



- Section II describes the legal standards governing the admissibility of contentions in this licensing proceeding;
- Section III demonstrates that the Proposed Contentions do not satisfy the requirements in Section 2.309(f)(1);
- Section IV discusses applicability of 10 C.F.R. Part 2, Subpart N, hearing procedures to this proceeding, should a hearing be granted; and
- Section V describes why this proceeding should not be consolidated with the proceeding that is considering SFC's Reclamation Plan (MLA-6).

## **I. BACKGROUND**

The raffinate sludge that is the subject of the LAR is a flowable slurry that is currently stored in lined impoundments known as Clarifier Basins 1A, 2A and 4A.<sup>2</sup> The LAR proposes that the raffinate sludge be removed from the Clarifier Basins, processed to reduce the water content (*i.e.*, dewatered), packaged in polypropylene bags and placed in temporary storage until final disposal.<sup>3</sup> Among the final disposal alternatives SFC is considering are off-site disposal or transfer of the raffinate sludge to a uranium mill for processing, both of which would require shipment.<sup>4</sup> These off-site alternatives would be greatly facilitated by dewatering, which would substantially reduce the mass of material to be transported and would make the material less subject to dispersion in the event of an

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<sup>2</sup> LAR at 1, § 1.0.

<sup>3</sup> LAR at 1-5, § 1.3.

<sup>4</sup> See Sept. 19, 2003 SFC Letter to NRC, Raffinate Sludge Dewatering Project, Enclosure 1, at 1 (ML032670997); LAR at 1, § 1.1 (both noting that the dewatered sludge will be placed in the temporary storage cells until a final disposition option is selected).

accident during transportation.<sup>5</sup> Transportation costs would constitute a significant portion of the cost of such off-site alternatives. The mass reduction achieved by dewatering would reduce the cost of shipping by more than enough to pay for the cost of the dewatering.<sup>6</sup> Further mass reduction will result from evaporation during storage of the dewatered sludge.<sup>7</sup>

All of the active decommissioning alternatives SFC considers to be viable entail dewatering the raffinate sludge.<sup>8</sup> SFC estimates that dewatering the raffinate sludge will take many months.<sup>9</sup> Completion of dewatering before the start of decommissioning will assure that the time required to dewater the raffinate sludge does not affect the decommissioning schedule and will free the Clarifier Basins for use in controlling storm water and groundwater during decommissioning. Since SFC has substantial fixed costs, any significant delay will further erode the limited resources available to SFC for decommissioning.

SFC's existing NRC license already allows SFC to possess and use the raffinate sludge, including transfer of the sludge from one location to another on site<sup>10</sup> and

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<sup>5</sup> See LAR at 6, § 2.2.2 (noting that shipment of the raffinate sludge as a slurry was abandoned, in part, due to concerns with dispersal of the liquid slurry in the event of a highway accident).

<sup>6</sup> See LAR at 6, § 2.2.2 (discussing the high cost of shipping large volumes of water combined with the slurry).

<sup>7</sup> LAR at 4, § 1.3.2.

<sup>8</sup> See LAR at 7, § 2.2.4 (“costs for shipping and disposal or increased volume in the disposal cell”); Sept. 19, 2003 SFC Letter to NRC, Raffinate Sludge Dewatering Project at 1 (regarding dewatering prior to placement in disposal cell).

<sup>9</sup> See Sept. 19, 2003 SFC Letter to NRC, Raffinate Sludge Dewatering Project at 1.

<sup>10</sup> LAR at 5, § 1.4.

shipment off site.<sup>11</sup> The LAR does not propose any changes to these aspects of the current license. The LAR seeks authorization to dewater the raffinate sludge in high pressure filter presses, package the dewatered sludge in polypropylene bags, and store the bags of dewatered sludge on a reinforced concrete pad known as the South Yellowcake Pad.<sup>12</sup> As the name implies, this pad was previously used for storage of uranium ore concentrates during plant operations.<sup>13</sup>

The LAR notes that the liquid removed from the sludge will be returned to the Clarifier Basin initially, and eventually removed for treatment and land application.<sup>14</sup> The LAR, however, does not request authorization to transfer, treat or land apply the liquid because such activities are already authorized by the SFC license.<sup>15</sup>

