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November 18, 1993

Samuel J. Chilk, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chilk:

I am enclosing for filing the original and two copies of Native Americans for a Clean Environment's Motion for Leave to Intervene in Proceeding Regarding Sequoyah Fuels Corporation's and General Atomics' Appeal of Nuclear Regulatory Commission's October 15, 1993, Order, and attached affidavit of Ed Henshaw. Please note that we did not receive a signed copy of Mr. Henshaw's affidavit in time for this pleading, and thus an unsigned copy is being filed today. Mr. Henshaw is mailing it the signed original to us and we will serve it on the Commission and the parties as soon as we receive it.

Sincerely,


Diane Curran

cc: Service List

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of)

Sequoyah Fuels Corporation)

(Source Material License No. SUB-1010)

Docket No.

40-0827
OFFICE OF SECRETARY
OF ENERGY SERVICE
BRANCH

**MOTION FOR LEAVE TO INTERVENE
IN PROCEEDING REGARDING SEQUOYAH
FUELS CORPORATION'S AND GENERAL ATOMICS'
APPEAL OF NUCLEAR REGULATORY COMMISSION'S
OCTOBER 15, 1993, ORDER**

Introduction

Native Americans for a Clean Environment ("NACE") hereby moves for leave to intervene in the hearing that has been requested by Sequoyah Fuels Corporation ("SFC") and General Atomics ("GA") regarding an October 15, 1993, order by the Nuclear Regulatory Commission ("NRC" or "Commission") to provide \$86 million in guaranteed decommissioning funding. The order was noticed on October 25, 1993, at 58 Fed. Reg. 55,087.

NACE, whose membership includes close neighbors of the SFC site, would be adversely affected if the October 15 order were reversed or weakened. If sufficient and guaranteed funds are not set aside for the cleanup of the SFC site, the site may become a long term nuclear and toxic waste dump. Thus, NACE has a strong interest in assuring that a full record is made regarding the legal basis for and reasonableness of the October 15 order against SFC's and GA's appeal.

Description of NACE

Native Americans for a Clean Environment is an Indian-controlled and staffed citizens' environmental organization, based in Tahlequah, Oklahoma. Its purpose is to educate the general public about environmental issues, with emphasis on the nuclear industry. NACE's approximately 400 members live in the United States, Canada, Guatamala, and Brazil. One hundred Indian Tribes, including 13 tribes in eastern Oklahoma, are represented in NACE's membership, which is also open to non-Indians.

NACE's membership includes individuals who live close to the SFC facility and who work and travel within close distance of the facility. These individuals would be directly and significantly affected if SFC did not adequately decommission the plant because of lack of funds. For instance, Ed Henshaw, whose affidavit is attached, lives next to the SFC facility. If the plant site is not decommissioned adequately, his groundwater and surface water may be poisoned with radioactive and chemical contaminants which migrate from the SFC site.

This Intervention Request is Timely.

NACE received notice of SFC's and GA's hearing requests on or about November 8, 1993, when it received copies from SFC's counsel, who had mailed them to the Licensing Board and the parties to the SFC license renewal proceeding. See Letter from Maurice Axelrad to James P. Gleason, enclosing hearing requests. While there is no established time frame for intervening in an

enforcement hearing that has been requested by a licensee, NACE submits that it has acted with reasonable speed by filing this motion to intervene within ten days of receiving notice of SFC's and GA's hearing request.

NACE notes that the October 15 order provided an opportunity for parties "adversely affected" by the order to request a hearing within 20 days of October 15, 1993. 58 Fed. Reg. at 55,092. However, that 20-day period was inapplicable to NACE, because NACE was not "adversely affected" by the order. See Bellotti v. NRC, 725 F.2d at 1381. Thus, NACE had no right or reason to request a hearing on the order. The potential adverse affect on NACE's interest in this proceeding arose only when SFC and GA requested a hearing on whether the order should be sustained. Accordingly, the timeliness of NACE's hearing request must be judged in relation to SFC's and GA's hearing request, not the 20-day period for hearing requests by parties adversely affected by the order.

