

August 14, 2006

Mr. Michael W. Owen, Director
Office of Legacy Management
Forrestal Building
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

SUBJECT: NON-11e.(2) BYPRODUCT MATERIAL AT THE SEQUOYAH FUELS
CORPORATION SITE

Dear Mr. Owen:

This letter provides the U.S. Department of Energy (DOE) with updated information regarding the progress made towards allowing the disposal of non-11e.(2) byproduct material in a Sequoyah Fuels Corporation (SFC) 11e.(2) disposal cell to be built at its facility near Gore, Oklahoma. In 2003, the U.S. Nuclear Regulatory Commission (NRC) designated most of the radioactive waste at the site as byproduct material as defined in section 11e.(2) (42 U.S.C. § 2014) of the Atomic Energy Act of 1954, as amended (AEA). SFC has proposed construction of a cell, similar to those at other Uranium Mill Tailings Radiation Control Act of 1978 sites, for disposal of its 11e.(2) byproduct material. As part of the NRC's license amendment process for the SFC license, the NRC now needs the DOE's agreement to, at the appropriate time, take title to the proposed disposal cell which would also contain non-11e.(2) byproduct material.

For the reasons discussed below, the NRC concludes that the DOE's agreement in this regard is warranted. Such an agreement will allow the NRC to grant SFC's requested license amendment, thus permitting SFC to dispose of non-11e.(2) byproduct material in its onsite 11e.(2) disposal cell. Such action will be an important step towards the eventual decommissioning of the SFC facility and the termination of the NRC license.

The DOE in its June 5, 2003 letter regarding the SFC site (Enclosure 1) made any future agreement on its part to take title to the site dependent on whether the requirements of AEA section 83 (42 U.S.C. § 2113), and the applicable criteria in the NRC's Regulatory Issue Summary (RIS) 2000-23, were met. As indicated in Enclosure 1, AEA section 83 requires that if, prior to NRC license termination and after completion of site reclamation, the State of Oklahoma does not take title to the land and 11e.(2) byproduct material at issue here, ownership and permanent custody will transfer to the DOE at no cost to the United States. Due to the proposed presence of non-11e.(2) byproduct material in its onsite 11e.(2) material disposal cell, applicable criteria in RIS 2000-23, "Interim Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct Material in Tailings Impoundments" (Enclosure 2) must also be met before any title transfer could occur. Criterion 7 of the Interim Guidance states that the NRC will obtain the DOE's "concurrence and commitment" to take title to the tailings impoundment after its closure, and that such an agreement must be reached before a license amendment permitting disposal of non-11e.(2) byproduct material in an 11e.(2) material disposal cell can be issued.

The NRC prepared a Draft Safety Evaluation Report (DSER) in September 2005 (Enclosure 3), documenting its review of SFC's proposed site reclamation, including compliance with RIS 2000-23. Since publication of the DSER, SFC has addressed the open issues identified and has resolved the issues relevant to the non-11e.(2) byproduct material. The NRC has determined that, except for a DOE commitment to accept the completed disposal cell containing non-11e.(2) byproduct material, SFC's proposed onsite disposal of non-11e.(2) byproduct material meets the RIS 2000-23 guidance and would therefore be approved.

The non-11e.(2) byproduct material at issue is uranium-contaminated soil, demolition debris and Calcium Fluoride sludge (this material is described in greater detail in Section 7 of Enclosure 3). The State of Oklahoma was concerned that the Calcium Fluoride sludge might be a hazardous waste under the Resource Conservation and Recovery Act (RCRA) criteria, but has recently concluded, based on test data submitted by SFC, that the sludge does not contain any RCRA hazardous waste. See Enclosure 4. This closes the open issue identified in the DSER pertaining to whether there is RCRA hazardous waste in the non-11e.(2) byproduct material. We are, therefore, requesting DOE concurrence in the disposal of the non-11e.(2) byproduct material in the SFC cell and its commitment to take custody of the site, at the appropriate time, if Oklahoma declines.

If you have any questions concerning this letter, please contact the NRC project manager for the Sequoyah Fuels Corporation site, Dr. Myron Fliegel, at (301) 415-6629 or by e-mail at mhf1@nrc.gov.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>

Sincerely,

/RA/

Robert Pierson, Director
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

Docket No.: 40-8027
License No.: SUB-1010

Enclosures: 1. DOE letter to SFC 6/5/03
2. RIS 2000-23, attachment 1
3. DSER - Sept 2005
4. ODEQ letter to NRC 5/24/06

cc: Ray Plieness, DOE

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