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General Counsel

Franklin N. Parks

STATUS REPORT ON BERYLLIUM CONTRACTS NOS. AT(11-1)-462 AND 465

The following are the major outstanding problems under the Brush (462) and Beryllium Co. (465) contracts.

1. Health and Safety. Both contracts contain extensive provisions covering safety and health standards. Furthermore, both contracts contain Walsh-Healey Act provisions. Among the health standards, the contracts contain a provision that the average in-plant atmospheric beryllium concentration should not exceed 2 micrograms per cubic meter (2 ug/m³), a standard recommended by an ad hoc AEC advisory committee on Beryllium. On December 28, 1960 the Department of Labor published standards under the Walsh-Healey Act. The standard for beryllium was the same as that in the contracts. Despite the contractual requirement for 2 ug/m³, apparently the contractors have never maintained a level lower than 5 ug/m³. Further, we understand that the contractors are unable to lower the level to below 5 ug/m³ without installing extensive additional equipment.

a. If the AEC should enforce the contract requirement of 2 ug/m³, the contractors may be required to shut down the plant and install extensive and expensive additional equipment. The duration of such a shut down and how it might affect the Commission's beryllium requirements is not known. Further, any cost to the contractors for installing new equipment will be passed on to the Government through the negotiated prices for beryllium. This may be an unnecessary cost to the Government since we understand that industrial hygienists (notwithstanding the health standard in the contracts and recently adopted by the Department of Labor) apparently do not feel that the level now being maintained (5 ug/m³) is unsatisfactory.

b. Even if the AEC should delete or revise the health provisions from the contract or refrain from enforcing them, the Walsh-Healey Provisions must remain in the contracts. Since the Walsh-Healey Act now prescribes the same health standards for industrial use of beryllium we can not in any event avoid the problems mentioned in (a) above because of the sanctions of the Walsh-Healey Act.

A headquarters task force has been set up to resolve these problems.

CONTRACTS Brush 462
CONTRACTS Beryllium 465

U. S. ARCHIVES
325 U.S. ATOMIC ENERGY COMMISSION
RG 326
Collection O.G.C.
Box 250
Folder Beryllium

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2. Past Excess Costs Under Diversion Article. The Brush Beryllium contract provides that all beryllium ordered by the Government or any of its contractors will be credited against deliveries to be made under the contract. The contract also provides that: "Allocated beryllium should be sold . . . at the prices and in accordance with the specifications currently in effect for beryllium delivered to the Commission under this contract . . . unless the contractor and purchaser agree on other terms and conditions or specifications." Apparently, Brush Beryllium has charged our contractors higher prices for beryllium than for beryllium delivered to the Commission. However, establishing the prices of beryllium at which the allocated beryllium were sold may be difficult or even impossible because of the way the contracts for fabricated beryllium were entered into by Brush and the various contractors (the contracts for fabricated beryllium between Brush and the various Commission contractors call for fabricated shapes at specified prices without, as we understand it, any reference to the prices of the beryllium that is used to make up the fabricated shapes). Finance will conduct a preliminary audit to determine whether the prices charged our contractors for beryllium under fabrication contracts can be established and the magnitude of the over-charge, if any.

3. Current Status of Allocation and Diversion Article. At present Brush is providing, or has offered to provide, powder and fabricated parts to a number of ALO prime and subcontractors as well as to Carbide and the DOD. The question of the Commission's right to limit ingot costs in the prices for powder and fabricated parts is still open. Attempts are being made to eliminate at least part of the problem by requesting Brush and Beryllium Co. to submit proposals for powder prices to be added to the contracts.

4. Conflict of Interest. Martin Powers, formerly an employee at COO is now employed by Brush Beryllium Company. Mr. Powers administered both beryllium contracts while he was with COO. This raises a question as to the propriety of the Commission's dealings with Mr. Powers. An opinion was written by OGC on this matter and Commission employees (and Brush) notified of subjects that should not be discussed with Mr. Powers. Brush has recently written DMA asking that DMA reconsider its opinion with regard to the propriety of Powers dealing with the Commission to obtain stockpile beryllium for Brush; and clarify the extent to which communications would be permissible on other subjects.

DOE ARCHIVES

5. Price Redetermination. Both contracts provide for price redetermination annually. Although, the dates specified by the contracts for redetermination of the prices have passed, no redetermination for FY 1961 have been made. Preparations are being made to audit the applicable records of both companies to obtain information necessary for negotiations.

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The following are problems which are not considered to be outstanding but which we would like to note for your information.

1. Amortization of Plant and Facilities under Beryllium Co. Contract. The contract contains a provision which states in effect that the total costs of plant and facilities to be amortized under the contract shall not exceed \$1,680,000. In 1958 the contract was partially terminated. The parties agreed on a settlement arrangement which will result in the contractor receiving \$2,377,000 for amortization of plant and facilities. The Comptroller General raised a question with the Commission as to why the \$1,680,000 figure was exceeded. The gist of our reply (10/31/60) was that the parties intended that the \$1,680,000 figure would be a limitation only in the event of complete performance of the contract and that it was not intended that this figure would apply in the case of termination. Since there was no clear contract provision to the contrary, we concluded that effect must be given to the intention of the parties.

2. Unauthorized Withdrawal by Brush of AEC Inventory. Prior to May 27, 1959 the Commission procured all of its requirements for fabricated beryllium shapes exclusively from Brush under OPFF Contract AT(30-1)-541. Effective that date all AEC orders for fabricated shapes were placed on a lump sum commercial basis through Brush, Beryllium Co. or any other commercial course which was available. Under Contract 541 the Commission had accumulated an inventory of beryllium (ingot, powder and scrap). When a physical inventory of the material was taken by the Commission, it was found that Brush had used approximately \$520,000 worth of material on non-Contract 541 work without the approval of the Commission. After investigation and consideration of the possible actions that could be taken by the Commission (including possible criminal action) the Commission negotiated a settlement with Brush for all material used by Brush without authorization. This problem is considered closed.

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3. Disposal of Luckey Plant. Prior to December 31, 1957, Brush operated the Government-owned Luckey Plant under a OPFF contract for the production of beryllium metal. When the Commission terminated the contract as of December 31, 1957, the Commission had no need for the plant. However, because the plant was contaminated its disposal created a problem. The Commission has declared it excess to GSA but the Commission still has standby responsibility for the plant. GSA has advertized the plant for sale on an as is where is basis. We understand that a bid for \$316,000 has been received by GSA for the plant. We understand from GSA that the disposal schedule calls for an award by April 10, 1961 and final closing by April 20, 1961.

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