

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
SEQUOYAH FUELS CORPORATION ) Docket No. 40-8027  
GENERAL ATOMICS ) License No. SUB-1010  
(Gore, Oklahoma, Site )  
Decontamination and )  
Decommissioning Funding) )

ORDER

I

Sequoah Fuels Corporation (SFC or Licensee) is the holder of Source Material License No. SUB-1010 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 C.F.R. Part 40. SFC is a wholly-owned subsidiary of General Atomics (GA). The License authorizes SFC to possess and use source material in the production of uranium hexafluoride ( $UF_6$ ) and depleted uranium tetrafluoride ( $DUF_4$ ) in accordance with the terms and conditions of the License. The License for  $UF_6$  production was originally issued on February 20, 1970, by the Atomic Energy Commission (now the NRC). On March 25, 1987, the NRC granted Amendment 8, which authorized SFC to convert  $DUF_6$  to  $DUF_4$ . The License was due to expire on September 30, 1990; on August 29, 1990, SFC submitted an application to the NRC to renew the License, so that pursuant to 10 C.F.R. § 40.43, the License currently remains in effect and has not expired. That application is currently pending in a proceeding before an Atomic Safety and Licensing Board.

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II

SFC operates the Sequoyah Fuels Facility (the Facility), which is located near the intersection of Interstate 40 and Oklahoma State Highway 10 near Gore, Oklahoma. The Facility, soil, and groundwater on the site are contaminated with uranium that will require remediation in order for the site to be released for unrestricted use. The Commission's regulations in 10 C.F.R. Part 40 require licensees to provide financial assurance for decommissioning. They require applicants for and holders of licenses specified therein to have in place a funding assurance mechanism which satisfies 10 C.F.R. § 40.36. They also require, at the time of termination of all activities involving materials authorized under the license, an updated detailed cost estimate for decommissioning and a plan for assuring the availability of adequate funds for the completion of decommissioning. 10 C.F.R. § 40.42(c)(2)(iii)(D). In its August 29, 1990 application to renew the License, SFC included a decommissioning funding plan (1990 DFP) intended to satisfy the requirements of 10 C.F.R. § 40.36.

During 1991, extensive contamination was discovered near the Main Process Building and the Solvent Extraction Building and on October 3, 1991, the Commission issued an Order to suspend licensed activities at the Facility. At a public meeting with the Commission on March 17, 1992, at which the Commission was

considering restart of Facility operations, SFC stated its expectation that it would fund the remediation of the contamination at the site through cash flows from operations at the Facility. This was supported by commitments made by GA, through its chairman, Mr. J. Neal Blue, to supply funding in order to guarantee that SFC will satisfy its obligations to provide financial assurance of funding for decommissioning. These commitments were confirmed by SFC's letter, with attachments, of March 20, 1992 and by GA's letter to NRC Chairman Selin dated March 19, 1992, which reiterated GA's commitment to fund site remediation should SFC fail to do so. These commitments are discussed in greater detail in Section V, below. The Commission relied on the GA financial commitments in authorizing restart of the SFC Facility on April 16, 1992. In response to the May 6, 1992, NRC request to formalize those commitments, GA agreed by letter dated June 24, 1992, to execute an agreement with SFC and submitted a draft agreement to the NRC which was to be presented to the boards of directors of SFC and GA for approval. SFC and GA, however, have not executed that agreement.

However, by letter dated November 23, 1992, SFC informed the Commission that it intended to "clean out" the UF<sub>6</sub> facility and put it in a "standby" mode, that SFC intended to restart the DUF<sub>4</sub> facility in order to fulfill one existing contract, and that the unexecuted agreement between SFC and GA was "no longer applicable." Because of SFC's decision to continue with only short term limited operations at the Facility, GA and SFC asserted that those

operations are expected to generate cash flow greatly reduced from that expected at the time of the March 17, 1992, public meeting. The November 23, 1992, letter indicated SFC's intent to cease permanently all production operations by the summer of 1993.

