

February 14, 2006

Marcia E. Moncrieffe (6RC-EW)
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202

Dear Ms. Moncrieffe:

I understand that you have had several discussions with Marisa Higgins of my staff regarding the Sequoyah Fuels Corporation's (Sequoyah) site in Gore, Oklahoma, for which the Environmental Protection Agency (EPA) currently has an active administrative order on consent (AOC). The purpose of this letter is to provide you with some background information regarding the Nuclear Regulatory Commission's (NRC) role in regulating radioactive material at the Sequoyah site in the past and the regulatory framework for decommissioning the site.

Sequoyah operated a uranium processing facility between 1970 and 1993, in Gore, Oklahoma, which the NRC licensed under NRC Source Materials License No. SUB-1010. The facility produced uranium hexafluoride and converted depleted uranium hexafluoride to uranium tetrafluoride. In 1993, Sequoyah notified the NRC of its intent to shut down and decommission the facility. In 2001, Sequoyah requested that the NRC determine if waste material from the solvent extraction process could be classified as 11e.(2) byproduct material, as defined in the Atomic Energy Act of 1954, as amended (AEA), which would permit the site to be decommissioned under 10 CFR Part 40, Appendix A, rather than 10 CFR Part 20, Subpart E.

The Commission concluded that most of the waste at the Sequoyah site could properly be classified as 11e.(2) byproduct material on July 25, 2002. See SRM-SECY-02-0095, "Applicability of Section 11e.(2) of the Atomic Energy Act to Material at the Sequoyah Fuels Corporation Uranium Conversion Facility." A hearing before the Atomic Safety Licensing Board was held on the amendment to Sequoyah's NRC license which allowed possession of 11e.(2) byproduct material. See *Sequoyah Fuels Corp.*, CLI-03-06, 57 NRC 547 (2003). The Commission affirmed this classification in two appellate decisions. See *Sequoyah Fuels Corporation*, CLI-03-15, 58 NRC 349 (2003); CLI-04-01, 59 NRC 1 (2004). Sequoyah's NRC license, therefore, enables possession of 11e.(2) material and decommissioning under 10 CFR Part 40, Appendix A.

Decommissioning under 10 CFR Part 40, Appendix A of the NRC's regulations follows a process developed pursuant to the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, which amended the AEA. Pursuant to UMTRCA, the EPA was instructed to promulgate standards of general applicability for the protection of health, safety, and the environment from radiological and nonradiological hazards associated with residual radioactive materials from uranium milling operations. The regulations for nonradiological hazards were to be consistent, to the maximum extent practicable, with the Solid Waste Disposal Act (SWDA). The NRC was instructed to manage any 11e.(2) byproduct material in such a manner as to conform with the standards promulgated by the EPA. See AEA § 84.a(2). EPA's standards, which reference

Resource Conservation and Recovery Act (RCRA) regulations, were promulgated in 1983. The NRC adopted standards conforming to the EPA's standards in 10 C.F.R. Part 40, Appendix A. The NRC's decommissioning standards under 10 CFR Part 40, Appendix A therefore conform to EPA regulations.

The NRC is currently regulating the decommissioning activities at Sequoyah's Gore, Oklahoma site to ensure compliance with Part 40, Appendix A regulations. After requesting additional information, and with several conditions, the NRC staff approved Sequoyah's groundwater monitoring plan in August 2005. See ADAMS Accession No. ML0522801390. The NRC staff is currently reviewing additional information submitted by Sequoyah regarding their proposed reclamation plan, originally submitted in January 2003. In September 2005, the NRC staff issued a draft safety evaluation report for that plan. See ADAMS Accession No. ML052550291. Sequoyah also submitted a ground water corrective action plan to the NRC in 2003, and has supplemented the plan with additional information as requested by the NRC staff. See e.g., ADAMS Accession Nos. ML031710029, ML0507600880, ML0535601580. The NRC staff is currently reviewing this information and will develop and issue a technical evaluation report on the plan. The NRC staff has kept the EPA involved in its review process by sending copies of all documents, inviting EPA to participate in site visits (EPA participated in an NRC site visit and public meeting on March 16, 2004), and through telephone discussions.

