

BEFORE THE
UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of

KERR-MCGEE CORPORATION
AMENDMENT TO SOURCE
MATERIAL LICENSE

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SUB 1010

AUG 7 1973

PETITION TO REQUIRE PUBLICATION
OF PROPER NOTICE OF HEARING

The Natural Resources Defense Council hereby petitions the Atomic Energy Commission to publish in the Federal Register and distribute in the area of concern (the State of Oklahoma) a notice which advises the general public of its right to intervene and participate in a hearing on the denial of the application of Kerr-McGee Corporation to amend its license.

The Kerr-McGee Corporation, holder of a AEC license authorizing the use of source material in the production of uranium hexafluoride, demanded a hearing pursuant to 10 CFR Part 2, Section 2.103 to dispute the Commission's denial of an amendment to that license which would permit disposal of certain radioactive waste materials. (38 F.R. 18921 July 21, 1973)

The notice of hearing was issued on July 16, 1973 (38 F.R. 18921, July 16, 1973) and the Atomic Safety and Licensing Board was designated on July 20, 1973. (38 F.R. 19422, July 20, 1973) Although both of these notices were issued pursuant to 10 CFR Part 2, the rules of practice of the AEC, neither specified the opportunity or procedures for intervention and participation by interested members of the public.

10 CFR 2.714 provides that any person "whose interest may be affected by a [Commission] proceeding and who desires to participate" may do so, upon the filing of a written petition within a prescribed time period.

10 CFR Part 2, Sec. 2.715 allows for limited appearances by persons who are not parties, but who desire to make a written or oral statement on the issues involved in the hearing.

This right to intervene is not limited to hearings conducted under 10 CFR Part 50, the Licensing of Production and Utilization Facilities. 10 CFR Part 2 sets forth general rules governing all types of proceedings before the Atomic Energy Commission, and unless otherwise stated, the rights and privileges established in this section apply.

The request for this hearing was made by the Kerr-McGee Corporation under the provisions of 10 CFR Part 2 (10 CFR Part 2, Sec. 2.103). Furthermore, 10 CFR Part 40, by which Kerr-McGee

obtained its license, does not establish different procedures to be followed for the licensing of the use and disposal of source material. On the contrary, it states that:

"Each license issued pursuant to the regulations in this part shall be subject to all provisions of the act...and to all rules, regulations and orders of the Commission."

(10 CFR 40.41(a))

It is not sufficient for the Commission to establish rights if the parties entitled to them are not informed of their existence. In fact, it is meaningless. The granting of the right to intervene carries with it the responsibility to provide proper notice to the public that a particular hearing is one in which intervention is permitted, and to specify the procedures to be followed in becoming a participant.

What constitutes proper notice of AEC proceedings is set forth in Part 2, Sec. 2.104, Notice of Hearing, and Sec. 2.105, Notice of Proposed Action. Sec. 2.105 is applicable to the hearing on the Kerr-McGee license amendment since this is not a proceeding which is required under the Act (remaining the option of the licensee) and because the action does not concern the construction or licensing of a production or testing facility. The proposed action involved at this point is the hearing itself, although it can be argued that the original proposed action - the denial of the license-should have been properly noticed as well.

10 CFR 2.105(d) specifies two items to be contained in the notice of proposed action; (1) that the applicant may request a hearing, and (2) that "any person whose interest may be affected by the proceeding may file a petition to intervene". The applicant has been notified and has exercised its right to demand a hearing. The notice of the proposed action did not, however, set forth the right of interested persons to intervene or a statement of procedures to be followed.

For this reason, and in respect of the interest of the Commission in careful observance of its rules, we request a re-issuance of the public notice for this hearing. Not only will this assure protection of the rights of all interested persons, it will avoid difficulties which might occur at a later date if a decision issued as a result of an improperly noticed hearings were disputed.

While the filing of an amended notice would delay the commencement of the evidentiary hearing (now scheduled for August 27, 1973) we feel that the effect of such delay, if no parties seek to intervene, will be minimal. If delay occurs because of the intervention of persons whose interest is affected by the action, the public interest will have been served by the timely raising of relevant issues.

In our opinion the ASLB has the authority to determine whether or not the notices which appeared in the Federal Register were improper, and through this authority it can re-issue amended notices.

However, to avoid delay should the ASLB determine that it lacks jurisdiction over the question of what constitutes proper notice, we are simultaneously filing this petition with the Commission. In the event the ASLB determines that it lacks jurisdiction we request that the hearings be postponed pending a Commission resolution of the matter, and the issuance of a proper notice.

Respectfully submitted,

Karin P. Sheldon

Karin P. Sheldon
Counsel for Natural Resources
Defense Council

Dated: August 7, 1973