Additionally, the lack of financial and other information provided regarding SFC's plans raised serious questions as to whether SFC would have the financial resources to accomplish site remediation and decommissioning. For these reasons, the Commission held a public meeting on December 21, 1992, with the management of SFC and GA to obtain information concerning the plans for the Sequoyah Fuels Facility, particularly concerning assurance of financial resources needed to decontaminate and decommission the Facility and site. At the December 21, 1992, meeting, Mr. Blue again addressed the Commission regarding GA's support for the decommissioning of the Facility and site, but at this meeting Mr. Blue stated that GA could no longer provide financial assurance because the earlier commitment to do so was premised on license renewal and long term operation of the Facility. However, GA and SFC indicated that GA had restructured the business activities of SFC by entering into a joint venture with Allied Signal Corporation, creating a partnership, ConverDyn, to satisfy outstanding business commitments of SFC. GA and SFC asserted that funds for cleanup of the Facility would be provided through anticipated revenues generated by ConverDyn.

Because the 1990 DFP did not consider the extensive additional contamination discovered during 1991, it is inadequate to satisfy 10 C.F.R. § 40.36 and the funding plan requirement of 10 C.F.R. § 40.42. SFC's Revision 1 to its application to renew the License, submitted on September 30, 1992, stated that:

[t]he revised and updated [Decommissioning Funding] Plan will be submitted by November 30, 1992 and will identify the decommissioning activities that will be performed after the 10-year license renewal term, and will summarize how they will be accomplished. While the estimated costs associated with these activities have not yet been fully quantified, they will be higher than the cost estimate previously submitted on August 29, 1990. (Revision 1 at 6-1)

SFC did not submit the revised DFP.

As a result of Mr. Blue's statements at the December 21, 1992 meeting, the Commission did not have an adequate basis to conclude that funding would in fact be available as needed to carry out necessary decontamination and decommissioning of the Facility and site.

The specific mechanisms for assurance of funding for decommissioning contained in 10 C.F.R. § 40.36 are important health and safety requirements of the Commission for providing adequate protection of the public health and safety. SFC and GA cannot escape the requirement to provide a description of the method of assuring funds for decommissioning pursuant to 10 C.F.R. § 40.36(d) and (e) by announcing termination of SFC's operations. In view of

SFC's failure to submit a revised DFP, its stated intention to discontinue operations at the Facility, as described above, and the lack of an adequate basis to conclude that funding would in fact be available as needed to carry out necessary decontamination and decommissioning of the Facility and site, the NRC Staff issued a Demand for Information on December 29, 1992, to SFC and to GA. Further information was needed to determine whether NRC action was necessary to assure that SFC and GA would be able to satisfy their obligations to provide funding for the ultimate decommissioning of the Facility and whether the health and safety of the public would be protected. GA and SFC were required to submit the following information:

A. On or before February 16, 1993, a plan, including schedule, for decontaminating and decommissioning the SFC Facility, including the soil, buildings, and groundwater, for release for unrestricted use in accordance with the criteria set forth in Appendices A, B, and C . . . (APPENDIX A: Options 1 or 2 of Branch Technical Position (BTP), "Disposal or Onsite Storage of Thorium or Uranium Wastes From Past Operations," 46 Fed. Reg. 52,061 (Oct. 23, 1981); APPENDIX B: "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, or Special Nuclear Material" (August 1987); APPENDIX C: Proposed National Drinking Water Regulations, 40 C.F.R. Part 141, 56 Fed. Reg. 33,050-51, 33,066-69, 33,126 (July 18, 1991)); and

B. On or before February 16, 1993, a decommissioning funding plan that contains a cost estimate for decommissioning the SFC Facility to the criteria identified in section IV.A above and a description of the method of assuring funds for decommissioning satisfying the requirements of 10 C.F.R. § 40.36 and the guidelines in Reg. Guide 3.66. . . .