## **II. LEGAL STANDARDS GOVERNING ADMISSIBILITY OF THE CONTENTIONS**

In order to intervene in an NRC licensing proceeding, an individual or group must demonstrate that it has standing, and “proffer with specificity at least one admissible contention.”<sup>16</sup> Oklahoma states that it has standing because the SFC Gore, Oklahoma facility is located within the boundaries of the State of Oklahoma, and the Oklahoma Attorney General is designated as the single representative of the State for the purpose of

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<sup>11</sup> *Id.* at 6, § 2.2.2.

<sup>12</sup> LAR at 4, § 1.3.2.

<sup>13</sup> Sept. 19, 2003 SFC Letter to NRC, Raffinate Sludge Dewatering Project, Enclosure 1, at 1.

<sup>14</sup> LAR at 2, § 1.3.

<sup>15</sup> *Id.*

<sup>16</sup> 10 C.F.R. § 2.309(a). *See also Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248 (1996); *Gulf States Utility Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 51 (1994).

this hearing. The State further asserts that it has standing pursuant to 10 C.F.R. § 2.309(d)(1)<sup>17</sup>. Based on 10 C.F.R. § 2.309(d)(2) and Oklahoma’s assertions, SFC does not contest Oklahoma’s standing in this proceeding.

The NRC, however, must deny a Request for Hearing from a petitioner who has standing but has not proffered at least one admissible contention.<sup>18</sup> In accordance with long-standing Commission policy, Petitioners have the burden of showing that the contentions are admissible. As stated by the Commission, “[a] contention’s proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basic requirement for the admission of contentions.”<sup>19</sup>

Under 10 C.F.R. § 2.309(f)(1), Proposed Contentions must satisfy the following requirements:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;

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<sup>17</sup> This claim, however, is not adequately supported, since it does not identify any plausible mechanism for offsite impacts.

<sup>18</sup> *Florida Power & Light Co.* (Turkey Point Nuclear Power Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 5 (2001).

<sup>19</sup> Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 22 (1998).

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and

(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's Environmental Report and Safety Report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

These requirements are essentially identical to the Commission's long-standing requirements for contentions in 10 C.F.R. § 2.714(b)(2), which were superceded by Section 2.309(f)(1). Therefore, precedents under the old Section 2.714(b)(2) are equally applicable to Proposed Contentions under the new Section 2.309(f)(1). Accordingly, a contention that fails to meet any one of these requirements must be rejected.<sup>20</sup>

The requirements pertaining to contentions are "strict."<sup>21</sup> This strict rule serves several purposes:

First, it focuses the hearing process on real disputes susceptible of resolution in an adjudication. For example, a petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies. Second, the rule's requirement of detailed pleadings puts other parties in the proceeding on notice of the Petitioners' specific grievances and thus gives them a good idea of the claims they will be either supporting or opposing. Finally, the rule helps to ensure that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual

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<sup>20</sup> See *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991).

<sup>21</sup> *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 and 3), CLI-99-11, 49 NRC 328, 334 (1999).

and legal foundation in support of their contentions.<sup>22</sup>

Contentions must also be set forth with reasonable specificity and particularity.<sup>23</sup>

For a contention to be admissible, the petitioner must “include references to the specific portions of the application . . . that the requestor/petitioner disputes and the supporting reasons for each dispute, or, if the requestor/petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requestor’s/petitioner’s belief.”<sup>24</sup> Simply put, the petitioner must provide “supporting grounds” for its contention that the application does not consider some information required by law.<sup>25</sup> An issue that does not directly controvert a position taken in the application is subject to dismissal.<sup>26</sup>

10 C.F.R. § 2.309(f)(1) also requires that the petitioner provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.<sup>27</sup> The dispute at issue is “material” if its resolution would “make a difference in the outcome of the licensing proceeding.”<sup>28</sup> A contention will also be dismissed if the intervenor sets forth no facts or expert opinion on which it intends to prove its contention.<sup>29</sup> The NRC will not accept an expert opinion as an adequate basis

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<sup>22</sup> Id.

