

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

In the Matter of)
KERR-McGEE CHEMICAL CORPORATION) Docket No. 40-2061-ML
(West Chicago Rare Earths Facility))

PEOPLE'S FURTHER ANSWERS TO
KERR-McGEE'S SECOND SET OF INTERROGATORIES

Pursuant to the Board's orders of September 26 and November 14, 1985, the People make further answers to certain of the interrogatories included in Kerr-McGee's Second Set Of Interrogatories. See also the People's Motion to Reconsider and Motion for Extension of Time filed this date.

Where Kerr-McGee did not challenge and the Board did not reject some portion of an interrogatory answer previously given, the People have reiterated that portion here. In some cases an unchallenged portion of an interrogatory answer is reiterated and another portion of that same interrogatory, which was challenged by Kerr-McGee and ruled upon in Kerr-McGee's favor, is made a subject of the accompanying Motion to Reconsider.

INTERROGATORY 4

Identify each federal, state, or local statute, regulation, or other legal authority, other than the Atomic Energy Act, that the State contends is applicable to the consideration of alternative sites for disposal of material from the West Chicago facility.

RESPONSE: Insofar as Kerr-McGee is asking what the People contend, our answer is the National Environmental Policy Act, 42 USC §§4321 et seq. ("NEPA"), 40 CFR Part 1500, 10 CFR Part 51, 10 CFR Part 40.

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INTERROGATORY 12

Does the State contend that Kerr-McGee was or is required to develop specific or detailed disposal plans for alternative disposal sites? If so,

- a. Identify each statute, regulation, or other legal authority that imposes such a requirement;
- b. Describe the type of disposal plan and the level of detail for such a plan that the State contends is required;
- c. Identify each alternative site for which the State contends such a plan should have been developed;
- d. Identify each document that refers or relates to the answers to (a) - (c);
- e. Identify each person on whom the State relies for its answers to (a) - (e), and state whether the State intends to offer any testimony or other evidence from that person in this proceeding.

RESPONSE: Objection, on the ground that this interrogatory is vague.¹

INTERROGATORY 13

Identify each communication between any agent, employee, or other representative of the State of Illinois or any of its agencies or subdivisions and any agent, employee, or other representative of Kerr-McGee concerning the search for and evaluation of alternative disposal sites, and as to each such communication:

¹In its September 26 order the Board "reject[s] the People's arguments that some of the interrogatories are too vague" Kerr-McGee, however, did not challenge our vagueness objection, either in its motion or its reply to our pleading in opposition. Since it is not apparent from the Board's order that the Board actually intended to raise objections to the parties' discovery responses sua sponte or to amend Kerr-McGee's interrogatories on their face, the People continue to assert an objection not challenged by Kerr-McGee.

- a. State its date;
- b. Identify the individuals involved;
- c. Describe the subject matter of the communication;
- d. Identify all documents that embody, refer to, or relate to the communication.

RESPONSE: Objection, on the ground that this interrogatory is vague (see footnote to response to Interrogatory 12). Furthermore, Kerr-McGee has now deposed more than a dozen state employees and reviewed discovery documents from all relevant state agencies; Kerr-McGee thus has learned whatever the People may know on the question propounded.

INTERROGATORY 14

Identify each communication between any agent, employee, or other representative of the State of Illinois or any of its agencies or subdivisions and any agent, employee, or other representative of the United States Government (including but not limited to, the NRC Staff) concerning the search for and evaluation of alternative disposal sites, and as to each such communication:

- a. State its date;
- b. Identify the individuals involved;
- c. Describe the subject matter of the communication;
- d. Identify all documents that embody, refer to, or relate to the communication.

RESPONSE: See answer to Interrogatory 13.

INTERROGATORY 15

Identify each meeting attended by any agent, employee, or other representative of the State of Illinois or any agency or subdivision thereof concerning the search for and assessment of alternative disposal sites, and as to each such meeting:

- a. State its date and location;
- b. Identify all individuals attending;
- c. Identify all documents that refer or relate to the meeting.