III

On February 16, 1993, SFC and GA responded separately to the Demand for Information. SFC supplied a Preliminary Plan for Completion of Decommissioning (PPCD), which included a plan and schedule for decontaminating and decommissioning the SFC site, and a preliminary cost estimate of \$21.1 million for activities directly related to decommissioning. The PPCD described the source of funds for decommissioning as the revenues from the ConverDyn arrangement. SFC described its plans as fitting "more closely the situation contemplated by 10 CFR 40.42", because of SFC's plans to terminate operations by July 31, 1992, and as providing a notification of termination of activities pursuant to 10 C.F.R. § 40.42, with information relevant to financial assurance as specified in 10 C.F.R. § 40.42(c)(2)(iii)(D). (Response of the Sequoyah Fuels Corporation to the Demand For Information Dated December 29, 1992, p. 4). By a separate letter dated February 16, 1993, SFC provided current notification that licensed activities involving the UF<sub>6</sub> facility had already been terminated, and advance notification that licensed DUF<sub>6</sub> activities would be terminated no later than July 31, 1993.

Neither SFC nor GA provided a description of the method of assuring funds for decommissioning which satisfies 10 C.F.R. § 40.36, as required by Section IV.B. of the Demand for Information. The

ConverDyn arrangement is not a prepayment method, a surety method, insurance or other guarantee of financial assurance required by the Commission's regulations in 10 C.F.R. Part 40, § 40.36(e). The "voluntary assistance" proffered by GA in its letter of February 16, 1993, does not amount to a parent corporation guarantee, and even if it did, it would not satisfy 10 C.F.R. § 40.36(e). Moreover, neither SFC nor GA have provided the financial assurance of adequate funds for completion of decommissioning required by 10 C.F.R. § 40.42, as explained below in Section IV.

IV

After review of the formal responses of SFC and GA to the December 29, 1992 Demand for Information, and of certain proprietary documents associated with the ConverDyn arrangement made available to the NRC Staff, the NRC Staff issued a "Supplement to December 29, 1992, Demand for Information" (Supplemental DFI) to GA and SFC on July 2, 1993. The Supplemental DFI requested additional information and certain documents associated with the ConverDyn arrangement. The formal answer to the questions of the NRC Staff and the additional documents requested were supplied by a response dated July 21, 1993.

ConverDyn is a partnership established by agreement between General Atomics Energy Services, Inc. and Allied-Signal Energy Services,

Inc., subsidiaries of General Atomics and Allied-Signal, Inc., respectively. The arrangement establishes that ConverDyn will provide the services necessary for SFC to meet its contractual obligations to supply UF<sub>6</sub> conversion services; in return, SFC is given rights to a share of ConverDyn's revenues, defined by a system of payment priorities and calculated pursuant to certain guidelines established by the partnership documents.

SFC projects that it will receive, at the maximum, less than \$72 million in fees from the ConverDyn arrangement through the year 2003, and an income of more than \$17 million from other sources. SFC estimates that the cost of decontaminating and decommissioning the SFC site will consist of some \$21 million in direct costs and approximately \$65 million in indirect costs, which reflect overhead such as personnel costs, legal expenses, NRC fees, taxes, insurance, DUF<sub>6</sub> operating costs, transition costs, interest, and ranch costs.

Our review of the information provided by SFC and GA in response to the Demands for Information, indicates that the proposed ConverDyn arrangement appears to be a *bona fide* business arrangement among the various parties and their principals. Estimates of income from the ConverDyn arrangement are necessarily uncertain because they are based upon assumptions about the market for UF<sub>6</sub> conversion services over the next ten years, ConverDyn's ability to keep existing customers or to obtain new customers, and the costs of

business operations, and because they are based upon some speculative assumptions about whether SFC will receive the maximum possible amount in fees, in view of the system of priorities for payments to be made under the ConverDyn arrangement. Nonetheless, the NRC Staff concludes that the proposed arrangement may be capable of producing a substantial portion of the funds that SFC estimates will be needed for Facility decommissioning.