<sup>23</sup> *Id.* at 355; 10 C.F.R. § 2.309(f)(1).

<sup>24</sup> Notice of Hearing, 69 *Fed. Reg.* 12715, 12716 (Mar. 17, 2004).

<sup>25</sup> Florida Power & Light Co., 54 NRC at 19.

<sup>26</sup> See *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181 (1998).

<sup>27</sup> 10 C.F.R. § 2.309(f)(1)(vi).

<sup>28</sup> *Duke Energy Corp.*, 49 NRC at 333-34.

<sup>29</sup> Notice of Hearing, 69 *Fed. Reg.* at 12716.

for an issue if it “merely states a conclusion (*e.g.*, the application is ‘deficient,’ ‘inadequate,’ or ‘wrong’) without providing a reasoned basis or explanation for that conclusion.”<sup>30</sup> Further, a contention that challenges the validity of previously issued NRC rules or regulations will not be admitted.<sup>31</sup>

The scope of permissible contentions is bounded by the issues specified in the Notice of Hearing.<sup>32</sup> A contention that raises matters that are not within the scope defined by the notice cannot be admitted.<sup>33</sup> In this case, the Notice of Hearing explicitly limits the scope of the LAR to issues involving (1) dewatering of the raffinate sludge using a pressurized filter press system and (2) temporary storage of the dewatered raffinate sludge in polypropylene bags in a lined, temporary storage cell on an existing concrete pad.<sup>34</sup>

### **III. ANALYSIS OF PROPOSED CONTENTIONS**

Oklahoma has identified two Proposed Contentions. Proposed Contention A alleges that SFC is required to obtain a license amendment for land application of filtrate water and Proposed Contention B alleges that the LAR is vague and insufficient to prevent additional contamination of the environment. As demonstrated below, neither of these contentions is admissible. Therefore, Oklahoma’s Request should be rejected.

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<sup>30</sup> *Private Fuel Storage*, LBP-98-7, 47 NRC at 181.

<sup>31</sup> See 10 C.F.R. § 2.335; *Florida Power & Light Co.*, 54 NRC at 6; *Yankee Atomic Electric Co.*, 43 NRC at 252.

<sup>32</sup> See *Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 118 (1995).

<sup>33</sup> See *Portland General Electric Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289 n.6 (1979); see also *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976).

<sup>34</sup> Notice of Hearing, 69 *Fed. Reg.* at 12716.

### **Contention A: Licensing of Land Application of Filtrate Water (Misc. Issue)**

Oklahoma contends that “SFC is required to obtain a license amendment from the NRC to land apply the filtrate water.”<sup>35</sup> This contention, on its face, concerns solely activities that are not within the scope of the LAR. Oklahoma contends that SFC should have requested authorization to conduct activities in addition to the activities that are included in the LAR. Oklahoma’s argument is premised on significant errors of law and fact. Even if Oklahoma’s assertions were correct, this Proposed Contention would be inadmissible because it concerns only matters that are outside the scope of the LAR and the Notice of Opportunity for Hearing.<sup>36</sup>

To support its claim that the LAR should have requested authorization for land application of the filtrate, Oklahoma asserts that the proposed dewatering process and resulting liquid waste are substantially different from SFC’s previously authorized activities, and that because of this alleged difference SFC is required by 10 C.F.R. Parts 20 and 40 and NUREG-1620 to request a license amendment to manage the filtrate generated by this process.<sup>37</sup> Oklahoma also asserts that the NRC must consider disposition of the filtrate in order to properly rule on the dewatering amendment and find that it is protective of public health, safety, and the environment, because there are various licensing and permitting requirements applicable to land application of the

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<sup>35</sup> Oklahoma Request at 10.

<sup>36</sup> See Portland General Electric Co., 9 NRC at 289 n.6; see also Public Service Co. of Indiana, 3 NRC at 170-71.

<sup>37</sup> Oklahoma Request at 10-13.

filtrate, including a permit from the Oklahoma Department of Environmental Quality (“ODEQ”).<sup>38</sup>

As noted above and discussed more fully below, the matters raised by this Proposed Contention are outside the scope of this proceeding. The Proposed Contention also fails to establish a material issue of law or fact relevant to the LAR.

