



OFFICE OF THE
GENERAL COUNSEL

RELATED CORRESPONDENCE
UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

DOCKETED
USNRC

'94 OCT -3 P5:09

October 3, 1994

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Stephen M. Duncan, Esq.
Mays & Valentine
110 South Union Street
Alexandria, Virginia 22314

Maurice Axelrad, Esq.
Newman, Bouknight & Edgar, P.C.
1615 L Street, N.W., Suite 1000
Washington, D.C. 20036

In the Matter of
SEQUOYAH FUELS CORPORATION
GENERAL ATOMICS
Docket No. 40-8027-EA

Dear Messrs. Duncan and Axelrad:

Enclosed for your consideration is a draft of a proposed protective order that reflects several changes made from the previous draft submitted to you by the NRC Staff on August 15, 1994. After carefully considering our most recent discussion with you, the NRC Staff has determined that some but not all of the changes urged by General Atomics and/or Sequoyah Fuels Corporation would be acceptable to the Staff.

If after reviewing the enclosure you believe there are fundamental differences that the parties will not be able to resolve through compromise, please let me know.

Sincerely,

Steven R. Hom
Counsel for NRC Staff

Enclosure: As stated

DESIGNATED ORIGINAL

Certified By

1003-07 CK

SECY-040

15762

DS63

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

PROTECTIVE ORDER

IT IS HEREBY ORDERED that all parties to this proceeding, counsel thereto, and the individuals and entities specified herein, are subject to the following terms and conditions:

1. This Protective Order governs the disclosure and use of the following categories of "discovery material" (documents, answers to interrogatories, and answers to requests for admissions obtained in this proceeding through the discovery provisions of Part 2 of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders, and any information which would reveal protected matters in those documents, answers to interrogatories, and answers to requests for admissions):

(a) documents submitted by Sequoyah Fuels Corporation ("SFC") and/or General Atomics ("GA") which the Commission has previously

determined or determines should be withheld from public disclosure pursuant to 10 C.F.R. § 2.790;

(b) any discovery material produced in this proceeding and designated by any of the parties as "protected" as described below, except as modified pursuant to Paragraph 7, *infra*; and

(c) any discovery material which would reveal protected material referred to in clauses (a) and (b) above.

For purposes of this Protective Order, the foregoing shall be collectively referred to as "Protected Discovery Material."

2. If a party responding to a discovery request believes that any material produced or disclosed in response to such request:

(a) is entitled to protection as privileged or confidential information, or

(b) contains information that constitutes Protected Discovery Material provided by another party or which would reveal Protected Discovery Material,

such party shall segregate such material from other portions of the response to the discovery request and shall designate such material as Protected Discovery Material by stamping or otherwise marking it with the legend:

PROTECTED: Subject to Protective Order
in Docket No. 40-8027-EA

3. Disclosure of Protected Discovery Material as defined in Paragraph 1 shall be made only to the following persons:

(a) All counsel of record, other than NRC Staff counsel, and their supervisors, who have executed an affidavit of non-disclosure, or NRC Staff

counsel and their supervisors, who are governed by the nondisclosure regulations at 10 C.F.R. § 2.790 and/or 10 C.F.R. §§ 9.17 and 9.25;

(b) Officers or employees of any party other than the NRC, who have executed an affidavit of non-disclosure and are assisting in the preparation of this case, or NRC Staff who are subject to and governed by the non-disclosure requirements of 10 C.F.R. § 2.790 and/or 10 C.F.R. §§ 9.17 and 9.25, and are assisting in the preparation of this case;

(c) Persons, such as accountants, consultants, and economists, (i) not regular employees of a party other than the NRC, who have executed an affidavit of non-disclosure and are assisting in preparation of this case, or (ii) not regular employees of the NRC, who are by contract with the NRC subject to and governed by the non-disclosure requirements of 10 C.F.R. § 2.790 and/or 10 C.F.R. §§ 9.17 and 9.25, and are assisting in the preparation of this case and have a need to know; and

(d) Any person from whom testimony is taken or to be taken in this matter, whether the testimony is oral or written, for purposes of a deposition, interrogatory or hearing, who has executed an affidavit of non-disclosure, or who is an NRC employee, consultant, or contractor subject to and governed by the non-disclosure requirements of 10 C.F.R. § 2.790 and/or 10 C.F.R. §§ 9.17 and 9.25.

Such witness or deponent referred to in (d) above may only be shown Protected Discovery Material during his or her testimony and in preparation for such

testimony and only to the extent necessary for such testimony or preparation for testimony, unless the witness or deponent is otherwise authorized to examine Protected Discovery Material. Prior to disclosing Protected Discovery Material to any deponent or witness, counsel shall apprise such person of the protected nature of the material, and that the Protected Discovery Material is to be used solely for the purpose of this matter and no other purpose. Each such person shall not disclose any Protected Discovery Material, unless otherwise directed by the Licensing Board.