RESPONSE: See the People's original answer to this interrogatory.²

INTERROGATORY 16

Identify each meeting concerning the search for or the evaluation of alternative disposal sites to which the State of Illinois (or any agency or subdivision thereof) was invited to send a representative but did not do so, and as to each such meeting,

- a. State its date;
- b. Identify the source of the invitation to attend;
- c. Describe the reason for the decision not to send a representative;
- d. Identify all documents that refer or relate to the meeting and the State's decision not to send a representative.

RESPONSE: Objection, on the ground that this interrogatory is vague and overly burdensome. (See footnote to response to Interrogatory 12.) See also answer to Interrogatory 63.

INTERROGATORY 17

Has the State of Illinois, or any agency or subdivision thereof, developed a policy concerning cooperation by its personnel in the search for and evaluation of alternative sites for the disposal of radioactive wastes? If so,

- a. Describe the policy and the reason for it;
- b. Describe any changes that have been made in the policy at any time and describe the reason for each such change;

²Kerr-McGee did not challenge this answer; instead, it challenged an objection we did not make--a relevancy objection.

- c. Describe the types of assistance that the State has provided in the past pursuant to the policy, and identify each person or entity to whom such assistance has been made available;
- d. Identify each document that refers or relates to such a policy and/or to assistance provided (or to be provided) pursuant to such a policy.

RESPONSE: Objection, on the ground that this interrogatory is vague and overly burdensome. (See footnote to response to Interrogatory 12.) See also answer to Interrogatory 63.

INTERROGATORY 18

Describe the types of assistance that the State is prepared to provide in the future in the search for and evaluation of alternative sites for the disposal of radioactive waste, and identify to whom such assistance will be made available.

RESPONSE: See answer to Interrogatory 63.

INTERROGATORY 20

Does the State contend that NRC failed to set adequate guidelines for Kerr-McGee's evaluation of alternative disposal sites or otherwise failed to supervise the evaluation adequately? If so,

. . .

- b. Identify each statute, regulation or other legal requirement that requires such guidelines or supervision.

RESPONSE: NEPA, 40 CFR Part 1500, 10 CFR Part 51, 10 CFR Part 40.

INTERROGATORY 21³

Does the State contend that abandoned surface coal mines can be rendered suitable for disposal of materials from the West Chicago site? If so,

- a. Identify each fact upon which the State bases its contention that such sites can be rendered suitable;
- b. Identify each step that would be required to render such a site suitable for such a purpose;
- c. Identify each aspect of the analysis of such sites in the Stabilization Plan and FES with which the State disagrees, and describe the basis for the disagreement;
- d. Identify each document that refers or relates to such sites and to their suitability for this purpose;
- e. Identify each person on whom the State relies for its contention that such sites can be rendered suitable, and state whether the State intends to offer testimony or other evidence from that person in this proceeding.

RESPONSE: No.

INTERROGATORY 22³

Does the State contend that limestone/dolomite quarries such as those described in the Stabilization Plan can be rendered suitable for disposal of materials from the West Chicago site? If so,

- a. Identify each fact upon which the State bases its contention that such sites can be rendered suitable;
- b. Identify each step that would be required to render such a site suitable for such a purpose;

³On page 36 of its order, the Board misstates Kerr-McGee's Interrogatories 21 and 22. The People's answers set forth here are made to the interrogatories as propounded by Kerr-McGee.

- c. Identify each aspect of the analysis of such sites in the Stabilization Plan and FES with which the State disagrees, and describe the basis for the disagreement;
- d. Identify each document that refers or relates to such sites and to their suitability for this purpose;
- e. Identify each person on whom the State relies for its contention that such sites can be rendered suitable, and state whether the State intends to offer testimony or other evidence from that person in this proceeding.

RESPONSE: No.

INTERROGATORY 27

Identify each state or local statute, regulation, or other legal authority that the State contends should have been considered in the FES, but was not so considered.

RESPONSE: Illinois Environmental Protection Act, 111-1/2 Ill.Rev.Stat. §§1001 et seq., 35 Ill.Adm.Code Subtitle G, 35 Ill.Adm.Code Subtitle C, Illinois Environmental Protection Agency's "Waste Management Facilities Design Criteria," Illinois Low-Level Radioactive Waste Management Act, 111-1/2 Ill.Rev.Stat. §§241 et seq.