Oklahoma states that “SFC did not request approval to land apply the filtrate water as part of its license amendment request[.]”<sup>39</sup> Oklahoma is clearly correct in this respect. As noted in the LAR and in the Notice of Hearing for the LAR, SFC is seeking an amendment to its license “to dewater raffinate sludge in high pressure filter presses, package the dewatered sludge in polypropylene bags, and store the bags of dewatered sludge on the South Yellowcake Pad.”<sup>40</sup> While the LAR also mentions in general terms how SFC will deal with the resulting filtrate,<sup>41</sup> the LAR does not request NRC authorization to land apply the filtrate. Proposed Contention A argues that, for various reasons, SFC also will need to obtain authorization of land application of the filtrate. If Proposed Contention A is correct, SFC will need to submit an additional amendment request for land application before SFC land applies the filtrate. Nothing in Oklahoma’s Request alleges any authority for the implicit premise that NRC cannot approve the LAR currently under consideration separately from and in advance of, any SFC request for authorization of land application. Any such SFC amendment request pertaining to land application would be a separate proceeding and is not within the scope of the LAR that is

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<sup>38</sup> *Id.* at 14.

<sup>39</sup> *Id.* at 16.

<sup>40</sup> LAR at 1 (Cover Letter); Notice of Hearing, 69 *Fed. Reg.* at 12715.

the subject of this proceeding.<sup>42</sup> Since Proposed Contention A is not material to the LAR currently under consideration, it is not admissible.

It should also be recognized that the bases proffered for Proposed Contention A are not adequate support for such a contention. SFC's license already specifically authorizes the use of ammonium nitrate solution for fertilizer. SFC believes this existing license provision authorizes SFC to land apply the filtrate, subject to the license conditions. The NRC staff concurred with SFC's interpretation in a letter dated October 17, 2003, as Oklahoma acknowledged in its Hearing Request.<sup>43</sup>

Oklahoma's basis for disputing this interpretation is its claim that the filtrate is chemically different from the fertilizer applied previously under the current license conditions.<sup>44</sup> In support of this, Oklahoma claims that the levels of uranium, thorium, and radium are significantly greater in the dewatering filtrate than in the previously land-applied ammonium nitrate fertilizer.<sup>45</sup> As evidence of this alleged difference, Oklahoma contrasts information in the LAR regarding the filtrate with data in a 1994 SFC report regarding ammonium nitrate fertilizer that SFC land applied in 1993. This comparison is not meaningful because Oklahoma is comparing "apples to oranges." As noted in Section 1.3 of the LAR, SFC plans to treat the dewatering filtrate to reduce radionuclide and metal levels prior to any land application. SFC also treated the ammonium nitrate

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<sup>41</sup> LAR at 2, § 1.3.

<sup>42</sup> See 10 C.F.R. § 2.309(f)(1)(iii). See also *Portland General Electric Co.*, 9 NRC 287, 289 n.6 (1979); *Public Service Co. of Indiana*, 3 NRC 167, 170-71 (1976).

<sup>43</sup> Oklahoma Request at 11.

<sup>44</sup> *Id.* at 10 - 11.

<sup>45</sup> *Id.* at 11 (as revised).

fertilizer prior to land application, in order to meet the terms of its license. In fact, SFC plans to use the same treatment process and procedures on the filtrate that SFC used to treat the ammonium nitrate fertilizer in the past. Therefore, Oklahoma is erroneously comparing levels of contaminants in untreated filtrate to treated raffinate. SFC's license conditions contain radionuclide concentration limits for the ammonium nitrate fertilizer that would require treatment of the filtrate prior to any land application, regardless of its source. Thus, Oklahoma has provided inadequate support for its claim that the dewatering filtrate differs significantly from the ammonium nitrate solution that is covered by License Condition 1.8 of SFC's license.<sup>46</sup>

