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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Alan S. Rosenthal, Presiding Officer in MLA-6 and  
Licensing Board Chairman in MLA-9

Dr. Anthony J. Baratta, Special Assistant in MLA-6  
and Licensing Board Member in MLA-9

Dr. Richard F. Cole, Licensing Board Member in MLA-9

In the Matter of  
  
SEQUOYAH FUELS CORPORATION  
  
(Gore, Oklahoma Site)

Docket No. 40-8027-MLA-6  
Docket No. 40-8027-MLA-9

ASLBP No. 03-812-03-MLA  
ASLBP No. 04-824-06-MLA

December 14, 2004

MEMORANDUM AND ORDER  
(Dismissing Proceedings Based Upon Settlement Agreement)

In hand, in different procedural stages, are two license amendment applications related to the Licensee Sequoyah Fuels Corporation's Gore, Oklahoma site. Between 1970 and 1993, the Licensee had operated under the aegis of its source materials license (SUB-1010) a facility on that site that produced uranium hexafluoride from yellow cake (a uranium oxide) and converted depleted uranium hexafluoride to uranium tetrafluoride.

The first of the two license amendment applications in question (identified as MLA-6 for adjudicatory purposes) was addressed to the Licensee's plan for reclamation of the Gore site. In accordance with the notice of opportunity to seek a hearing published in the Federal Register, timely hearing requests with regard to that plan were submitted in 2003 by the State of Oklahoma and the Cherokee Nation. Under the Commission's Rules of Practice then in effect, the hearing

requests were assigned to a presiding officer and special assistant for adjudication. In LBP-03-29. 58 NRC 442 (2003), they were granted.

Filed in early 2004, the second application (MLA-9) related to a proposed raffinate sludge dewatering project, which seemingly had in mind the disposition of the sludge in a different manner than that contemplated in the reclamation plan that was the subject of MLA-6. Oklahoma submitted a timely hearing request with regard to that proposal following the publication of the relevant Federal Register notice. Under the new Rules of Practice that became effective in February 2004, that request was assigned to a three-member licensing board instead of a single presiding officer.

In normal circumstances, after the grant of the two hearing requests in MLA-6, the next step (upon the furnishing of the mandated hearing file by the NRC Staff) would have been the preparation and submission of written presentations by Oklahoma and the Cherokee Nation, followed by responsive presentations on the part of the Licensee and Staff. And, in MLA-9, once the responses to the Oklahoma hearing request were in hand, the Licensing Board would have immediately undertaken to determine whether the request met the requirements of the then applicable Rules of Practice. The presiding officer and licensing board were informed, however, that serious negotiations were underway that might lead to a settlement of not only these two proceedings but, as well, others involving the reclamation of the Gore site, including one pending in a federal court of appeals. Given the obvious desirability of such an outcome, the presiding officer in MLA-6 granted a series of extensions of the time within which to file the opening written presentations on the reclamation plan. And in MLA-9, the licensing board withheld action on the Oklahoma hearing request pertaining to the raffinate sludge dewatering project.

The protracted settlement negotiations have turned out to be successful. Now before the presiding officer in MLA-6 and the licensing board in MLA-9 is the December 6, 2004 joint motion

of Oklahoma and the Cherokee Nation requesting termination of both proceedings. Attached to the motion was a copy of the settlement agreement reached by the parties, the text of which is also set forth in an appendix to this order.

The motion recites that a material provision of the settlement agreement that helped facilitate resolution of the outstanding issues was section III.B.1. In accordance with that provision, Oklahoma and the Cherokee Nation request that the order terminating MLA-6 include the following (as editorially revised by the presiding officer):

Pursuant to the Settlement Agreement resolving the hearing request in MLA-6, it is acknowledged that, in the event either (1) Sequoyah Fuels Corporation makes additional changes to the Reclamation Plan filed with the NRC for its Gore, Oklahoma facility; or (2) new information becomes available that indicates deficiencies in the Reclamation Plan unknown to the State of Oklahoma or the Cherokee Nation on November 30, 2004, the occurrence of such changes or the discovery of such new information shall constitute good cause within the meaning of 10 C.F.R. § 2.309(c)(1)(i) for the failure of either the State of Oklahoma or the Cherokee Nation to file a hearing request on time

In a separate December 8, 2004 filing, the Licensee explicitly endorses the request that this provision be included in the order terminating MLA-6. And both it and the movants stress that the provision does no more than to reflect the agreement of all parties to the settlement that, in the stated circumstances, good cause would exist for a late filing. As the movants acknowledge (at 2), “the requirements of 10 C.F.R. § 2.309 would still apply and the balancing of the factors set forth therein remain applicable in deciding whether a hearing request should be granted or denied.” In the course of its endorsement of the provision, the Licensee observes (at 2) that it is “acceptable because it is consistent with, and in essence restates, the Commission’s existing standards. See 10 C.F.R. § 2.309(c)(1)(i); Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-01-13, 53 NRC 319, 324-26 (2001).” The Licensee goes on to note (ibid) that “the proposed statement would not prejudice any questions that might arise in a future hearing request about such issues as whether certain knowledge should be imputed to a party or

whether the new information provides an adequate basis for requesting a hearing.”