However, there are a number of important shortcomings in the proposed arrangement from the standpoint of financial assurance that adequate funding will in fact be available to properly decommission the Facility as required by Commission regulations. Because of these shortcomings, the SFC funding plan based on the ConverDyn arrangement does not fully satisfy the requirements of 10 C.F.R. §§ 40.36 and 40.42. No financial assurance mechanism, as required by 10 C.F.R. § 40.36, is in place, and the ConverDyn arrangement does not constitute the equivalent. Additionally, the \$72 million in projected revenues from ConverDyn are of necessity based on inherently speculative assumptions about anticipated market conditions. Also, since there are a number of other claims on ConverDyn revenues that have higher payment priority than payments to SFC, there is significant uncertainty that SFC's projected revenues will in fact materialize. Furthermore, SFC's estimate of the amount of revenue projected to be derived from the ConverDyn arrangement is based upon the unsubstantiated assertion that ConverDyn's fixed costs of operation will steadily decline

after 1994. Revenue estimates also assume that ConverDyn will operate at a 100% capacity utilization rate continuously through the year 2003. Finally, there is uncertainty concerning SFC's projected decommissioning costs. The proposed decommissioning plan has not yet been submitted to NRC, although a preliminary plan (the PPCD) has been submitted. SFC's cost estimate for decommissioning is based on assumptions as to acceptable decommissioning alternatives. If more costly decommissioning alternatives are required by NRC as a result of its review of SFC's decommissioning plan, the \$89 million in revenues from the ConverDyn arrangement and other sources are unlikely to be sufficient.

Thus, although the funding plan proposed by SFC based on the ConverDyn arrangement may be capable of producing a substantial portion of the funding that may be required for Facility decommissioning and should be carried out in order to provide funding for this purpose, the funding plan does not provide the level of assurance required by the Commission that adequate funds will be available to fully decommission the Facility. Accordingly, to satisfy the Commission's requirements, the ConverDyn arrangement must be supplemented by funding assurances to protect against SFC revenue shortfalls, and to assure additional funding if more costly decommissioning alternatives are required. This Order imposes the supplemental conditions necessary to fully satisfy the Commission's financial assurance requirements. However, since the ConverDyn arrangement appears to be SFC's only source of income, SFC does not

appear to be able to satisfy the Commission's financial assurance standards. Accordingly, supplemental financial assurance is required from SFC's parent corporation, GA.

V

GA made a number of commitments to the NRC concerning the operation and cleanup of the SFC Facility and GA has had direct involvement with the operation of SFC.

As mentioned above, in connection with the Commission's consideration of the restart of the Facility after the October 3, 1991 Order suspending operations, the Commission was concerned about funding for the required cleanup of the Facility site. At a public meeting of the Commission, Mr. J. Neal Blue, Chairman of GA, the parent corporation of SFC, made commitments on behalf of GA to the NRC to supply funding in order to guarantee that SFC will satisfy its obligations to provide financial assurance of funding for decommissioning. In a letter to NRC Chairman Selin dated March 19, 1992, GA confirmed this commitment. In addition, recognizing the need to remediate existing environmental concerns on a reasonable schedule, GA stated in the March 19, 1992 letter its commitment to fund site remediation during operation should SFC fail to do so. In the March 19, 1992 letter, GA set forth its commitments as follows:

To summarize the highlights of our commitments to the support of SFC's operations:

- (1) SFC complies fully with all present regulatory requirements to provide financial assurance for the decommissioning of the facility. Further, GA supports SFC's program to minimize or prevent any adverse environmental effects resulting from SFC's future operations and to remediate existing environmental concerns on a reasonable schedule as may be agreed to by SFC, the NRC and other governmental entities. SFC should be able to fund these programs from current revenues when operations are resumed. Should those revenues prove insufficient, the associated commitments will be fulfilled by GA.
- (2) The longer term program to decontaminate and decommission the SFC facility will be backed by such guarantees from GA as may be required to satisfy NRC regulations. This is a matter which will be determined in connection with the NRC's action on the pending SFC license renewal application. SFC's renewal application utilizes alternative financial mechanisms permitted under the regulations. However, GA is prepared to provide its guarantee or financial support, if that proves necessary.