Further, Oklahoma's assertion that the NRC must consider disposition of the filtrate water in order to properly rule on the dewatering amendment is similarly flawed.<sup>47</sup> While dewatering clearly will result in production of filtrate, Oklahoma does not show or allege that production of filtrate must result in land application. Although SFC presently intends to land apply water drawn from the Clarifier Basin after treatment, this LAR can be implemented regardless of whether SFC can land apply the filtrate. For example, SFC can dewater the raffinate sludge and temporarily store the filtrate in the same locations where the raffinate is currently stored (*e.g.*, Clarifier Basin, Clarifier 3A, Pond 5). Therefore, Oklahoma has failed to establish that a genuine dispute exists with the LAR

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<sup>46</sup> See, *e.g.*, *GPU Nuclear Inc. et al.* (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 206-207 (2000) (noting that absent some documentary support, the Commission will not assume that licensees will contravene applicable regulations).

<sup>47</sup> Oklahoma Request at 13 (noting that the dewatering and filtrate water disposition are two parts of an inseparable process).

on a material issue of law or fact and for this reason, Proposed Contention A must be rejected.

Finally, Oklahoma lists various requirements that it contends to be applicable to land application, including provisions of 10 C.F.R. Parts 20 and 40, NUREG-1620, and Oklahoma law. Since land application is not within the scope of the LAR, the discussion of requirements that might apply to land application is too far afield of the issues currently before the Presiding Officer to require a response, but SFC does want to be clear that it does not agree that there are any legitimate issues regarding whether its land application program is consistent with applicable law.

**Contention B: Ability of the Dewatering Plan to Prevent Contamination  
(Environmental Issue)**

Oklahoma asserts that the information SFC provided is not accurate<sup>48</sup> or adequate to fully assess the impacts of the LAR and to ensure that contaminants will not migrate from the dewatering process into the environment.<sup>49</sup> Oklahoma contends that SFC must provide more detail regarding the various elements for the proposed dewatering process, including polypropylene bags, storage cell liner, and cell cover, and that more information is required to demonstrate that the storage plan sufficiently prevents migration of contaminants in the sludge into the environment.<sup>50</sup> Oklahoma also asserts

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<sup>48</sup> Although Oklahoma does say it questions the accuracy of the LAR, it does not identify any alleged inaccuracies.

<sup>49</sup> Oklahoma Request at 17.

<sup>50</sup> *Id.* at 17 – 20.

that this LAR should not be approved until a plan for final disposition of the wastes is approved by NRC.<sup>51</sup>

In essence and as discussed more fully below, the premise for Proposed Contention B is that the level of detail in the LAR is not adequate to demonstrate that the contaminants from the process slurry or dewatered sludge will not somehow leak or seep into the environment or pose a danger to site workers. However, Oklahoma does not provide the necessary supporting basis for this Proposed Contention. Oklahoma does not allege that the information submitted by SFC on the issues Oklahoma addresses, including radiation and contamination controls proposed for the dewatering project, is incorrect or that it fails to comply with some particular standard. Oklahoma also fails to provide any basis for concluding that there is an unreasonable risk that the proposed engineered barriers (*e.g.*, bags, liner, cover, concrete pad, drain sumps, *etc.*) will fail, leak, or otherwise be insufficient to contain the contaminated material.

Under 10 C.F.R. 2.309(f)(1), if the petitioner believes that the application fails to contain information on a relevant matter as required by law, in addition to identifying each failure, the petitioner must provide “supporting reasons for the petitioners’ belief.”<sup>52</sup> Oklahoma’s claim that the Environmental Report (“ER”) “raises many questions” regarding the ability of the dewatering plan to prevent further site contamination clearly does not satisfy this standard.<sup>53</sup> In each instance, Oklahoma asserts that the level of information is not adequate, but its only supporting reason is the opinion of counsel that

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<sup>51</sup> *Id.* at 18 – 19.

<sup>52</sup> 10 C.F.R. § 2.309(f)(1)(vi).

<sup>53</sup> Oklahoma Request at 17.

some possible risk is not adequately foreclosed. Accordingly, this Proposed Contention fails to identify a genuine dispute on a material issue of law or fact and should be rejected. The individual elements of this Proposed Contention are considered below.