In light of these considerations, the presiding officer in MLA-6 sees no good reason not to include in this order the adoption of the above stated provision and it is accordingly made a part of the order insofar as the order directs the dismissal of that proceeding. The short of the matter is that the provision was apparently central to the reaching of a highly desirable settlement of several proceedings relating to the reclamation of the Gore site and does no apparent violence to any provision of the Rules of Practice.

Insofar as the balance of the settlement agreement is concerned, neither the presiding officer in MLA-6 nor the licensing board in MLA-9 has paused to consider whether approval of the agreement as a whole is required as a condition precedent to the grant of the dismissal motion. Be that as it may, both have undertaken to examine the agreement and perceive no basis for objection to any of its provisions, finding them to be consistent with the public interest. See 10 C.F.R. § 2.1241 (pre-February 2004 provision applicable to MLA-6), id. § 2.338 (i) (post-February 2004 provision to MLA-9).

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The joint motion of the State of Oklahoma and the Cherokee Nation to dismiss MLA-6 and MLA-9 is granted; the dismissal in MLA 6 incorporating the provision set forth at page 3 of this order.

It is so ORDERED.

BY THE PRESIDING OFFICER IN MLA-6 AND LICENSING  
BOARD IN MLA-9<sup>1</sup>

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Alan S. Rosenthal  
ADMINISTRATIVE JUDGE

*/RA/*

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Dr. Anthony J. Baratta  
ADMINISTRATIVE JUDGE

*/RA/*

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Dr. Richard F. Cole  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
December 14, 2004

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<sup>1</sup>Copies of this memorandum and order were sent by electronic mail transmission to counsel for the parties to the proceedings.

## APPENDIX

### SETTLEMENT AGREEMENT

#### I. **Recitals:**

A. This Settlement Agreement concerns legal challenges by the State of Oklahoma (State) and Cherokee Nation (CN) to the decommissioning and reclamation plans of the Sequoyah Fuels Corporation (SFC) facility in Gore, Oklahoma that are currently under review by the U.S. Nuclear Regulatory Commission. The parties to this Settlement Agreement are the State, CN and SFC.

B. SFC is licensed by the NRC to possess and use, for limited purposes, source and 11e.(2) byproduct material at its Gore facility. SFC has requested NRC approval of various license amendments to authorize activities associated with the decommissioning/reclamation of the facility. SFC also has agreed with the U.S. Environmental Protection Agency (EPA) to an order under section 3008(h) of the Resource Conservation and Recovery Act (RCRA).

C. State and CN filed separate hearing requests concerning several of SFC's license amendment applications. State and CN are agreeing to terminate several ongoing legal proceedings specifically described below that challenge SFC's compliance with the Atomic Energy Act in return for certain commitments by SFC that are detailed in this Settlement Agreement.

1. After State and CN both requested a hearing on SFC's application for an amendment authorizing possession of 11e.(2) byproduct material, CN and SFC entered into a settlement and CN withdrew its hearing request. The NRC subsequently ruled that certain SFC waste could be reclassified as 11e.(2) byproduct material and denied State's hearing request on the remaining issues. State has appealed these rulings to the U.S. Court of Appeals.
2. Both State and CN were granted a hearing and admitted as parties in the proceeding considering SFC's proposed Reclamation Plan (RP). The hearing is pending before an NRC Presiding Officer.
3. NRC also denied hearing requests of State and CN respecting SFC's proposed Groundwater Monitoring Plan (GWMP) and Groundwater Corrective Action Plan (GWCAP). After this denial, State and CN urged the NRC to consider their objections to those plans as a request for a Director's Decision pursuant to 10 CFR §2.206 and NRC agreed to do so. This request is pending before the NRC Director of Nuclear Material Safety and Safeguards.
4. State's request for a hearing on SFC's proposal for dewatering raffinate

sludge is pending before an NRC Atomic Safety and Licensing Board.

**II. Effective Date:** The effective date of this Settlement Agreement shall be the last date by which it has been executed by an authorized representative of each of the parties.