INTERROGATORY 50

Does the State contend that Kerr-McGee is legally obligated to include in its disposed plan any wastes or other material not currently located on the Kerr-McGee site? If so,

- a. State where any such material is located;
- b. As to each location identified in (a) above, state the volume of material that the State contends Kerr-McGee is obligated to include in the disposal plan;
- c. As to each location identified in (a) above, describe the physical composition of the material, including its chemical and radiological composition;

- d. Identify each statute, regulation or other legal authority that the State contends obligates Kerr-McGee to include such material in the disposal plan;
- e. Identify each document that refers or relates to the answers to (a) - (d) above.

RESPONSE: Objection, on the ground that this interrogatory is irrelevant to any issue raised in the People's Contentions. (Kerr-McGee's obligation under federal law to clean up offsite areas is not involved in this proceeding.)

INTERROGATORY 52

Identify each aspect of UMTRCA and its implementing regulations with which the State contends the Stabilization Plan does not comply, and describe the basis for the State's contention that the Stabilization Plan does not comply with each such aspect.

RESPONSE: Insofar as Kerr-McGee is asking what the People contend, the People state that those portions of UMTRCA and its implementing regulations with which Kerr-McGee's Stabilization Plan does not comply are set out in the People's Contention 2, and the People have nothing to add thereto at this time.

INTERROGATORY 54

Identify by date, subject, and participants every communication between the State and the Staff concerning

- a. The design of the proposed containment cell;
- b. The health, safety, and environmental effects of Kerr-McGee's proposed disposal plan;
- c. The costs and benefits of Kerr-McGee's proposed disposal plan;
- d. Any state statute, regulation, or other legal authority that the State contends is applicable to the disposal plan and to the West Chicago site.

1. Does the State contend that it currently has authority to enforce the "policy" in connection with the Kerr-McGee site? If so, state that basis for that contention;

- p. Describe each procedural protection afforded Kerr-McGee in the determination purportedly made for the Department in paragraph 9;
- q. State the basis for the affiant's statement that on-site stabilization would be inconsistent with Illinois law.

RESPONSE: (c) Yes.

(e)-(f) Objection, on the ground that these interrogatories are irrelevant.

(h)-(i) Objection, on the ground that these interrogatories are irrelevant.

(j) The policy has been applied to all situations concerning present or contemplated disposal of low-level radioactive waste within Illinois.

(l) Objection, on the ground that this interrogatory is irrelevant.

(p) Objection, on the ground that this interrogatory is irrelevant.

(q) Illinois Low-Level Radioactive Waste Management Act, 111-1/2 Ill.Rev.Stat. §§241 et seq., 10 CFR Part 61, 10 CFR Part 40, and all other laws, regulations, and authorities forming the basis for the Department's low-level radioactive waste management policy.

INTERROGATORY 65

With respect to the Affidavit of Lawrence W. Eastep filed as an exhibit to the State's Reply Brief on its contentions:

- e. Identify each statute, regulation, or other regulation that grants the Agency authority to make the determinations described in the fourth paragraph;
- h. Identify the legal mechanisms currently available under state law for enforcing the policies described in the fourth paragraph;
- j. Does the State contend that it currently has authority to enforce the policies described in the fourth paragraph in connection with the Kerr-McGee site? If so, state the basis for that contention;
- m. Describe each procedural protection afforded Kerr-McGee in the determination stated in the fifth paragraph that the Stabilization Plan "would not be consistent with Agency requirements".

RESPONSE: (e) Illinois Environmental Protection Act, 111-1/2 Ill.Rev.Stat. §§1001 et seq., 35 Ill.Adm.Code, Subtitle G.

(h) Objection, on the ground that this interrogatory is irrelevant.

(j) Objection, on the ground that this interrogatory is irrelevant.

(m) Objection, on the ground that this interrogatory is irrelevant.

INTERROGATORY 105

Does the State contend that the implementation of the Stabilization Plan may or will fail to satisfy the EPA requirements for control of radiological hazards specified in 40 C.F.R. §§192.41, 192.32(b)? If so:

- a. Describe each such failure or possible failure and the basis for the State's contention as to the existence of each such failure or possible failure;
- b. Describe how the cell design should be modified to satisfy the EPA requirements;
- c. Identify each document that refers or relates to the answers to (a) and (b);
- d. Identify each person on which the State relies for the answers to (a) and (b), and state whether the State intends to offer testimony or other evidence from that person in this proceeding.