Because the NRC is regulating the Sequoyah site to ensure compliance with 10 CFR Part 40, Appendix A, and because Sequoyah's financial resources are limited,¹ the NRC does not oppose the request made from Sequoyah's counsel, submitted to the EPA on December 28, 2004, to close the EPA's AOC for the Sequoyah site. See ADAMS Accession No. ML050350292. The NRC is certainly amenable to providing the EPA with any additional information it needs, to assure the EPA that the decommissioning process will be carried out in accordance with 10 CFR Part 40, Appendix A. The NRC believes that the eradication of dual regulation at the Sequoyah site would be the most efficient use of government resources and would also permit Sequoyah's limited decommissioning funds to be spent in an efficient manner.

If you have any questions, please contact Marisa Higgins, at 301-415-4060.

Sincerely,

Stuart A. Treby /ra/
Assistant General Counsel for
Rulemaking and Fuel Cycle

cc:
William Andrews

¹See *Sequoyah Fuels Corp. and General Atomics*, CLI-97-13, 46 NRC 195 (1997) (affirming settlement agreements between the NRC and Sequoyah and the NRC and General Atomics (LBP-95-18, 42 NRC 150 (1995) and LBP-96-24, 44 NRC 249 (1996)) which limited the amount of decommissioning funds available for the Gore, Oklahoma site).

U.S. Geological Survey
202 NW 66th BLDG 7
Oklahoma City, OK 73116

Kelly Burch, Esq.
Assistant Attorney General
Office of the Attorney General
State of Oklahoma
4545 N. Lincoln BLVD. Suite 260
Oklahoma City, OK 83105-3498

Will Focht
Environmental Institute
Oklahoma State University
003 Life Sciences East
Stillwater, OK 740078

Pat Gwin
Associate Director
Environmental Health Services
Cherokee Nation
PO Box 948
Tahlequah, OK 74465

Craig Harlin
Dir, Regulatory Affairs
Sequoyah Fuels Corporation
PO Box 610
Gore, OK 74435

Michael Broderick
Oklahoma Department of Environmental Quality
707 N. Robinson
Oklahoma City, OK 73101-1677

John Ellis
President
Sequoyah Fuels Corporation
PO Box 610
Gore, OK 74435

Alvin Gutterman, Esq.
Morgan Lewis & Bockius LLP
1111 Pennsylvania Ave, NW
Washington, D.C. 20004

cc: con't.
Jeannine Hale
Acting Administrator

Environmental Protection Programs
Cherokee Nation
PO Box 948
Tahlequah, OK 74464

Jim Harris
U.S. Army Corps of Engineers
1645 S. 101st East Ave.
Tulsa, OK 74128-4629
Attn: OD-R

Troy Poteete
Cherokee Nation
PO Box 948
Tahlequah, OK 74465

Saba Tahmassiebi
Chief Engineer
Land Protection Division
Oklahoma Department of Environmental Quality
707 N. Robinson
Oklahoma City, OK 73101-1677

Kim Winton
District Chief
U.S. Geological Survey
202 NW 66th BLDG 7
Oklahoma City, OK 73116

Charles Scott
Field Supervisor
Oklahoma Ecological Services
Field Office
US Fish and Wildlife Service
222 S. Houston
Tulsa, OK 74127

Rita Ware
Hazardous Waste Enforcement Branch (6EN-HX)
U.S. EPA Region 6
1445 Ross Ave.
Dallas, TX 75202-2733

Merritt Youngdeer
Area Director
BIA Muskogee Area Office
101 N. 5th
Muskogee, OK 74401-6206

1645 S. 101st East Ave.
Tulsa, OK 74128-4629
Attn: OD-R

Troy Poteete
Cherokee Nation
PO Box 948
Tahlequah, OK 74465

Saba Tahmassiebi
Chief Engineer

cc: con't.
Jeannine Hale
Acting Administrator
Environmental Protection Programs
Cherokee Nation
PO Box 948
Tahlequah, OK 74464

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U.S. Army Corps of Engineers

Land Protection Division
 Oklahoma Department of Environmental Quality
 707 N. Robinson
 Oklahoma City, OK 73101-1677

Kim Winton
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 Oklahoma City, OK 73116

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 Field Supervisor
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 Hazardous Waste Enforcement Branch (6EN-HX)
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 1445 Ross Ave.
 Dallas, TX 75202-2733

Merritt Youngdeer
 Area Director
 BIA Muskogee Area Office
 101 N. 5th
 Muskogee, OK 74401-6206

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