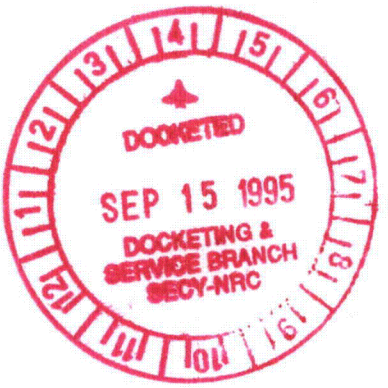
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

James P. Gleason, Chairman
Dr. Jerry R. Kline
G. Paul Bollwerk, III
Thomas D. Murphy



In the Matter of	)	Docket No. 40-8027-EA
SEQUOYAH FUELS CORPORATION and GENERAL ATOMICS	)	Source Material License No. SUB-1010
(Gore, Oklahoma Site Decontamination and Decommissioning Funding)	)	September 15, 1995

SFC'S MOTION FOR LEAVE TO FILE REPLY

Sequoyah Fuels Corporation ("SFC") respectfully submits this Motion for Leave to File a Reply. On September 8, 1995, Intervenors filed their "Response to Joint Motion For Approval of Settlement Agreement." Intervenors argue that the Settlement Agreement entered into between the NRC Staff and SFC "is either legally deficient or requires further investigation" in a number of respects, and they contend that the Settlement Agreement should not be approved.

The Intervenors have mischaracterized many facts and have misconstrued the terms of the Settlement Agreement. In addition, they have raised issues that are beyond the scope of this proceeding or are irrelevant to approval of the Settlement Agreement. Neither the NRC Staff nor SFC could have anticipated the Intervenors' arguments when they filed their Joint Motion for

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Approval of the Settlement Agreement. The attached Reply, "SFC's Reply to Intervenors' Opposition to Settlement Agreement," clarifies both the facts and the terms of the Settlement Agreement as they relate to the issues raised by the Intervenors. This will assist the Board in reviewing and rejecting the unfounded arguments raised by the Intervenors. Thus, the interests of justice will be served if SFC is given the opportunity to file the attached Reply.

Respectfully Submitted,

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ATTORNEYS FOR
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SFC'S REPLY TO INTERVENORS' OPPOSITION TO SETTLEMENT AGREEMENT

Sequoyah Fuels Corporation ("SFC") respectfully submits this Reply to "Intervenors' Response to Joint Motion For Approval of Settlement Agreement" dated September 8, 1995 (hereafter, "Response"). Intervenors argue that in "a number of respects" the Settlement Agreement entered into between the NRC Staff and SFC "is either legally deficient or requires further investigation." They therefore contend that the Atomic Safety and Licensing Board ("Board") should withhold its approval of the settlement.

In the Settlement Agreement (hereafter, "Agreement"), SFC has pledged to use its best efforts to preserve and use all of its net assets and net revenues for the purpose of decommissioning the Sequoyah facility and to do so until the NRC Staff determines that the decommissioning has been satisfactorily

completed. Nevertheless, the Intervenors have attempted to interpose various "issues" that are based upon erroneous assumptions of fact, misconstrue the terms of the Agreement, and in many respects go beyond the scope of this proceeding. As discussed in greater detail below, the Intervenors' specious arguments and misguided assertions are entirely without merit and should be summarily rejected. SFC respectfully asks that the Board act promptly to approve the Agreement and permit SFC to devote its full attention to the decommissioning task before it, rather than wasting its resources in needless litigation.

ARGUMENT

I. THE RIGHTS OF SENIOR LIENHOLDERS ARE UNAFFECTED BY THE SETTLEMENT AGREEMENT

Intervenors erroneously suggest that the Agreement gives "primacy" to senior lien-holders and somehow presents an opportunity for SFC to allow its "creditors to plunder its assets." Response at 4. In addition, Intervenors imply that General Atomics ("GA") is a senior lien-holder and demand that they be permitted to conduct various discovery regarding liens on SFC's assets. The Intervenors' concerns are erroneous and reflect a fundamental misunderstanding of both the Agreement and the legal significance of a senior lien. Thus, the discovery requested by the Intervenors is neither necessary nor appropriate.

As an initial matter, it must be noted that the Agreement does not in fact extend any rights or "primacy" to senior lien-holders. Rather, the Agreement merely recognizes the

fact that certain third-parties have liens on the assets of SFC and that such parties may, or may not, have legal rights that they may exercise with regard to SFC's property. The statement of fact that SFC's gross assets are "subject to the rights of senior lien-holders" does not confer any right upon such a senior lien-holder, but rather, the terms of the Agreement merely acknowledge that such rights may exist. There is therefore no basis for engaging in any further inquiry with regard to this matter, because neither the Order at issue in this proceeding nor the Agreement was ever intended to change the rights of any of SFC's senior lien-holders.

Nevertheless, the Intervenors have posited, without any foundation, that the Agreement's acknowledgement of pre-existing liens on SFC's assets raises the specter of SFC's creditors attempting "to plunder its assets." The focal points of the Intervenors' harangue on this issue are the Intervenors' erroneous presumptions that GA has liens on SFC assets and that the Agreement provides that SFC will pay Kerr-McGee $10.6 million prior to the completion of decommissioning. Both of these claims are completely wrong. Apparently, the Intervenors have confused debts with liens and have fantasized an unfounded parade of horrors resulting from the Agreement.

