

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Charles Bechhoefer, Presiding Officer
Anthony J. Baratta, Special Assistant

In the Matter of

SEQUOYAH FUELS CORPORATION

(Gore, Oklahoma Site Decommissioning)

Docket No. 40-8027-MLA-4

ASLBP No. 99-770-09-MLA

January 28, 2005

ORDER
(TERMINATING PROCEEDING)

This proceeding concerns Sequoyah Fuels Corporation's (SFC's) proposed amendment to its Source Materials License No. SUB-1010, to decommission SFC's uranium conversion facility located near Gore, Oklahoma. On January 19, 2005, SFC moved for approval of its withdrawal of its license amendment request and for termination of the proceeding. For the reasons set forth, I approve.

As Presiding Officer, I granted the State of Oklahoma's request for a hearing on December 16, 1999, LBP-99-46, 50 NRC 386 (1999), and the Commission affirmed this ruling. CLI-01-02, 53 NRC 9 (2001). In approving Oklahoma's hearing request, I looked at the requirements set forth in 10 C.F.R. Part 40, Appendix A, which, although not explicitly governing the proposed license amendment, served as useful guidance to evaluate the proposal under review.

Subsequently, SFC proposed an alternate plan for site remediation, monitoring and license termination. The alternate plan also specifically addressed the requirements of 10 C.F.R. Part 40, Appendix A. The NRC Staff stopped its review of the proposed license

amendment and decommissioning plan in 2002, after SFC requested another license amendment to classify some waste at the SFC site as § 11e.(2) byproduct material. On December 31, 2002, the Staff advised me that it had suspended processing of the license termination plan pending final decision on the application for byproduct material, and that on December 11, 2002, the Staff approved the application. See letter to Administrative Judges from G.M. Longo, Esq., NRC Staff Counsel, dated December 31, 2002.

SFC filed its reclamation plan for decommissioning the § 11e(2) and other material at the SFC site on January 28, 2003. Oklahoma challenged the legality of the reclassification but the Commission agreed with SFC that the front-end waste qualifies as § 11e(2) material. Sequoyah Fuels Corporation, CLI-03-15 (2003). Oklahoma's request for a hearing on the reclamation plan was denied, and it appealed that decision to the 10th Circuit Court of Appeals.

On November 30, 2004, SFC entered a settlement agreement with Oklahoma (as well as the Cherokee Nation, which had sought a hearing on the alternate plan), and Oklahoma withdrew its appeal to the 10th Circuit. As a result, NRC's reclassification decision became final. Accordingly, SFC wrote the NRC on December 29, 2004 seeking to withdraw the license amendment request associated with the Decommissioning Plan. On January 19, 2005, it filed the instant motion to approve withdrawal of the license amendment request and for termination of this proceeding. SFC advised that the Staff had no objection. ASLBP staff inquired whether Oklahoma had any objection, and Oklahoma advised that it would not be filing an objection to the motion.

SFC asserts that my approval of the withdrawal request is appropriate because withdrawal will not prejudice any party. I agree. SFC's withdrawal request is hereby approved and this proceeding is thus terminated.

IT IS SO ORDERED.

/RA/

Charles Bechhoefer, ADMINISTRATIVE JUDGE
Presiding Officer

Rockville, Maryland
January 28, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
SEQUOYAH FUELS CORPORATION) Docket No. 40-8027-MLA-4
)
(Gore, Oklahoma Site Decommissioning))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (TERMINATING PROCEEDING) (LBP-05-03) 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

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

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

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

Alvin H. Gutterman, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004

Craig Harlin
Sequoyah Fuels Corporation
P.O. Box 610
Gore, OK 74435

Cannon Miles Tolbert, Esq.
Assistant Attorney General
Environmental Protection Unit
Office of Attorney General of Oklahoma
4545 North Lincoln Boulevard, Suite 260
Oklahoma City, OK 73105-3498

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 28th day of January 2005