The Board Should Admit NACE As An Intervenor in This Proceeding.

NACE seeks leave to intervene for the purpose of advocating the legal authority for and reasonableness of the October 15 order. If SFC's and GA's appeal is successful, NACE's interest in ensuring the adequate and safe decommissioning of the SFC site will be adversely affected by the resulting uncertainty that SFC and GA will provide adequate funding for the cleanup. NACE and its members who live and work in the vicinity of the SFC plant

will be left without any firm assurance that funding will be available to cleanup the SFC site. Instead, they will be left to rely on the good graces and good fortunes of of SFC and GA. If SFC does not meet its commitment to divert ConverDyn resources to the cleanup, or if ConverDyn is not successful, there is no assured source of funding for the cleanup of the SFC site, and thus NACE and other SFC neighbors will be left with a toxic and radioactive waste dump in their back yards. Accordingly, NACE has a vital interest in participating in this proceeding, so that it may be assured that the record of this proceeding fully supports the sustaining of the October 15 order.

NACE is aware that under the rule established by the D.C. Circuit in Bellotti v. NRC, 725 F.2d 1380, 1383 (D.C. Cir. 1983), it is not entitled to seek a hearing on the question of whether the October 15 order is adequate to protect public health and safety, or whether additional measures are required. NACE is not intervening for that purpose. Although NACE does in fact question whether \$86 million is an adequate estimate of decommissioning costs, we believe that the October 15 order is a vital first step toward providing reasonable assurance that the SFC site will indeed be cleaned up. Thus, NACE seeks to intervene solely for the purpose of protecting its interest in seeing that the October 15 order is fully defended.

NACE notes that it is an intervenor in the license renewal proceeding for the SFC facility, and that the Licensing Board's

determination of issues that NACE has raised in that proceeding may be affected by the outcome of this hearing on the October 15 order. SFC has requested the Licensing Board to dismiss the license renewal proceeding unconditionally, on the asserted ground that it is no longer subject to the Commission's license renewal provisions. NACE has opposed SFC's motion, arguing, inter alia, that SFC should be required to comply with 10 C.F.R. § 40.36 before it can be allowed to withdraw its license renewal application. In the course of considering SFC's motion, the Board has repeatedly questioned the NRC Staff, both orally and in writing, regarding the Staff's intentions with respect to the imposition of decommissioning funding requirements. It is clear that the disposition of this proceeding on decommissioning funding may affect the Licensing Board's decision on the terms of dismissal of SFC's license renewal application; thus, fairness requires that NACE be given the opportunity to participate in this proceeding for purposes of supporting the application of § 40.36 to SFC and GA.

Specific Issues on Which NACE Seeks to Intervene

NACE seeks to be heard in opposition to the following claims made by SFC and GA in their answers to the October 15 order:

- 1) SFC claims that it is not legally required to satisfy 10 C.F.R. § 40.36. SFC's Answer and Request for Hearing (hereinafter "SFC Answer") at 7, 9, 12, 15-16; GA's Answer and Request for Hearing (hereinafter "GA's Answer") at 7. NACE

believes this is an erroneous interpretation of the law, and seeks to be heard on the applicability of 10 C.F.R. § 40.36.

2) SFC and GA both deny that GA has direct control over the affairs of SFC, or that GA bears any responsibility for decommissioning funding. SFC Answer at 13, GA Answer at 4, 7, 13, 10. SFC also denies that GA had a central role in structuring the ConverDyn arrangement. SFC Answer at 13, GA Answer at 14. NACE disagrees, and seeks to be heard on the relationship between SFC and GA.

3) SFC also denies that its funding plans are inadequate to satisfy 10 C.F.R. § 40.42. SFC Answer at 12. NACE disagrees, and seeks to be heard on this issue.

4) SFC claims that SFC's arrangements with Converdyn "are expected to be capable of producing a substantial portion of the funds that SFC estimates will be needed for the SFC facility decommissioning." SFC Answer at 10-11. NACE believes this assertion is erroneous, and seeks to be heard on the reliability of SFC's existing financial arrangements to provide adequate decommissioning funds.