GA has no liens on SFC's assets. 1/ Kerr-McGee has a lien on SFC's property, plant and equipment as security for a promissory note that is owed to it (approximately $10.6

1/ SFC's two lines of credit with GA are unsecured.

million), 2/ and it has a similar security interest in the ranch lands that are owned by SFC's parent company, Sequoyah Fuels International Corporation ("SFIC"). When Sequoyah Holding Corporation ("SHC") acquired the stock of Old SFC (now, SFIC) in 1988, it paid to Kerr-McGee a sum of money and other consideration. Part of this consideration was execution of a $10,567,000 promissory note. The assets of Old SFC were the collateral for this note, and both SHC and Old SFC were co-makers of the note. 3/ When New SFC (now, SFC) was created in 1989, Kerr-McGee consented to the transfer of property, plant and equipment to New SFC, on the condition that its security interest would be preserved and that New SFC become a co-maker of the promissory note. Thus, SHC, SFIC and SFC are jointly and severally liable to Kerr-McGee for the $10.6 million note.

Significantly, no principal payments have ever been made on the Kerr-McGee note, and the last interest payment was made in August of 1993. Kerr-McGee has notified the parties of its position that a default has occurred, and negotiations are currently taking place. However, Kerr-McGee has not taken any action to exercise its rights pursuant to its liens and security

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2/ The only other current liens on SFC's assets are a number of liens on automobiles and office equipment (e.g., xerox machines, computers), in accordance with standard business practices for such assets. Any limitations on these liens would be inappropriate, as such limitations would only serve to disrupt SFC's ability to conduct its activities and potentially increase the costs of decommissioning.

3/ Despite Intervenors' protestations to the contrary, such an arrangement is a common business practice.

interest. SFC has no intention of resuming any principal or interest payments to Kerr-McGee prior to such time as the NRC Staff determines that decommissioning has been satisfactorily completed. SFC will not make any such payments to Kerr-McGee unless it is ordered to do so by a competent judicial or other governmental authority. SFC is dedicated to preserving and using its assets for decommissioning and has absolutely no incentive whatsoever to dilute its ability to complete decommissioning by "enriching" Kerr-McGee, as suggested by Intervenors. Response at 7.

Moreover, the Agreement does not do anything to alter the existing rights of senior lien-holders either favorably or unfavorably. Rather, the Agreement is completely neutral on this issue. Therefore, the Intervenors' purported concerns are of no moment. Even if the NRC had the authority to alter the pre-existing rights of third parties, 4/ there is no reason for the Board to broach this issue at this time. If Kerr-McGee attempted to exercise rights pursuant to a claimed "senior lien," the NRC's authority, if any, to alter such rights can be exercised at that time. 5/

4/ Notably, Kerr-McGee is not even a party to this proceeding.

5/ The Agreement provides that SFC's gross assets are subject only to the rights of senior lien-holders. Since the term "senior lien" means "a prior lien which has precedence as to the property under the lien over another lien or encumbrance" Black's Law Dictionary 1222 (5th Ed. 1979), the very terms of the Agreement that Intervenors question apply only to the rights of third parties that, by definition, have precedence as a matter of law.

In addition, the Intervenors' various references to piercing the corporate veil to hold GA liable for the Kerr-McGee note are a red herring. First, as discussed above, there is no need to do so, because no payments are being made by SFC on the note. Secondly, the question of GA's alleged liabilities regarding SFC are the subject of ongoing litigation in this proceeding. Nothing in the Agreement is intended to "exonerate GA from liability." Response at 7. Rather, it explicitly provides that nothing in the Agreement "shall be construed to limit the NRC staff's ability to continue to pursue litigation with GA." Agreement, ¶ 8.

Finally, the Intervenors' claims that SFC has no incentive to protect itself from "unjust or fraudulent commercial transactions" is absurd. SFC is managed by experienced and dedicated professionals who have every incentive to accomplish their current goal to decommission the facility. Many of these dedicated individuals have families that live in the local community around the Sequoyah facility. They have absolutely no incentive to "enrich Kerr-McGee" at the expense of the local community. The Intervenors' unfounded allegations are offensive and do a disservice to those individuals who have the primary responsibility for successful completion of the very decommissioning Intervenors' claim to desire. Moreover, the Agreement itself provides detailed commitments pledging to preserve SFC's net assets and net revenues for decommissioning. E.g., ¶¶ 3-4. Additionally, it specifically preserves the NRC

Staff's continuing authority to enforce compliance with SFC's commitments in the Agreement. ¶ 7.

II. EXISTING DECOMMISSIONING FUNDING MECHANISMS ARE UNAFFECTED BY THE SETTLEMENT AGREEMENT

The Intervenors raise concerns regarding SFC's existing decommissioning reserve and letter of credit that have been established, pursuant to the SFC license and NRC regulation, to provide for decommissioning funding. Response at 8-14. These pre-existing decommissioning funding mechanisms are simply not at issue and are beyond the scope of this proceeding. In addition, the Agreement does not affect the status of either the decommissioning reserve or the existing letter of credit. Therefore, the Board need not even consider the Intervenors' questions regarding these two matters.

