions are to be held until November 29, and written testimony filed on December 13 and 20. Failure to comply with our discovery orders jeopardizes this schedule. If the discovery schedules could not be met by the People, a timely motion should have been filed. We have not

received the additional discovery responses required of the People, and our law clerk's efforts to ascertain the status of this matter by telephone have revealed that they have not been filed. Thus, pursuant to 10 CFR 2.707, the Board orders the People to show cause why their contentions 1 and 6 should not be dismissed as a sanction for failure to comply with our discovery orders.

We hold in abeyance our ruling on Kerr-McGee's October 31, 1985, motion pending the People's response to this Order and to that motion. The People's response to this Order to Show Cause is to be filed at the same time as their Response to Kerr-McGee's motion, no later than November 15, 1985.

It is so ORDERED.²

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



John H. Frye, III, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
November 6, 1985

² Judges Carpenter and Morris concur but were unavailable to review and sign this Memorandum and Order.