**III. Agreement to Terminate the Ongoing Legal Proceedings:**

- A. **Court of Appeals:** The parties agree to take all actions necessary to terminate State's appeals to the U.S. Court of Appeals in Case Nos. 04-9503 and 04-9523:
1. Within one week following the effective date of this Settlement Agreement, State will withdraw its appeals in the above referenced cases and request dismissal of both cases.
  2. If any responsive pleadings are required, SFC will submit responses that support dismissal of both cases.
- B. **Hearing on the RP:** The parties agree to take all actions necessary to terminate the NRC hearing on the RP (i.e., the proceeding NRC has numbered as MLA-6).
1. Within one week following the effective date of this Settlement Agreement, State and CN will take all actions necessary to withdraw their respective hearing requests and request termination of MLA-6. State and CN shall retain their respective rights to request further NRC hearings to the extent that SFC makes additional changes to the RP or to the extent that new information becomes available which indicates deficiencies of the RP previously unknown to State and CN on the effective date of this Settlement Agreement, subject only to the consultation requirements in section IV.B of this Agreement. SFC authorizes State and CN to state in such request to terminate MLA-6 that SFC joins in requesting that the NRC order for such termination include a provision stating that the occurrence of new information, such as additional RP changes or previously unknown deficiencies, would constitute good cause within the meaning of 10 CFR §2.309(c)(1)(i) for the failure of either State or CN to file a hearing request on time. Furthermore, if State and/or CN file such a hearing request promptly after the new information becomes available and the conclusion of consultations regarding the subject of such hearing request in accordance with section IV.B, below, SFC will not object to the hearing request(s) on the grounds that State and/or CN failed to demonstrate good cause for such hearing request being untimely. In addition, SFC authorizes State and/or CN to state in such hearing request that SFC has agreed that new information, including RP changes and information revealing previously unknown RP deficiencies, would constitute good cause for a hearing request to be untimely.

2. If any pleading is required in response to the hearing termination request, SFC will submit a response that supports termination, and the inclusion of such a provision in the termination order.
- C. **Hearing on Dewatering Plan:** State and SFC agree to take all actions necessary to terminate the NRC's consideration of State's request for hearing on SFC's raffinate dewatering project (i.e., the proceeding NRC has numbered as MLA-9).
1. Within one week following the effective date of this Settlement Agreement, State will take all actions necessary to withdraw its hearing request and request termination of MLA-9.
  2. If any responsive pleading is required, SFC will submit a response that supports termination.
- D. **2.206 Petition:** The parties agree to seek termination of NRC's ongoing consideration of State and CN concerns under 10 CFR §2.206.
1. State and CN agree that promptly after the groundwater plans are revised in accordance with this Agreement, they will advise the NRC in writing that their respective concerns regarding the current version of the groundwater plans have been resolved, and that they desire to withdraw their respective requests for a Director's Decision under 10 CFR § 2.206.

#### **IV. Consultation to Avoid Future Litigation**

- A. **Copies of Documents:** SFC agrees to continue to provide State and CN with copies of the documents it submits to the NRC or EPA concerning decommissioning/reclamation of the SFC facility, including proposed license amendments and any other applications, no later than the time the document are submitted to the NRC or EPA, and will use its best efforts to provide a draft of the proposed amendments 30 days in advance of submittal to the NRC.
- B. **Consultation:** State and CN agree that they will notify SFC of any concerns regarding the SFC site and negotiate in good faith with SFC to resolve their concerns. State and CN further agree that they will make mutual agreement on such concerns their first priority, and will not file any future hearing requests or litigation until such good faith negotiations have been unsuccessful in resolving their concerns.

#### **V. Resolution of Concerns Regarding the Pending Applications**

- A. Disposal of Certain Materials.

1. **Raffinate Sludge, North Ditch Sediments, Emergency Basin Sediments, and Sanitary Lagoon Sediments.**

a. The Parties agree:

- (i) SFC will revise the RP to state that the raffinate sludge, north ditch sediment, emergency basin sediment, and sanitary lagoon sediment (collectively "Material") located at the SFC site will be disposed of at an appropriate offsite location.
- (ii) SFC agrees to spend up to \$3.5 million for offsite disposal of the Material.
- (iii) The parties acknowledge that offsite disposal of the Material is of utmost importance to State and CN and will be given high priority by SFC but they also acknowledge that complete offsite disposal of the Material may subsequently prove not to be economically possible due to circumstances outside the control of SFC.
- (iv) Within two months after the NRC completes its Technical Evaluation Report for the RP, SFC will prepare and provide to State, CN and NRC, an updated assessment of the available offsite disposal locations, SFC's financial resources, and the estimated costs of such offsite disposal, decommissioning and reclamation, including a timely schedule for shipment for offsite disposal of Material to commence within three (3) months after both distribution of the updated assessment discussed above, and achievement of Material densities of 55 percent solids by weight. The three month period after achievement of a Material density of 55 percent is to be calculated separately for each shipping batch (i.e., truck load).
- (v) In the event the aforementioned updated assessment confirms that complete offsite disposal of the Material cannot be economically achieved through no fault of SFC, the parties will attempt to reach consensus on other disposal options or modifications to the RP necessary to achieve complete offsite disposal of the Material, subject to NRC approval, if required.
- (vi) The parties agree that if, after good faith negotiations, they are unable to reach a consensus, and State and/or CN request a hearing on a SFC application for NRC approval of an alternative disposal option, the parties to that new proceeding will make a prompt request for alternative

dispute resolution in accordance with 10 CFR §2.338(b). Furthermore, if such a hearing request is deemed to be untimely but is filed promptly after the conclusion of such negotiations, SFC will not object to the hearing request(s) on the grounds that it failed to demonstrate good cause for being untimely and authorizes State and/or CN to so state in the request for such hearing.