Method of Treatment of Filtrate: Oklahoma asserts that the plan for the disposition of the filtrate must be specified and approved by the NRC.<sup>54</sup> This element simply repeats Oklahoma's assertions in Proposed Contention A and should be similarly rejected. As noted previously, SFC is not requesting NRC authorization in this LAR to land apply the filtrate. Therefore, this element only raises matters that are outside the scope of this proceeding.

Integrity of Storage Bags, Cell Liner and Cover: Oklahoma asserts that SFC must provide additional detail regarding the polypropylene storage bags, storage cell liners and storage cell cover, including the length of time SFC has had the material, for the cell liner and cover systems.<sup>55</sup> Oklahoma, however, provides no legal or regulatory authority indicating the need to provide such detailed information, nor does it cite any regulatory criteria that would apply to judge the adequacy of these materials. Therefore, this element lacks sufficient supporting information to establish a genuine dispute on a material issue of law or fact.<sup>56</sup>

This element is also insufficient because Oklahoma does not identify any particular deficiencies in the ER. As noted in the ER, the polypropylene storage bags to be used to package the dewatered raffinate sludge have a storage capacity of

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<sup>54</sup> *Id.* at 19.

<sup>55</sup> *Id.* at 19.

<sup>56</sup> 10 C.F.R. §§ 2.309(f)(1)(iv) and (vi).

approximately 2000 lbs.<sup>57</sup> The bags will be stacked in “cells” on a reinforced concrete pad formerly used to store yellowcake.<sup>58</sup> The cells will be lined with a synthetic material and covered with a similar material to prevent water pooling and rain intrusion.<sup>59</sup> Any spills of dewatered sludge caused by possible physical damage to the cell or storage bags will be picked up and placed into containers, and any remaining residue will be washed into the North or South Yellowcake sump, thereby minimizing any potential for groundwater contamination.<sup>60</sup> Oklahoma does not explain how the failure of one or more of these engineered barriers could result in any significant contamination of the environment given the dewatered (nearly solid) form of the stored raffinate and the design of the temporary storage cell. Therefore, this element lacks any legal, factual, or expert support.<sup>61</sup>

Venting of Temporary Storage Cells: Oklahoma asserts that there is no information in the ER regarding the contaminants that will be released into the air as a result of evaporation caused by venting of the temporary storage cells.<sup>62</sup> Oklahoma also asserts that the contaminated air will be in proximity to site workers and there is no proposal to monitor the release.<sup>63</sup>

Oklahoma does not challenge any of the information on the venting of the cell, including expected radon emissions, radon monitoring plan, and occupational dose

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<sup>57</sup> LAR at 3, § 1.3.1.2.

<sup>58</sup> *Id.* at 4, § 1.3.2.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 8, 11, §§ 3.1.1.2 and 3.3.

<sup>61</sup> 10 C.F.R. §§ 2.309(f)(1)(iv) and (vi).

<sup>62</sup> Oklahoma Request at 19.

control in the ER. Oklahoma also fails to explain what (if any) contaminants it believes could be released into the environment. Accordingly, this Proposed Contention fails to identify a genuine dispute on a material issue of law or fact and should be rejected.<sup>64</sup>

As noted in Section 2.0, “Environmental Considerations,” Section 2.4, “Airborne Protection,” Attachment 1, “Radon Dispersion,” and Attachment 3, “Radiation Safety Plan,” SFC expects an increase in radon emanations from the raffinate sludge while in storage. SFC has determined, however, that radon concentrations at the site boundary as a result of the Dewatering Project will be well below regulatory limits. SFC does not expect any other contaminants to be released to the environment as a result of evaporation. Nevertheless, radon monitors installed at the site boundary will be monitored quarterly to ensure compliance with applicable regulatory limits and measures will be in place to protect workers from potential radon exposure during the Dewatering Project. These measures include continuous monitoring of work spaces and use of personal air samplers in accordance with the site Radiation Safety Plan.<sup>65</sup>

Contrary to the requirements of 10 C.F.R. 2.309(f)(1)(iv) and (vi), Oklahoma has apparently overlooked (or ignored) these sections and has not alleged – much less provided any supporting evidence or expert testimony – that the analyses contained therein are deficient in any way. Additionally, Oklahoma does not identify any contaminants, other than radon, that it believes could possibly be released during storage and how such contaminants could affect site workers and/or the environment. Therefore,

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<sup>63</sup> Id.

