

RAS 6520

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 06/11/03
SERVED 06/11/03

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Alan S. Rosenthal, Presiding Officer
Thomas D. Murphy, Special Assistant

In the Matter of

SEQUOYAH FUELS CORPORATION

(Gore, Oklahoma Site)

Docket No. 40-8027-MLA-6

ASLBP No. 03-812-03-MLA

June 11, 2003

ORDER

In hand are hearing requests of the Attorney General of the State of Oklahoma and the Cherokee Nation, filed on May 14 and 15, 2003, respectively, together with the May 27 response thereto of the Sequoyah Fuels Corporation (Licensee). The hearing requests were filed as a consequence of a notice of opportunity for hearing contained in an April 15, 2003 Federal Register notice. 68 Fed. Reg. 18,268.¹

The April 15 notice alluded to the fact that, on December 11, 2002, the NRC Staff had amended the Licensee's outstanding source materials license (SUB-1010) to allow it to possess at its Gore, Oklahoma site byproduct material as defined in section 11e.(2) of the Atomic Energy Act of 1954, as amended. (As the notice explained, this action was taken on the basis of a Commission conclusion last July that some of the waste accumulated on that site as a

¹ A third hearing request was filed under date of May 15, 2003, by Ed Henshaw. According to the Licensee's June 10 response to the request, Mr. Henshaw failed to satisfy the requirement imposed by the Federal Register notice that a copy of his hearing request be served upon the Licensee by personal delivery or by mail. I am told that the Licensee first learned of the Henshaw filing on May 28 when it received a copy of the memorandum sent on that date by the Acting NRC Secretary to the Chief Administrative Judge of the Licensing Board Panel containing a reference to the filing. In the circumstances, Licensee maintains, among other things, that the hearing request should be deemed untimely and denied as such.

result of the operations of the Licensee's Gore facility could be properly classified as section 11e.(2) byproduct material.) The notice then went on to state that the Staff now had before it the Licensee's reclamation plan, which would have the waste material put in a disposal cell on the site designed to conform to the regulatory requirements pertaining to the disposal of section 11e.(2) byproduct material. Both the Attorney General and the Cherokee Nation now seek a hearing on aspects of the reclamation plan that they deem unacceptable.

In an earlier instituted proceeding involving the same source materials license and the same waste (Docket No. 40-8027-MLA-5), the State of Oklahoma sought to challenge before me the Commission's conclusion that the material in question can properly be classified as section 11e.(2) byproduct material and, therefore, the above-mentioned action that the Staff took last December 11 based upon that conclusion. At least in the absence of a specific Commission authorization, however, I am not empowered to entertain challenges to Commission determinations even where (as here) made in a non-adjudicatory setting.

Accordingly, on May 1, 2003, I certified to the Commission pursuant to 10 C.F.R. § 2.1209(d) two questions. First, should Oklahoma be now allowed to challenge the license amendment permitting the possession of section 11e.(2) byproduct material on the Gore site on its assertion that the waste on the site does not qualify as such material? Second, if the answer to that question is in the affirmative, will the Commission entertain the challenge or is it to be considered in the first instance by this presiding officer? See Sequoyah Fuels Corporation (Gore, Oklahoma Site), LBP-03-07, 57 NRC ___.

That certification remains pending before the Commission. Given that the proposed license amendment under current consideration clearly assumes that the waste in issue will remain classified as section 11e.(2) byproduct material, it is obvious that disposition of the

hearing requests addressed to it should await the outcome of the certification. Accordingly, all further consideration of those requests is hereby deferred to await the ultimate resolution of the section 11e.(2) question in the companion proceeding.

It is so ORDERED.

BY THE PRESIDING OFFICER²

/RA/

Alan S. Rosenthal
ADMINISTRATIVE JUDGE

Rockville, Maryland

June 11, 2003

² Copies of this order were sent this date by e-mail transmission to counsel for the parties.

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NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
SEQUOYAH FUELS CORP.) Docket No. 40-8027-MLA-6
GORE, OKLAHOMA)
)
(Materials License Amendment))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER DATED JUNE 11, 2003 have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 40-8027-MLA-6
LB ORDER DATED JUNE 11, 2003

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 11th day of June 2003