2. **DUF4 Slag:** SFC agrees not to dispose of the drummed DUF4 slag, which is currently stored at SFC's facility, on SFC's site.
  
3. **Potentially Hazardous Wastes:** SFC agrees to comply with the provisions of NRC's policy regarding disposal of non-11e.(2) byproduct material in a uranium mill tailings impoundment, the current version of which has been published as Attachment 1 to NRC's Regulatory Issue Summary number RIS 2000-023.
  - a. SFC agrees to take representative samples of the Calcium Fluoride Sludge and conduct a Toxicity Characteristic Leachate Procedure Test (TCLP) and total metals analyses on the samples. State will review the results of these samples to determine whether it agrees that the Calcium Fluoride Sludge is not "hazardous waste" as defined in the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.) ("RCRA hazardous waste").
  - b. If State agrees that the Calcium Fluoride Sludge is not RCRA hazardous waste, it will provide a statement to SFC that will help satisfy the requirements in NRC's letter to SFC dated April 5, 2004, in which the NRC advised that SFC will need to provide the NRC with a statement from the State to the effect that no State permit is required for disposal of SFC's non-11e.(2) byproduct material in the onsite disposal cell.
  - c. SFC agrees that it will not place in the onsite disposal cell any non-11e.(2) byproduct material that is RCRA hazardous waste without the approval of the government regulator with jurisdiction to approve such disposal.
  - d. In accordance with an Administrative Order on Consent dated August 3, 1993 (AOC), SFC has submitted a Draft Corrective Measures Study (DCMS) to the EPA and EPA has the DCMS under review. After the NRC determined that some wastes at the SFC site meet the definition of 11e.(2) byproduct material, SFC suggested that EPA consider closing the AOC so that all of the corrective actions at the SFC site would be regulated by a single regulator, the NRC. SFC agrees that if EPA does close the AOC,

SFC will submit a revision to the RP or take other appropriate procedural steps in consultation with the NRC Staff, to assure that the matters now being considered in the EPA review of the DCMS are placed before the NRC for its consideration.

4. **PCB - contaminated Soil:** SFC agrees to excavate the PCB-contaminated soil and dispose of this material at an approved offsite disposal location in accordance with the applicable requirements in 40 CFR Part 761, and to provide a copy of any required reports to State and CN at the time of submission to EPA.
  5. **Asbestos:** SFC plans to remove friable asbestos from the SFC buildings prior to their demolition, in accordance with the RP.
    - a. Asbestos removal will be accomplished by a contractor that is licensed to conduct such activities in Oklahoma and in accordance with Oklahoma law.
    - b. The asbestos will be removed from the SFC buildings and packaged in accordance with the applicable requirements in 40 CFR Parts 61.145 and 61.150. Documentation of the amount of asbestos removed and packaged will be maintained by SFC and made available to the State for inspection upon request.
    - c. State agrees that:
      - (i) The onsite disposal cell described in the RP and as modified by this Settlement Agreement is acceptable to the State for purposes of disposing of asbestos currently present at the SFC site, as long as the packaging required in paragraph (5)(b) above is intact when on-site disposal occurs.
      - (ii) No additional approval or authorization will be required from the State for SFC's disposal of the asbestos in the onsite disposal cell.
  6. **Offsite Waste:** SFC agrees not to accept, store or dispose of radioactive or other wastes at SFC that are not currently at the SFC site, except for samples of SFC wastes originally generated from the site and being returned after analysis or testing.
- B. **Reclamation Plan Changes** SFC agrees to make the following changes to the design of its disposal cell and to amend the RP to incorporate these modifications. SFC further agrees that it will provide the Oklahoma Department of Environmental Quality (DEQ) and CN with a reasonable opportunity to comment on the proposed amendment before SFC submits it to the NRC:

1. **Base Liner:** The thickness of the disposal cell clay base liner will be increased to 3 feet and the synthetic base liner will be 60 millimeters in thickness.
2. **Cap:** The disposal cell cover will be ten feet in thickness and will be composed of 8 feet of soil and 2 feet of compacted clay which will be placed above the emplaced waste materials. If the synthetic liner is retained in the cap design, such clay layer will be directly below the synthetic liner. If SFC proposes to eliminate the synthetic liner, it will first consult with State and CN in accordance IV, above. If, after consultation, the parties do not agree and SFC requests NRC approval of a cap without a synthetic liner, this change would constitute new information, as that term is discussed in III.B.1, above.
3. **Technical Specifications:** The proposed Cell Construction Technical Specifications will be revised to be consistent with the draft revised Technical Specifications SFC provided to State and CN on October 22, 2004, with the addition of provisions to the effect that the permeability of the clay layers in the cell liner and cap must be  $1 \times 10^{-7}$  or less, contaminated water will not be used for reclamation activities and trees will be eliminated from the vegetative mix on the cover consistent with V.B.4, below.
4. **Trees:** Trees will be eliminated from the planned vegetative mix on the cover, and SFC will prevent the growth of trees on the cover as long as it retains its NRC license.
5. **Separation From Groundwater:** SFC will maintain at least a five foot separation between the waste in the cell, including leachate, and the highest measured groundwater level at any point under the cell as established by the water level measurements SFC has taken since 1990.
6. **Sumps:** The design of the leachate collection sumps will be revised to provide for welding the synthetic liner to the leachate collection pipe, double-wall pipe, and with a liner-to-pipe joint design that is designed to withstand anticipated differential settlement.
7. **Leak Detection:** The disposal cell described in the RP is underlain by a leak detection system under the synthetic cell base liner. SFC will not make changes to this design unless the NRC finds that an alternative design provides a satisfactory level of protection for public health, safety, and the environment which is equivalent to, or more stringent than, the level which would be achieved by compliance with Appendix A to 10 CFR Part 40. SFC agrees that if it does propose a change to this design, such proposal would constitute new information, as that term is discussed in III.B.1, above.
8. **Point Of Compliance Wells:** Two proposed disposal cell point of

compliance wells will be added, one of which will be placed near the Phase II cell section leachate collection sumps on the southwest corner of the cell and the other will be placed midway along the south side of the cell. SFC will sample all point of compliance wells quarterly.

9. **Action Plan:** The sampling and analysis plan for the cell point of compliance monitoring wells (described in RP § 6.4) will be revised to provide that if SFC detects statistically significant indications of cell leakage, it will take the following actions:
  - a. SFC will verify the indications by such actions as re-sampling, review of calculations and re-analysis .
  - b. If the indications are verified, SFC will increase the sampling frequency to monthly, and analyze the sample results to confirm or refute the existence of cell leakage.
  - c. If leakage is confirmed, SFC will initiate an investigation to determine the cause of the leakage and prepare a corrective action plan.
  - d. SFC agrees that, if leakage is confirmed, it will inform DEQ and CN promptly (at essentially the same time as it informs the NRC) and provide them with a reasonable opportunity to comment on a proposed corrective action plan before SFC submits the plan to the NRC.

C. **Additional Actions Related to the Reclamation**

1. **TerreSIM Model:** SFC agrees to re-run the TerreSIM model after final agreement has been reached with the NRC on the cell cover design, and to provide a copy of the results to DEQ and CN. SFC will ensure that the leachate collection system is adequately designed to handle any infiltration that is indicated by the model.
2. **Borrow Areas:** SFC agrees to provide DEQ and CN with a copy of any future studies of alternative borrow areas.
3. **Treatment Of Calcium Fluoride Sludge And Soil:** SFC agrees to provide State and CN with an analysis of need to treat or stabilize Calcium Fluoride Sludge and contaminated soils at the site within 60 days after the effective date of this Settlement Agreement. If such analysis indicates that treatment or stabilization is necessary, SFC agrees to amend the RP to provide for such actions.
4. **Radon Model:** SFC further agrees that it will rerun the RADON model based on the final cell design proposed to NRC to determine whether the design will meet the NRC radon emission standard. SFC will provide the

results of these analyses to DEQ upon completion.

5. **Settlement Analysis:** SFC will conduct an analysis of differential settlement for the final design to ensure that settlement will not undermine the integrity of the cell and the leachate collection system. SFC will provide the results of this review to DEQ upon completion.
  6. **Fill Excavation:** SFC will excavate fill materials at the SFC site in areas where groundwater is contaminated and in areas where the level of soil contamination exceeds the cleanup level approved in the RP.
  7. **Drainage 005:** SFC will install rock armor in the 005 Drainage adequate to assure that erosion will not undermine the cell.
  8. **Well Plugging:** SFC agrees that it will plug all wells that it closes at the SFC site in accordance with Oklahoma law.
  9. **Impoundment Closure:** State agrees to provide SFC with a letter stating that the impoundment closure plans that SFC provided to DEQ are acceptable and satisfy the impoundment closure provision of SFC's OPDES Permit, as to the impoundments identified in the closure plans.
- D. **GWCAP:** SFC agrees that the objective of the GWCAP is to meet the groundwater standards in 10 CFR Part 40, Appendix A, Criteria 5 and 13, or, for constituents that do not have limits specified in Appendix A, the Maximum Contaminant Level (MCL) established in accordance with the Safe Drinking Water Act. Based on groundwater monitoring conducted to date, the constituents of concern and the applicable limits have been established as:
- |   |           |           |
|---|-----------|-----------|
| - | Arsenic:  | 0.05 mg/l |
| - | Fluoride: | 4.0 mg/l  |
| - | Nitrate:  | 10 mg/l   |
| - | Uranium:  | 30 µg/l   |
1. **Vicinity of Fluoride Holding Basin #2:** SFC will excavate an exploratory trench to the top of bedrock in the area north and west of Fluoride Holding Basin #2 to investigate the flow of groundwater contamination within 2 months after the effective date of this Settlement Agreement.
    - a. Based on the results of this investigation, SFC will develop a corrective action plan for submission to NRC as a revision to the GWCAP.
    - b. SFC will provide DEQ and CN with a copy of its report of the results of the investigation, and with a reasonable opportunity to comment on the proposed corrective action plan before it is submitted to the NRC.