<sup>64</sup> 10 C.F.R. §§ 2.309(f)(1)(iv) and (vi).

<sup>65</sup> LAR at 11 - 12, §§ 3.4 and 3.5.

this element lacks sufficient supporting information to establish a genuine dispute on a material issue of law or fact.<sup>66</sup>

Accident Analysis: Oklahoma asserts that the accident scenario considered by SFC in Section 3.1 of the ER is “unlikely” and that a “more likely” scenario, such as hazards associated with a “release of the wet, flowable material and its impact on the environment and workers responsible for responding to the release,” should be provided.<sup>67</sup> Again, Oklahoma provides no legal, factual, regulatory or expert support for this element of the Proposed Contention. It cites no reason why a “more likely” scenario should be analyzed or why its proposed scenario is more likely. Absent such supporting information, basis or rationale, Oklahoma’s suggestion or conclusion cannot serve as the basis for a contention.<sup>68</sup>

In any event, it is not clear how the accident scenario suggested by Oklahoma differs in any fundamental way from the limiting accident scenario considered by SFC. As described fully in Attachment 2, “Accident Analysis,” of the ER, the scenario considered by SFC, which includes a high pressure discharge of liquid raffinate, is intended to be bounding—*i.e.*, have the greatest potential impact—and SFC assessed the potential impact on site workers and the environment. Oklahoma has not alleged that there is any error in this section and has not alleged – much less provided any supporting evidence – that SFC’s analysis of this bounding accident scenario is deficient in any way.

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<sup>66</sup> 10 C.F.R. §§ 2.309(f)(1)(iv) and (vi).

<sup>67</sup> Oklahoma Request at 19 – 20.

<sup>68</sup> Private Fuel Storage, 47 NRC at 181.

Therefore, this element also lacks sufficient supporting information to establish a genuine dispute on a material issue of law or fact and should be rejected.<sup>69</sup>

Protection Against Moisture Re-Introduction: Oklahoma asserts that SFC failed to consider the high winds and the unpredictable nature of Oklahoma weather, including severe rainfall, in the storage plans for the dewatered raffinate sludge.<sup>70</sup> Oklahoma further asserts that the temporary storage area needs to be designed to address these severe weather contingencies.<sup>71</sup> This assertion is both factually incorrect and unsupported.

Section 3.2, “Flood and Rain Protection,” clearly states that SFC considered “extreme storm events” (including probable maximum precipitation events with 29 inches of rain in six hours and 19 inches of rain in one hour) in planning for measures to protect against moisture reintroduction. Oklahoma does not contest (or even acknowledge) the information contained within this section, nor does it cite any evidence or expert testimony as support for its assertion. Even assuming that an extreme weather event resulted in some moisture reintroduction, Oklahoma does not explain how such an event could cause significant environmental contamination given the design of the storage cell and measures planned to protect against and contain any spills. Therefore, this element lacks sufficient supporting information to establish a genuine dispute on a material issue of law or fact and should be rejected.<sup>72</sup>

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<sup>69</sup> 10 C.F.R. § 2.309(f)(1)(iv) and (vi).

<sup>70</sup> Oklahoma Request at 20.

<sup>71</sup> Id.

<sup>72</sup> 10 C.F.R. §§ 2.309(f)(1)(iv) and (vi).

Permanent Disposal Plan: Oklahoma asserts that the dewatering project should not be approved until the NRC approves a plan for the final disposition of the waste, and establishes the probable duration of the temporary storage of the dewatered sludge.<sup>73</sup>

Oklahoma does not cite any regulatory criterion that limits the duration of storage or any basis for concluding that the dewatered sludge cannot be stored safely for an extended period. In contrast, the ER shows that the benefits of further mass reduction through evaporation during storage favor prompt dewatering to maximize the time in storage and consequent evaporation. Further, as noted in Section I of this Answer, all of the active decommissioning alternatives SFC considers to be viable entail dewatering the raffinate sludge. Completion of dewatering before the start of decommissioning will assure that the time required to dewater the raffinate sludge does not affect the decommissioning schedule and will free the Clarifier Basins for use in controlling storm water and recovered groundwater during decommissioning. Nothing in Oklahoma's suggestion contests any of these facts or identifies any applicable regulatory criteria, expert opinion, or evidence to support its assertion. Consequently, this element of Proposed Contention B also should be rejected.