The Commission relied on the above GA financial commitments in authorizing restart of the SFC Facility on April 16, 1992. In addition, the NRC acknowledged GA's commitments in a letter dated May 6, 1992, in which the NRC requested GA to formalize those commitments and advised GA that these commitments were in addition to, and not in lieu of, satisfaction of the Commission's decommissioning funding requirements. See 10 C.F.R. § 40.36. By letter dated June 24, 1992, GA agreed to formalize its commitments

by executing an agreement with SFC and submitted a draft agreement to the NRC which it stated would be presented to the boards of directors of SFC and GA for approval. SFC and GA, however, have not executed that agreement.

GA has had and now has de facto control over the day-to-day business of SFC. That control is demonstrated by, but not limited to, the following facts: GA owns all the capital stock of SFC indirectly through a subsidiary, Sequoyah Fuels International Company. GA and SFC have and have had common directors or officers. For example, Richard Dean, former Chairman of the SFC Board was also a GA Engineering Director, and Max Kemp, Chief Executive Officer of SFC and a member of its Board of Directors, also was the GA Finance Manager. GA exercises management oversight of SFC activities through periodic oversight and program audits of SFC's QA program by the QA Director of GA, and through the Nuclear Committee of the SFC Board of Directors, which was chaired by a GA Engineering Director and which not only advises SFC but directs SFC activities such as clean-up and repair of piping structures in the SFC Solvent Extraction Building, and by the appointment of a GA engineering Director to serve as Manager, Engineering for SFC. GA supplies technical expertise and personnel to SFC; for example, the GA Quality Systems Manager acted as the SFC QA manager and a GA Engineering Director served as Manager, Engineering for SFC, while both remained on GA's payroll. In addition, the SFC Source Material License specifies that the Corporate Manager, Health

Physics, the Corporate Manager, Licensing, Safety and Nuclear Compliance, and the Vice President, Human Resources, all of whom are GA employees, shall be responsible for auditing SFC licensed activities and ensuring the qualifications of certain SFC employees. Also, GA has directed SFC regarding satisfying requirements for site remediation and decommissioning and GA made "a strong commitment" to SFC that resources are available to SFC for site remediation and decommissioning. Moreover, GA's Chairman, J. Neal Blue, represented to the NRC at the Commission's March 17, 1992, public meeting, that GA would guarantee the financial resources necessary for SFC site remediation and decommissioning. As indicated above GA has now structured the business activities of SFC by entering into a joint venture with Allied Signal Corporation, creating a partnership, ConverDyn, in order to satisfy outstanding business commitments of SFC.

On November 23, 1992, SFC informed the Commission that it intended to continue with only short term limited operations at the Facility and that the unexecuted funding guarantee agreement between SFC and GA was "no longer applicable." GA and SFC asserted that such limited operations are expected to generate cash flow greatly reduced from that expected at the time of the March 17, 1992, public meeting. The November 23, 1992, letter raised serious questions as to whether SFC would have the financial resources to accomplish site remediation and decommissioning. Accordingly, the Commission held a public meeting on December 21, 1992, with the

management of SFC and GA to obtain information concerning the plans for the Sequoyah Fuels Facility, particularly concerning assurance of financial resources needed to decontaminate and decommission the Facility and site. At the December 21, 1992, meeting, Mr. Blue addressed the Commission regarding GA's support for the decommissioning of the Facility and site. Contrary to Mr. Blue's March 17, 1992, financial assurance commitments, as well as his March 19, 1992, letter affirming his "financial support and guarantees", Mr. Blue stated on December 21st that GA could no longer provide financial assurance because the commitment to do so was premised on license renewal and long term operation of the Facility.

Mr. Blue's December 21st statement that GA's March 17th and 19th commitments were conditional is contrary to the record. Mr. Blue's March 17th statements to the Commission and his March 19th letter to Chairman Selin were clear and unconditional financial assurance guarantees. On March 17 and 19, Mr. Blue represented that SFC's operating revenues would be sufficient to cover remediation and decommissioning costs. On December 21, he assured the Commission that revenues paid to SFC by ConverDyn likewise would be sufficient. This latter assurance is inconsistent with Mr. Blue's December 21 representation that the financial status of SFC was significantly deteriorated such that GA's financial assurance of remediation and decommissioning costs was no longer possible. Furthermore, Mr. Blue's characterization of Citicorp's reason for