5) SFC "denies the implication" that the \$89 million in expected revenues from the Converdyn arrangement "are unlikely to be sufficient." SFC Answer at 12, GA Answer at 8. NACE believes that the costs of decommissioning are likely to greatly exceed this figure, and seeks to introduce expert testimony demonstrating that the ordered \$86 million in decommissioning funds is the very least that should be required.

6) SFC and GA deny that the NRC relied on GA financial commitments in authorizing restart of the SFC Facility on April 16, 1992. SFC Answer at 16, GA Answer at 11. GA also denies that it agreed to execute an agreement with SFC for decommissioning funding, or that if it had, such an agreement would have legally obligated GA. GA Answer at 12, 17-18, 20. NACE disagrees and seeks to be heard regarding these assertions.

7) SFC and GA assert that the consent order with EPA has no effect on the availability of decommissioning funds for NRC cleanup. SFC Answer at 14, GA Answer at 19. NACE believes this assertion is not supportable.

8) SFC asserts its preliminary plan for completion of decommissioning ("PPCD") satisfies the requirements of 10 C.F.R. § 40.42(c)(2)(iii)(D); and that if it did not comply, it would be entitled to an exemption under 10 C.F.R. § 40.14(a). SFC Answer at 15. NACE believes that § 40.42(c)(2)(iii)(D) is inapplicable; that if it were applicable, SFC does not satisfy it; and that SFC would not be entitled to any exemption.

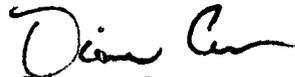
9) SFC and GA argue that the NRC has no statutory authority for the Order and that in numerous respects, the Order is arbitrary and capricious. SFC Answer at 16, GA Answer at 19-20. GA also argues that the NRC has no jurisdiction over it. GA Answer at 19. NACE disagrees with these assertions and seeks to be heard regarding the lawfulness and appropriateness of the Order.

10) Finally, we note that SFC and GA generally deny any statements in the Order which are not specifically admitted. SFC Answer at 1, GA Answer at 3. Thus, NACE reserves the right to respond to any further attacks by SFC or GA on the Order as they may be made in the course of the hearing.

Conclusion

For the foregoing reasons, NACE requests that it be admitted as an intervenor in this proceeding.

Respectfully submitted,



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6935 Laurel Avenue, Suite 204
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November 18, 1993

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

_____)
In the Matter of)
)
Sequoyah Fuels Corporation) Docket No. 40-0827
)
(Source Material License No. SUB-1010)
_____)

AFFIDAVIT OF ED HENSHAW

I, Ed Henshaw, depose and say:

- 1) I am a member of Native Americans for a Clean Environment ("NACE").
- 2) My address is Route 1, Box 76, Vian, Oklahoma, 74962. My home is adjacent to the Sequoyah Fuels site.
- 3) I am concerned regarding the potential contamination of my property and associated risks to my health and the health of my family if the radioactive and chemical contamination at the Sequoyah Fuels site is not properly cleaned up and decommissioned. I am particularly concerned that contaminated groundwater and surface water will migrate onto my property. I am also concerned about the social and economic impacts of living next to a de facto nuclear waste dump.
- 4) In order to do an adequate job of decommissioning the site, SFC needs to commit adequate funds to the task. Therefore, I believe my interest in a clean and healthful home and environment will be jeopardized if SFC and GA succeed in their appeal of the NRC's October 15, 1993, order to SFC and General Atomics to provide \$86 million in assured decommissioning funding for the SFC cleanup.
- 5) Accordingly, I have authorized NACE to represent my interests by intervening in the hearing which SFC and GA have requested regarding the NRC's October 15 order.

Ed Henshaw

Signed and sworn to before me this ____ day of November, 1993.

Notary Public

CERTIFICATE OF SERVICE

I certify that on November 18, 1993, copies of the foregoing Native Americans for a Clean Environment's Motion for Leave to Intervene in Proceeding Regarding Sequoyah Fuels Corporation's and General Atomics' Appeal of Nuclear Regulatory Commission's October 15, 1993, Order, were served on the following by first class mail and/or FAX, as indicated below:

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