The individuals listed in this paragraph 3 shall not disclose, orally or in writing, any Protected Discovery Material to any person other than those persons subject to this Protective Order. Furthermore, no disclosure shall be made other than for purposes directly related to this proceeding and the hearing to be held in conjunction with this matter. Additional individuals may be designated only with the approval of the Licensing Board.

4. Nothing in this Protective Order shall prevent NRC Staff authorized to receive Protected Discovery Material from disclosing such to the NRC Executive Director for Operations, the NRC Director of the Office of Investigations, or the NRC Inspector General, or their staff, but such NRC Staff shall inform each of the foregoing to whom Protected Discovery Material is disclosed that the material was obtained from documents covered by this Protective Order. Notwithstanding any other provision contained in this Protective Order, the NRC Executive Director for Operations, the NRC Director of the Office of Investigations, or the NRC Inspector

General, or their staff may use or refer such Protected Discovery Materials as is appropriate in the legitimate exercise of their respective duties.

5. The restrictions on dissemination of Protected Discovery Material set forth in this Protective Order shall not apply to any party's non-public dissemination at its discretion of documents or materials that contain only its own Protected Discovery Material and neither contains nor is derived directly from materials for which another party is entitled to protected status. Once a party has publicly disclosed or disseminated its own Protected Discovery Material pursuant to this paragraph, the disclosed or disseminated material shall be deemed disclosed for all parties and for all purposes, and said materials shall no longer be subject to this Protective Order or remain confidential.

6. Parties granted access to Protected Discovery Material under the terms of this Protective Order shall take all necessary and prudent steps, including limiting the number of copies made, to prevent disclosure of the Protected Discovery Material, including any documents, notes, compilations, summaries or other documents incorporating the materials or their content. The Protected Discovery Material cannot be revealed, transmitted, or communicated to any person who is not described in Paragraphs 3 and 4 above. Each person given access to the Protected Discovery Material shall segregate all such material, keep it secure, refrain from disclosing it in any manner to persons not essential to the preparation and completion of this matter, and shall keep it confidential, and take all steps reasonably required to ensure that persons to whom counsel has permitted access for trial preparation maintain such

confidentiality, except as provided for by this Protective Order or other order of the Licensing Board. Furthermore, persons granted access to the Protected Discovery Material shall, upon completion of this proceeding, including any reviews or appeals, return all Protected Discovery Materials, other than those which have been made part of the record or have otherwise been relied upon by a party, to the Licensing Board or to counsel for the party producing said material for disposition. All other Protected Discovery Material shall be maintained and secured so as to prevent unauthorized access or disclosure.

7. In any testimony or pleadings filed with the Licensing Board in the above-captioned proceeding, on appeal, or in any other litigation matters, Protected Discovery Material shall be kept separate from the public record, according to the normal methods of protecting confidential information established by the pertinent tribunal. Any portion of the hearings before the Licensing Board pertaining to such material shall be conducted *in camera*.

8. Any party may object to the designation of material as Protected Discovery Material. Such objection shall be made by a letter to the party claiming protection, which letter shall identify the material to which the objection is addressed and the grounds for the objection. Such correspondence shall be treated as Protected Discovery Material. Prior to any further proceedings, the objecting party shall have the burden of consulting with the party claiming protection. If the dispute is not resolved through consultation, the objecting party may apply to the Board for a ruling that the material sought to be protected is not entitled to such status and protection.

In the event of a dispute concerning the designation of Protected Discovery Material, the material designated as protected shall be treated as such under this Protective Order until the Board orders to the contrary.

9. This Order is without prejudice to the right of any party to seek further or additional protection of any discovery material, including an order that certain discovery not be had.

10. Neither the taking of any action in accordance with the provisions of this Order, or the failure to object thereto, shall be construed as a waiver of any claim or defense in this action. Moreover, the failure to designate material in accordance with the provisions of this Order, or the failure to object to such designation at any given time, shall not preclude the later filing of a motion seeking to obtain such designation or challenging the propriety thereof. The entry of this Protective Order shall not be construed as a waiver of any right to object to the furnishing of information in response to discovery and shall not relieve any party of the obligation of producing information in the course of discovery.

11. The inadvertent production of any privileged or work product material shall not be deemed a waiver or impairment of any claim of privilege or protection, including but not limited to, the attorney client privilege and the protection afforded to work product materials. Upon receiving notice from the producing party that materials, including copies of summaries thereof, have been inadvertently produced, all such materials shall be returned to the producing party within five (5) days of receipt of such notice.

12. Any allegations of abuse or violation of this Protective Order will be referred to the Licensing Board for any action it deems appropriate.

The Atomic Safety and
Licensing Board

James P. Gleason, Chairman
ADMINISTRATIVE JUDGE

Dr. Jerry R. Kline
ADMINISTRATIVE JUDGE

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Thomas D. Murphy
ADMINISTRATIVE JUDGE

Dated at Rockville, Maryland
this day of September 1994