RESPONSE: (a)-(d) Yes. At this time see the People's Contentions, their answers to Kerr-McGee's First and Second Sets of Interrogatories in this proceeding, and counsel's letter in the State court litigation to Peter Nickles dated September 16, 1985.

INTERROGATORY 106

Does the State contend that the implementation of the Stabilization Plan may or will fail to satisfy the EPA requests for the control of nonradiological hazards specified in 40 C.F.R. §§192.41, 192.32(b)? If so:

- a. Describe each such failure or possible failure and the basis for the State's contention as to the existence of each such failure or possible failure;
- b. Describe how the cell design should be modified to satisfy the EPA requirements;
- c. Identify each document that refers or relates to the answers to (a) and (b);
- d. Identify each person on which the State relies for the answers to (a) and (b), and state whether the State intends to offer testimony or other evidence from that person in this proceeding.

RESPONSE: Yes. (a)-(d) At this time see the People's Contentions, their answers to Kerr-McGee's First and Second Sets

of Interrogatories in this proceeding, and counsel's letter in the State court litigation to Peter Nickles dated September 16, 1985.

INTERROGATORY 107

Does the State contend that the implementation of the Stabilization Plan may or will fail to satisfy 10 C.F.R. Part 40 App. A, criteria 4 and 5? If so:

- a. Describe each such failure or possible failure and the basis for the State's contention as to the existence of each such failure or possible failure;
- b. Describe how the cell design should be modified to satisfy the EPA requirements;
- c. Identify each document that refers or relates to the answers to (a) and (b);
- d. Identify each person on which the State relies for the answers to (a) and (b), and state whether the State intends to offer testimony or other evidence from that person in this proceeding.

RESPONSE: To the extent the People's Contentions can be said to so contend, yes. At this time see those Contentions, the People's answers to Kerr-McGee's First and Second Sets of Interrogatories, and counsel's letter in the State court litigation to Peter Nickles dated September 16, 1985.

INTERROGATORY 114

Does the State contend that the near surface glacial aquifer in the vicinity of the West Chicago site must be rendered and/or maintained in a quality fit for human consumption? If so,

- a. State the basis for that contention;
- b. Identify each document that refers or relates to the State's contentions concerning the glacial aquifer;
- c. Identify each person upon whom the State relies for its contentions concerning the glacial aquifer, and state whether the

State intends to offer testimony or other evidence from that person in this proceeding.

RESPONSE: This interrogatory has been answered.

INTERROGATORY 117

Has the Illinois Department of Nuclear Safety and/or its counsel in this proceeding communicated with any official, employee, agent, or other representative of any other agency, department, or division of the State of Illinois concerning any of the specific matters at issue in this proceeding? If so, as to each such communication:

- a. State the date of the communication;
- b. Identify the participants;
- c. Describe the subject of the communication and its substance;
- d. Identify all documents that embody, refer to, or relate to the communication.

RESPONSE: Objection to the extent that this interrogatory calls for information protected by the attorney-client, work-product, or executive privilege. See also answer to Interrogatory 63.

Respectfully submitted,

NEIL F. HARTIGAN
Attorney General
State of Illinois

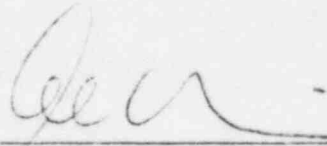
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CERTIFICATE OF SERVICE

I, Anne Rapkin, an attorney, certify that I have this date served the foregoing PEOPLE'S MOTION TO RECONSIDER, PEOPLE'S MOTION FOR EXTENSION OF TIME, and PEOPLE'S FURTHER ANSWERS TO KERR-McGEE'S SECOND SET OF INTERROGATORIES on the persons listed in the attached Service List by placing same in envelopes addressed to such persons, first-class postage prepaid, and depositing said envelopes at the U.S. Post Office located at 160 N. LaSalle, Chicago, Illinois 60601

A handwritten signature in cursive script, appearing to read 'Anne Rapkin', is written over a horizontal line.

ANNE RAPKIN

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