not approving GA's financial assurance guarantee is not supported by Citicorp's letter of December 18, 1992 (submitted to the NRC by GA as proprietary confidential information), which is a general prohibition on assuming financial liability and is not based on any changed financial conditions of SFC. In short, Mr. Blue's stated bases for GA's withdrawal of its financial assurance commitments not only appears to be internally inconsistent, but also contrary to the clear record of GA's financial assurance guarantees of March 17th and 19th on which the Commission relied in authorizing restart of the Facility on April 16, 1992. As a result of Mr. Blue's statements at the December 21, 1992 meeting, the Commission did not have an adequate basis to conclude that funding would in fact be available as needed to carry out necessary decontamination and decommissioning of the Facility and site. Accordingly, on December 29, 1992 the NRC Staff issued a Demand for Information to SFC and GA concerning this matter.

The December 29, 1992 Demand for Information required GA and SFC to submit a plan for decontaminating and decommissioning the SFC Facility and a decommissioning funding plan for decommissioning the SFC Facility in compliance with 10 C.F.R. § 40.36. Although SFC submitted a Preliminary Plan for Completion of Decommissioning (PPCD) the SFC site, and preliminary cost estimates for activities directly and indirectly related to decommissioning, neither SFC nor GA provided a description of the method of assuring funds for decommissioning which satisfies 10 C.F.R. § 40.36, as required by

Section IV.B. of the Demand for Information, or which satisfies 10 C.F.R. § 40.42, as discussed above.

Mr. J. Neal Blue states in his letter of February 16, 1993, transmitting the GA response to the Demand for Information, that GA has been consistent in its willingness, on a voluntary basis, to assist SFC in meeting its remediation objectives. For example, between October 1988 and October 1991, GA enabled SFC to commence clean-up of the environmental conditions at the site. Mr. Blue also states that the ConverDyn arrangement is a good-faith effort by GA to assist SFC in arranging resources necessary to meet SFC's obligations. Nevertheless, neither the voluntary assistance by GA nor the ConverDyn arrangement are sufficient to satisfy NRC requirements for financial assurance under 10 C.F.R. § 40.36 or 10 C.F.R. § 40.42, as discussed above.

In the "Response of General Atomics to December 29, 1992 Demand for Information" attached to Mr. Blue's letter of February 16, 1993, GA disputes that Mr. Blue's statements at the March 17, 1992, meeting constituted a commitment to provide financial guarantees by GA, and asserts that Mr. Blue only committed GA to make it possible for SFC to use its operating revenues and retained earnings for remediation and other capital improvements, and that any GA financial commitment would arise after a period of continued operation under a renewed license. GA also disagrees that Mr. Blue's letter of March 19, 1992, to Chairman Selin constituted a financial

guarantee, asserts that it evidenced only an intention to provide "stop-gap" funding for items not covered by SFC operating revenues, and maintains that any offer of financial guarantees was dependent upon renewal of the SFC operating license. Notwithstanding GA's assertions, Mr. Blue's statements of March 17 and 19, 1992, constituted a guarantee of financial resources necessary for SFC site remediation and decommissioning.

Mr. Blue argues that his commitments must be viewed in the context of GA's acquisition of SFC, specifically, that in 1988, when GA's subsidiary, Sequoyah Holding Company, acquired the stock of SFC, the NRC "fully understood and accepted that GA explicitly refused to furnish any guarantee" for decontamination and decommissioning of the SFC Facility, and that the license makes only SFC financially responsible for decontamination and decommissioning. (Letter of J. Neal Blue, dated February 16, 1993, to Robert M. Bernero, p. 2, and its Attachment, "1988 Acquisition of SFC and Subsequent NRC Financial Review", pp. 1-5) Although at the time of the purchase GA may have refused to guarantee SFC's obligation to decontaminate the facility, GA's actions in control over the day-to-day operations and business of SFC, and GA's representations of financial guarantees described above, on which the Commission has relied, make GA responsible, along with SFC to satisfy the NRC financial assurance requirements.