2. **Consultation:** SFC will consult with DEQ and CN during the course of implementation of the GWCAP, as follows:
  - a. SFC will continue to collect groundwater data in accordance with the GWMP and will utilize the data to assess the effectiveness of the GWCAP in achieving its objective, which is to reduce the concentrations of constituents of concern that have been found in the groundwater to within the relevant concentration limits.
  - b. SFC will conduct statistical analyses for trends in the monitoring data. SFC will monitor all new wells quarterly for the first year after completion to analyze trends and then annually thereafter.
  - c. Based on its assessment, and other changes in groundwater and contaminant flows, particularly the changes that are likely to result from implementation of the GWCAP and the RP, SFC will consider whether changes should be made to the GWCAP.
  - d. If the data from the site monitoring wells and other sources indicates that the concentration limits described above will not be met in a reasonable time despite reasonable changes to the GWCAP or that migration will result in impairment of surface waters, SFC will either undertake further corrective action or propose Alternate Concentration Limits in accordance with the NRC standards for establishing such limits in 10 CFR Part 40, Appendix A, criteria 5B(5)(c) and 5B(6).
  - e. To implement SFC's commitment to consult with DEQ and CN regarding such decisions, SFC will provide DEQ and CN with copies of its reports to NRC of monitoring results and with a reasonable opportunity to comment on proposed changes to the GWCAP before SFC submits the changes to the NRC.
  
- E. **GWMP:** SFC will monitor Groundwater in accordance with the GWMP. SFC agrees to make the following changes to the GWMP:
  1. **Action Plan:** SFC will include a plan for responding to significant changes in groundwater quality:
    - a. If it identifies statistically significant adverse changes in groundwater concentrations, other than changes that are clearly intended as a result of actions reflected in the RP or GWCAP, and verifies the existence of these changes, SFC will increase the sampling frequency to monthly, notify the NRC within 60 days, and provide the NRC with an assessment of alternative actions.
    - b. SFC will provide DEQ and CN with a copy of any such notice to NRC, and a reasonable opportunity to comment on the associated

assessment of corrective action alternatives.

2. **Seep Samples:** SFC will analyze future seep samples for all of the constituents it detected in the samples it collected in July 2004 that exceed background or the MCL. (Background will be used if there is no MCL or if higher than MCL).
  - a. SFC agrees to provide DEQ and CN with the results of the sampling and analysis of the seep samples it collected in July 2004, including analyses for all of the constituents listed in Table 4 of the GWMP.
  - b. Based on the results and in consultation with DEQ and CN, SFC will determine whether to amend its procedure for sampling the seeps to provide for analyses for constituents found to exceed the MCL, except for constituents which exceed the MCL at background levels, in which case the constituents will be added if the detected levels exceed background.
  - c. SFC will include the results of future seep sampling events in SFC's Annual Groundwater Monitoring Reports.
- F. **Risk Assessment:** SFC agrees to complete a risk assessment, provide the results to State and CN, and consult with State and CN regarding any comments or concerns they may have.
- G. **OPDES Permit:** In response to SFC's application for renewal of its OPDES Permit, DEQ provided SFC with draft Renewed OPDES Permit No. OK0000191, Facility ID I-68000010, on September 15, 2004. SFC provided DEQ with comments on the draft Renewed Permit by letter dated October 25, 2004, including a comment indicating that the receiving stream segment designation in the draft Renewed Permit is incorrect. By letter dated November 18, 2004 DEQ indicated that, except for Radium-226, which will remain the same as in the draft OPDES permit dated September 15, 2004, the draft OPDES permit will contain effluent limitations for radionuclides as set forth by the U.S. Nuclear Regulatory Commission in 10 CFR Part 20, Appendix B. The only such radionuclides will be Uranium-natural and Thorium-230. SFC represents that Uranium-natural, Thorium-230 and Radium-226 are the only radionuclides known to be found at the SFC facility above natural background levels. However, if during the normal decommissioning of the SFC facility, SFC discovers additional radionuclides SFC will report the discovery to DEQ and any effluent limits for those radionuclides will also be as set forth in 10 CFR Part 20, Appendix B. Correction of the receiving stream designation as a "high quality waters" will not result in more stringent limits for any constituents than those contained in the draft Renewed Permit sent to SFC on September 15, 2004. SFC agrees to continue the permitting process and obtain a Renewed Permit, but SFC specifically reserves the right to argue in any forum that the State's regulation of radioactive materials at the SFC site is preempted by the Atomic Energy Act (AEA). SFC further