#### **IV. HEARING PROCEDURES**

According to 10 C.F.R. § 2.310, upon a determination that a request for hearing should be granted and a hearing held, the Commission, the Presiding Officer, or the Atomic Safety and Licensing Board will determine and identify the specific hearing procedures to be used for the proceeding. SFC believes that if a hearing must be held on this matter, it is expected to take no more than two days to complete. Accordingly, SFC

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<sup>73</sup> Oklahoma Request at 19.

recommends that any hearing on this matter be conducted in accordance with the Subpart N informal hearing process.

**V. THIS PROCEEDING SHOULD NOT BE CONSOLIDATED WITH MLA-6**

Oklahoma requests that this proceeding be consolidated with the proceeding that is considering SFC's Reclamation Plan (MLA-6).<sup>74</sup> The asserted basis for this request is the claim that dewatering the raffinate sludge is "inextricably linked" with the Reclamation Plan.<sup>75</sup> Oklahoma does not, however, identify any aspect of either proceeding that cannot be decided without regard to the other.

As explained above, while dewatering the raffinate sludge must be accomplished before site reclamation can be completed, dewatering would be justified to facilitate offsite shipment for processing and disposal. Since SFC shipped raffinate sludge for offsite processing and disposal during operation of the facility, it is obvious that such shipment is not inextricably linked to site reclamation.

In addition, consolidation should be denied because there are different parties in the two proceedings, and different rules of practice apply. Consequently, the request for consolidation should be rejected.

**VI. CONCLUSION**

For the reasons discussed above, none of the Proposed Contentions submitted by Oklahoma satisfies the requirements in 10 C.F.R. § 2.309(f)(1). A petitioner must satisfy the requirements of 10 C.F.R. 2.309(f)(1) with respect to at least one contention to be

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<sup>74</sup> Oklahoma Request at 10.

<sup>75</sup> *Id.*

permitted to participate as a party.”<sup>76</sup> Since Oklahoma has not proposed at least one admissible contention, its Hearing Request should be denied.

Respectfully submitted,



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<sup>76</sup> 10 C.F.R. § 2.309(a).

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board Panel

In the Matter of	)	Docket No. 40-8027
	)	
SEQUOYAH FUELS CORPORATION,	)	
Gore, Oklahoma Site	)	
	)	
(Request to Amend License No. SUB-1010 for	)	June 11, 2004
Raffinate Dewatering Project)	)	

NOTICE OF APPEARANCE OF ALVIN H. GUTTERMAN

The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia, hereby enters his appearance in the above-captioned matter as counsel on behalf of Sequoyah Fuels Corporation, P.O. Box 610, Gore, Oklahoma 74435.

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Dated: June 11, 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board Panel

_____	)	
In the Matter of	)	Docket No. 40-8027
	)	
SEQUOYAH FUELS CORPORATION,	)	
Gore, Oklahoma Site	)	
	)	
(Request to Amend License No. SUB-1010 for	)	
Raffinate Dewatering Project)	)	June 11, 2004
_____	)	

NOTICE OF APPEARANCE OF PAUL M. BESSETTE

The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia, hereby enters his appearance in the above-captioned matter as counsel on behalf of Sequoyah Fuels Corporation, P.O. Box 610, Gore, Oklahoma 74435.

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

\_\_\_\_\_) )  
In the Matter of ) )  
 ) )  
SEQUOYAH FUELS CORPORATION, ) Docket No. 40-8027  
Gore, Oklahoma Site ) )  
\_\_\_\_\_) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Answer Opposing the Request for Hearing filed by the State of Oklahoma and Notices of Appearance for Paul M. Bessette and Alvin Gutterman were served upon the persons listed below by U.S. mail, first class, postage prepaid and, where shown, by e-mail on this 11th day of June 2004.

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