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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'95 MAR -6 12:30

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

NRC STAFF'S ANSWERS
TO THE ATOMIC SAFETY AND LICENSING BOARD'S QUESTIONS

INTRODUCTION

On February 24, 1995, the Atomic Safety and Licensing Board (Board) issued a "Memorandum and Order (Requiring Staff to Answer Board Questions)," instructing the NRC staff (Staff) to provide answers to two questions relating to the Staff's argument in support of its position regarding paragraph seven of the protective order proposed by Sequoyah Fuels Corporation (SFC).

The Board has instructed the Staff to answer the following questions:

1. What are the specific provisions found in NRC Manual Chapter NRC-0517 and Management Directive 8.8 that justify the Staff's position that there should be a free flow of protected discovery information to the Office of Investigations and the Office of Inspector General.

2. What comments [does] the Staff have about the applicability of the last sentence of NRC Management Directives System Directive 1.1, Policy (1.1-01) which states:

This directive and handbook do not affect Commission rules and regulations applicable to NRC Licensees, which are set forth in the *Code of Federal Regulations*, although some of

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these may be included in the system for the convenience of the NRC Staff.

The Staff hereby responds to the Board's Order.

DISCUSSION

1. Management Directive 8.8 and NRC Manual Chapter NRC-0517 and its appendix are mandatory for the Staff and the Staff is *required* to follow their provisions. 8 *Management Directives, United States Nuclear Regulatory Commission, Chapter 8.8, Manual Chapter NRC-0517-05.051.* Although they do not specifically address protected discovery information, as such, they do address how all matters or allegations of wrongdoing, without limitation as to the circumstances by which they come to the attention of the NRC, are to be handled by the Staff. The Staff has interpreted the provisions of Manual Chapter NRC-0517 to require the Staff to report all matters of possible wrongdoing which come to its attention, no matter what their genesis, to the Office of Investigations (OI) or the Office of the Inspector General (OIG), as appropriate. Any other interpretation would, in the Staff's opinion, be inconsistent with the objective of the Management Directive.

Manual Chapter NRC-0517-03.033(f) requires all Office Directors and Regional Administrators to "refer all matters *where there is a reasonable basis for belief of wrongdoing and for which the staff determines an investigation is necessary to determine whether regulatory action is required*, except those involving NRC employees or NRC contractors, to the Office of Investigations" *See also* Manual Chapter, NRC

Appendix 0517, Part III, B.1.¹ Manual Chapter NRC-0517-33.033(m) requires all Office Directors and Regional Administrators to "notify OI when the staff is aware of a matter which could potentially involve wrongdoing by licensees, vendors, or their contractors." Manual Chapter NRC-0517-04.043 is the only section which contains any reference to allegations of wrongdoing which arise during formal agency processes, such as hearings. These allegations, if not resolved within the hearing process, "shall be subject to treatment under this chapter [Manual Chapter NRC-0517]."² Therefore, any information regarding wrongdoing discovered by the Staff during review of discovery documents (unless related to the issues in the proceeding) would be subject to the requirements of Manual Chapter NRC-0517, and the Staff would be required to report same to OI or OIG.

2. There is no doubt that the management directives and handbook are applicable to the conduct of NRC employees only. The Staff has never contended otherwise. As stated above, they are, in fact, mandatory for the NRC Staff. *See* 1 *Management Directives*, Chapter 1.1, § 04.041 ("This directive and handbook apply to and must be followed by all NRC headquarters and regional office employees.").

¹ In addition, Manual Chapter NRC-0517-03.033(g) requires all Office Directors and Regional Administrators to "refer all allegations of wrongdoing by NRC employees or NRC contractors to [the Office of the Inspector General]."

² The allegations contained in an enforcement order upon which a proceeding is based would be an example of allegations which would be resolved within the hearing process. Conversely, if in reviewing discovery materials the Staff were to find information which led it to believe that an entity had committed another violation not addressed in the order, that is an allegation which would not be resolved within that hearing process.

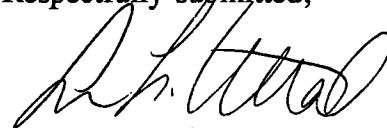
The Management Directives System incorporates the "basic NRC policies, requirements, procedures, and management information of overall applicability and . . . information on the manner of compliance with Executive orders, pertinent laws, regulations, and the directives of other Federal agencies." 1 *Management Directives*, Chapter 1.1, § 01. See also 1 *Management Directives*, Chapter 1.1, § 06.³ Although the Management Directives "do not affect Commission rules and regulations applicable to NRC Licensees," they may affect the manner in which the Staff is required to apply the rules and regulations. They therefore may affect how the Staff may deal with a licensee or a member of the public. The fact that they may affect how the Staff interacts with a licensee or other entity outside of the NRC does not render the Management Directives any less valid or binding on the Staff; the Staff is not aware of any right conferred by any Commission regulation or rule which is abridged by the Staff's application of the Management Directives.

³ The Management Directives System is a public document which is available in the Public Document Room. See *Administrative Procedure Act*, 5 U.S.C. § 552(a)(2)(c); 1 *Management Directives*, Chapter 1.1, Handbook, Part IV(a)(2). It is therefore available to those who do business with the NRC. Hence, such persons are on notice of the Commission's policies and practices as to the matters addressed the Management Directives System, including the treatment of allegations or evidence of wrongdoing.

CONCLUSION

The Staff is bound by the requirements of the Management Directives System, under which it is required to report, to the appropriate investigative body, *all* matters that come to its attention where there is a reasonable belief that wrongdoing has occurred. Therefore, the Staff respectfully requests that the Board adopt the proposed language for paragraph 7 of the protective order submitted by the Staff.

Respectfully submitted,



Susan L. Uttal
Counsel for NRC Staff

Dated at Rockville, Maryland
this 3rd day of March 1995

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWERS TO THE ATOMIC SAFETY AND LICENSING BOARD'S QUESTIONS" in the above-captioned matter have been served on the following by deposit in the United States mail, first class, or as indicated by asterisk through deposit in the Nuclear Regulatory Commission's internal mail system or as indicated by a double asterisk by facsimile or as indicated by a triple asterisk by electronic mail this 3rd day of March 1995.

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