agrees that it will not challenge the State's authority to issue or enforce the provisions concerning nonradioactive materials in the Renewed Permit or any future OPDES permit on the grounds that the State's regulation is preempted by the AEA due to NRC's determination that SFC possesses 11e.(2) byproduct material unless the future permit contains provisions that are more stringent than were in the draft Renewed Permit discussed above, such that (1) SFC cannot comply with such provisions and also complete decommissioning in accordance with the RP and NRC requirements or (2) the cost of compliance would have a substantial adverse impact on SFC's ability to complete decommissioning. SFC agrees, however, that it will not take any action for the purpose of making itself unable to comply with any OPDES Permit provision. In the event that SFC does challenge such provisions of a future permit on preemption grounds associated with 11e.(2) byproduct material such challenge will be limited to those provisions which are more stringent than the draft Renewed Permit.

## VI. General

- A. **Reservation of Rights:** This Settlement Agreement resolves all pending legal challenges to the versions of the RP, GWCAP, GWMP, and the raffinate sludge dewatering plan pending before the NRC as of the effective date of this Settlement Agreement, and the appeals of State pending before the U.S. Court of Appeals as of such date. The parties specifically reserve the right to take appropriate action regarding such Plans, as discussed below, in response to changes to such Plans or the discovery of new information that was not reasonably available to them on the effective date of this Settlement Agreement. In particular:
1. If consultations with SFC in accordance with IV, above, do not result in agreement, State and/or CN may submit a hearing request to the NRC concerning the matter of concern. If such a request is filed, SFC agrees not to argue that the State and/or CN lacked good cause for the request being "untimely" if:
    - a. The information on which the contentions of State/CN are based was not previously available, such as modifications of the RP other than those described in V.B and V.C, above; and
    - b. The request was filed promptly after the information became available to State and CN, and completion of such consultations.
  2. This Settlement Agreement relates solely to the legal proceedings described in Section I of this Agreement, and is intended to resolve all concerns of State and CN existing as of the effective date of this Settlement Agreement pertaining to the Plans described in Section I. The State and CN expressly retain all other rights and remedies that may be available to them under tribal, state and federal law concerning any matter other than such plans. Nothing in this Settlement Agreement shall

relieve SFC of the responsibility to comply with applicable state and federal laws, rules and regulations. Furthermore, nothing herein shall prohibit or impede the State or CN from pursuing relief in any appropriate forum if such Plan(s) fail to achieve the intended purposes of such Plan(s).

- B. SFC is entering into this Settlement Agreement in an effort to end litigation and restore a cooperative and constructive relationship among the parties, without admitting that any of the changes to the RP, GWMP, GWCAP, or any other action or limitation provided in this Settlement Agreement is necessary to meet any applicable NRC or other legal requirement.
- C. SFC agrees that it will request NRC approval for the actions specified in the terms of this Settlement Agreement and not to request NRC approval for actions inconsistent with the terms of this Settlement Agreement unless NRC indicates that it will not approve SFC's Plans without such changes. SFC agrees that any changes to the RP, GWCAP, GWMP or Sludge Dewatering Plan required by NRC that are inconsistent with the terms of this Settlement Agreement will be new information that would constitute good cause within the meaning of 10 CFR §2.309(c)(1)(i) for the failure of either State or CN to file a hearing request on time. Furthermore, if State and/or CN file such a hearing request promptly after the new information becomes available and the conclusion of consultations regarding the subject of such hearing request in accordance with section IV.B, above, SFC will not object to the hearing request(s) on the grounds that State and/or CN failed to demonstrate good cause for such hearing request being untimely. In addition, SFC authorizes State and/or CN to state in such hearing request that SFC has agreed that new information, including Plan changes that are inconsistent with this Settlement Agreement, would constitute good cause for a hearing request to be untimely.
- D. This Settlement Agreement constitutes the entire agreement among the parties respecting the SFC plans and applications currently pending before the NRC, provided however, that the separate letter agreement between SFC and CN dated April 9, 2003 shall not be affected and shall remain in effect. Any other offers or proposals that may have been made as part of the settlement negotiations are either reflected in this Settlement Agreement or have been withdrawn. Each party shall bear its own costs and attorney fees incurred in connection with the aforementioned administrative or court proceedings.
- E. In the event any party is prevented from fulfilling its obligations under any provision of this Settlement Agreement, that party shall inform the other parties of the cause of its inability to fulfill the obligation, and shall enter into good faith negotiations regarding alternative actions to achieve the objectives of the obligation. This Settlement Agreement shall not be changed or superseded, except by mutual agreement in writing signed by the duly authorized representatives each party.
- F. All parties agree to exercise due diligence in the performance of their various

responsibilities under this Settlement Agreement and to cooperate with each other in carrying out its intent. This Settlement Agreement applies to the parties hereto, including their respective successors and assigns.