GA asserts that the DFI incorrectly states that the Commission relied on the GA financial commitments in authorizing restart of the SFC facility on April 16, 1992. Although the Staff Requirements Memorandum of March 27, 1992, specified that NRC Staff efforts to make the March 19, 1992, commitments legally binding were not a necessary precondition to restart, nonetheless, Mr. Blue's commitments of March 17 and March 19 were relied upon by the Commission in authorizing restart. The Commission reasonably took Mr. Blue at his word. The Commission's decision not to delay the SFC Facility restart to await legal documents formalizing Mr. Blue's commitments hardly means, as GA would have it, that the Commission was indifferent to GA's guaranty. To the contrary, Mr. Blue's promise to stand behind SFC reassured the Commission that SFC's cleanup effort was creditable and would proceed upon restart.

GA disputes the conclusions in the DFI that GA has had and now has de facto control over the day-to-day business of SFC, and that this control makes GA and SFC jointly and severally responsible for funding decontamination and decommissioning of the SFC site. In this regard, GA relies upon immaterial facts<sup>1</sup>, disputes the

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<sup>1</sup> For example, GA asserts that none of the six members of GA's Board of Directors were simultaneously members of the SFC Board of Directors. See, "Response of General Atomics to December 29, 1992, Demand for Information" (February 16, 1993), p. 14. The NRC Staff did not assert that any of these individuals were simultaneously on both the GA and SFC Boards of Directors. The NRC Staff cited as indicia of GA's de facto control of SFC that GA and (continued...)

significance of virtually each individual indicia of control relied upon by the DFI, and even provides additional evidence of GA's control over SFC<sup>2</sup>. GA, however, provides no basis to change the conclusion that the entire body of evidence establishes that GA exercised and exercises *de facto* control over the day-to-day business of SFC.

After review of the responses to the Demands for Information, the NRC Staff finds that there is no basis to change its conclusion that the degree of GA's control over the business of SFC and Mr. Blue's representations of financial assurance, on which the Commission relied, make GA responsible, along with SFC, for satisfying NRC financial assurance requirements.

VI

In summary, although SFC has outlined its plan for funding Facility decommissioning through the ConverDyn arrangement and while such

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<sup>1</sup>(...continued)

SFC shared "common directors or officers", specifically that Dr. Dean was on the SFC Board of Directors while at the same time he was the GA Engineering Director, and that Mr. Kemp was the GA Finance Manager while at the same time he was the Chief Executive Officer of SFC. See, Demand for Information (December 29, 1992), pp. 3-4.

<sup>2</sup> For example, GA states that Mr. James R. Edwards is a Vice-President, General Counsel and Secretary of GA while also acting as SFC's Secretary and General Counsel and sitting on the SFC Board of Directors. See, "Response of General Atomics to December 29, 1992 Demand for Information" (February 16, 1993), pp. 14-15.

arrangement may be a reasonable business arrangement, it does not satisfy the requirement of the Commission's regulations in 10 C.F.R. § 40.36(e) for financial assurance or in 10 C.F.R. § 40.42 to submit a plan assuring the availability of adequate funds for completion of decommissioning. Neither SFC nor GA proposed or established a funding mechanism in compliance with 10 C. F. R. § 40.36(e). Moreover, after review of the ConverDyn arrangement and SFC's financial projections, the NRC Staff has concluded for the reasons set forth above that SFC's funding plan must be supplemented with additional assurances before it can be accepted by NRC as providing reasonable assurance that SFC will be able to satisfy its obligations to provide adequate funding for the ultimate decommissioning of the Facility or that the health and safety of the public will be protected. Since decommissioning will likely commence in the near future, I find that steps must be taken now to assure the availability of adequate funding for decommissioning.

Independent of the NRC's activities regarding the cleanup of the Facility, the United States Environmental Protection Agency (EPA) recently issued an Administrative Order on Consent which required SFC to study and correct contamination at the SFC site in Gore, Oklahoma. *Sequoyah Fuels Corporation*, U.S. EPA Docket No. VI-005-(h)93-H (August 3, 1993). Although EPA's action was taken under the authority of Section 3008h of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further

amended by the Hazardous Waste Amendments of 1984, 42 U.S.C. § 6928h, it was coordinated with the NRC Staff in an effort to avoid duplication of regulation by the Federal government and to maximize the benefits to the agencies' mutual objective of assuring a timely cleanup and decommissioning of the Facility. Thus, while the EPA Consent Order is directed only at nonradioactive materials under the terms of the EPA's authorizing statutes, the NRC believes that the conduct of the required activities may provide information that will satisfy some of the terms of this Order. Accordingly, SFC, in discharging its obligations under this Order, may avoid duplication by submitting to the NRC information prepared in fulfillment of the EPA Consent Order to the extent that it is also responsive to the provisions of this Order.

VII

Accordingly, pursuant to sections 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. § 2.202 and 10 C.F.R. Part 40, IT IS HEREBY ORDERED THAT:

- A. General Atomics Corporation and Sequoyah Fuels Corporation are and shall be jointly and severally responsible for:
  1. Providing funding to continue remediation of existing contamination at the SFC Facility site, regardless of whether the Facility continues to operate or not;

2. Providing financial assurance for decommissioning in accordance with the requirements of 10 C.F.R. § 40.36; and
3. Providing an updated detailed cost estimate for decommissioning and a plan for assuring the availability of adequate funds for completion of decommissioning, in accordance with the requirements of 10 C.F.R. § 40.42(c)(2)(iii)(D);

B. Sequoyah Fuels Corporation shall:

Carry out the funding plan described in its February 16, 1993 submission;

C.

1. To the extent Sequoyah Fuels Corporation fails to or is unable to do so, GA shall complete the actions required of Sequoyah Fuels as described in Section VII;
2. If the revenues provided by ConverDyn or other sources to SFC in any year are less than the revenue projected in the Preliminary Plan for Completion of Decommissioning, GA shall make up the shortfall by providing funds to SFC to carry out the decommissioning activities up to the amount specified in the Preliminary Plan for Completion of Decommissioning, or by directly funding such activities so that total funding for decommissioning activities is not less than that specified in the Preliminary Plan for Completion of Decommissioning;

3. If the decommissioning alternative approved by NRC is more costly than those upon which the Preliminary Plan for Completion of Decommissioning is based, GA shall make up the shortfall by providing funds to SFC to carry out required decommissioning in accordance with schedules approved by NRC or by directly funding such decommissioning activities; and
4. On or before November 19, 1993, GA shall provide financial assurance for decommissioning and decontamination in the amount of \$86 million through a) prepayment, b) a surety method, insurance, or other guarantee method, or c) an external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund, in accordance with the requirements of 10 C.F.R. § 40.36 and the guidelines in Reg Guide 3.66;
5. If GA demonstrates to the satisfaction of the Commission that the amount of financial assurance provided in satisfaction of Section VII, Paragraph C.4. of this Order exceeds the amount sufficient to properly decontaminate and decommission the SFC Facility and site, GA may request the Commission to authorize a reduction in that amount; and
6. If the Commission later determines that the amount of financial assurance provided in satisfaction of Section

VII, Paragraph C.4. of this Order is insufficient to properly decontaminate and decommission the Facility and site, the Commission may direct an increase in the amount or take such other action as the Commission may deem appropriate;

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by the Sequoyah Fuels Corporation or General Atomics of good cause.

VIII

In accordance with 10 C.F.R. § 2.202, SFC and GA must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and set forth the matters of fact and law on which SFC, GA, or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Services Section, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel

for Hearings and Enforcement at the same address, to the Director, Office of Nuclear Material Safety and Safeguards at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011-8064, and to SFC and GA if the answer or hearing request is by a person other than SFC or GA. If a person other than SFC or GA requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 C.F.R. § 2.714(d).

If a hearing is requested by SFC, GA, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, the provisions specified in Section VIII above shall be final 20 days from the date of this Order without further order or proceedings.

FOR THE NUCLEAR REGULATORY COMMISSION

  
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Hugh L. Thompson  
Deputy Executive Director  
for Nuclear Materials Safety, Safeguards,  
and Operations Support

Dated at Rockville, Maryland  
this 15th day of Oct., 1993