- G. The Parties agree that this Settlement Agreement may be enforced as a contractual obligation the terms of which shall be construed according to the laws of the state of Oklahoma.
- H. The Parties represent that they have carefully read this Settlement Agreement and understand its terms and conditions without reservation, and that it has been entered into knowingly and voluntarily. Moreover, this Settlement Agreement has been negotiated and prepared at the mutual request, direction and instruction of the parties, at arms length, with the advice and participation of counsel for each party. The provisions of this Settlement Agreement are to be interpreted without regard to the identity of the party that drafted them.
- I. Notices: Any notice to a party required pursuant to this Settlement Agreement shall be provided in writing to the designated representative of the party as follows:

for SFC:           John H. Ellis  
                          President, Sequoyah Fuels Corp.  
                          P.O. Box 610  
                          Gore, OK 74435

for State:         James V. Barwick, Esq.  
                          Assistant Attorney General  
                          Environmental Protection Unit  
                          4545 North Lincoln Boulevard, Suite 260  
                          Oklahoma City, Oklahoma 73105-3498

and

Saba Tahmassebi, Engineer Manager  
Land Protection Division  
Oklahoma Department of Environmental Quality  
P.O. Box 1677  
Oklahoma City, Oklahoma 73101-1677

for CN:            Julian Fite, General Counsel  
                          Cherokee Nation  
                          P.O. Box 948  
                          Tahlequah, OK 74465

## **VII. Acceptance**

By signing below, the designated representative of the respective party represents, warrants and agrees that he or she is authorized to execute this Settlement Agreement on behalf of the

designated party and thereby to bind that party to comply with the provisions this Settlement Agreement. This Settlement Agreement may be executed by the parties in one or more counterparts and a copy with all original executed signature pages affixed thereto shall constitute an original Settlement Agreement, so that each party will receive an executed original Settlement Agreement, but all of which shall constitute one and the same Settlement Agreement.

For the State of Oklahoma

For the Cherokee Nation

James V. Barwick     Date  
Assistant Attorney General

Julian Fite             Date  
General Counsel

For Sequoyah Fuels Corporation

John H. Ellis             Date  
President

UNITED STATES OF AMERICA  
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 MEMORANDUM AND ORDER (DISMISSING PROCEEDINGS BASED UPON SETTLEMENT AGREEMENT) (LBP-04-30) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Alan S. Rosenthal, Presiding Officer  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Anthony J. Baratta, Special Assistant  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Angela B. Coggins, Esq.  
Darani M. Reddick, Esq.  
Office of the General Counsel  
Mail Stop - O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Kelly Hunter Burch, Esq.  
James V. Barwick, Esq.  
J. Trevor Hammons, Esq.  
Assistant Attorneys General for the  
State of Oklahoma  
Environmental Protection Unit  
4545 N. Lincoln Blvd., Suite 260  
Oklahoma City, OK 73105-3498

Julian Fite, Esq.  
General Counsel  
Jeannine Hale, Esq.  
Asst. General Counsel  
Cherokee Nation  
P.O. Box 948  
Tahlequah, OK 74465-0948

Docket No. 40-8027-MLA-6  
LB MEMORANDUM AND ORDER (DISMISSING  
PROCEEDINGS BASED UPON SETTLEMENT  
AGREEMENT) (04-30)

John Ellis  
Sequoyah Fuels Corporation  
P.O. Box 610  
Gore, OK 74435

Alvin H. Gutterman, Esq.  
Paul M. Bessette, Esq.  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Ave., NW  
Washington, DC 20004

[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 14<sup>th</sup> day of December 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
SEQUOYAH FUELS CORP. ) Docket No. 40-8027-MLA-9  
GORE, OKLAHOMA SITE )  
 )  
(Materials License Amendment) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (DISMISSING PROCEEDINGS BASED UPON SETTLEMENT AGREEMENT) (LBP-04-30) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Administrative Judge  
Anthony J. Baratta  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Richard F. Cole  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Angela B. Coggins, Esq.  
Darani M. Reddick, Esq.  
Office of the General Counsel  
Mail Stop - O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Kelly Hunter Burch, Esq.  
Assistant Attorney General for the  
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Environmental Protection Unit  
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1111 Pennsylvania Ave., NW  
Washington, DC 20004

John Ellis  
Sequoyah Fuels Corporation  
P.O. Box 610  
Gore, OK 74435

[Original signed by Evangeline S. Ngbea]

\_\_\_\_\_  
Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 14<sup>th</sup> day of December 2004