The Intervenors' questions regarding the decommissioning and reclamation account presume that the decommissioning reserve is a cash account, which it is not, nor has it ever been. In accordance with the terms of Section 7.5 of License No. SUB-1010, the decommissioning and reclamation reserve is an accrual based upon units of production or a fixed monthly charge that is carried on SFC's balance sheet. The reserve is not a separate "source of decommissioning funding" as suggested by Intervenors, but rather is an accounting reserve that is backed only by the assets of SFC.

In any event, the decommissioning reserve is provided for and maintained under the terms of SFC's license, and it is unaffected by the Agreement. SFC will continue to maintain the

account in accordance with its license, and nothing in the Agreement limits the NRC's continuing authority to assure SFC's compliance with its license. There is therefore no basis for further consideration of any of the unfounded concerns raised by the Intervenors regarding this reserve. 6/

Likewise, Intervenors have misconstrued the facts associated with SFC's existing $750,000 letter of credit for decommissioning funding. Intervenors suggest that the Agreement is somehow deficient in failing to require that the letter of credit be used to fund decommissioning. As noted by the Intervenors, this letter of credit is a decommissioning funding mechanism that is required by NRC regulation. Therefore, there is no need for expenditures under the letter of credit to be a subject of the Agreement. The funds to be derived from the letter of credit are governed by existing regulations which assure that the funds are used for decommissioning. No further requirements are necessary.

In their misguided analysis of the existing letter of credit and the associated Standby Trust Agreement, the Intervenors conclude, without basis, that the Standby Trust has

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6/ Intervenors have erroneously claimed that SFC's transmittal to NACE on May 12, 1994 waived the confidentiality of the financial statements it had previously submitted on a proprietary and confidential basis to the Environmental Protection Agency. Response at 10 n.5. To the contrary, Mr. Ellis' letter to Lance Hughes transmitting portions of the submission specifically noted that the First Quarter Financial Statement was not being forwarded to Mr. Hughes because it is proprietary; and SFC's file copy of the transmittal to Mr. Hughes indicates that the First Quarter Financial Statement was not transmitted to Mr. Hughes.

been funded and raise questions as to interest earned by funds covered by the Standby Trust Agreement. Once again, the Intervenors have simply misunderstood the facts. SFC has a $750,000 letter of credit, and if funds were drawn on that letter of credit, such funds would be placed in the Standby Trust and would earn interest. The Standby Trust is designed so that its funds would be released to pay decommissioning expenses. No funds have ever been drawn on the $750,000 letter of credit and no interest has ever been earned under the terms of the Standby Trust. There is therefore no issue to be considered regarding interest.

Intervenors' confusion stems from a different financial arrangement. The bank that issued the letter of credit subsequently required SFC to back up the letter of credit with a separate cash collateral account. In order to do so, GA has placed $750,000 in a cash collateral account that is drawn on SFC's line of credit with GA. Interest earned on that cash collateral account has nothing to do with the terms of the Standby Trust cited by Intervenors.

SFC has recognized that since the bank currently requires the letter of credit to be fully collateralized, it would be preferable to replace the letter of credit with an escrow account. Thus, SFC has requested NRC approval to substitute an escrow account funded with $750,000 for the existing letter of credit and standby trust. The Intervenors have raised several questions regarding the proposed terms of the

escrow arrangement. However, the proposed escrow arrangement is not within the scope of this proceeding. SFC is in compliance with the existing regulatory requirement (in the form of its $750,00 letter of credit and Standby Trust). See 10 CFR 40.36(c)(2). Whether, and under what terms, SFC may be permitted to substitute an escrow arrangement is a separate regulatory matter that is currently subject to review and approval by the NRC Staff without regard to the pending proceeding or the Settlement Agreement.

III. THE REASONABLENESS OF SFC'S FINANCIAL RELATIONSHIP WITH CONVERDYN IS NOT AN ISSUE BEFORE THIS BOARD

The reasonableness of SFC's financial relationship with ConverDyn (Response at 14-15) is not within the scope of this proceeding. In fact, the Order issued to SFC on October 15, 1993 specifically documents the fact that the NRC Staff had previously reviewed the reasonableness of SFC's financial relationship with ConverDyn and concluded that it "appears to be a bona fide business arrangement among the various parties and their principals." Order at 8-9. The issue raised by the Order is not the bona fides of the ConverDyn arrangements, but whether or not those arrangements provided the financial assurance for decommissioning required by the NRC's regulations. Thus, the bona fides of the ConverDyn arrangements is not within the scope of this proceeding.

In any event, the concerns regarding the ConverDyn arrangements raised by the Intervenors are of no moment and are irrelevant to the Board's consideration of the Agreement. The

terms of the existing ConverDyn arrangements are not affected in any way by the Agreement. Moreover, as already explained above, SFC has committed in the Agreement to preserve and use all of its net assets and net revenues for decommissioning. In fact, SFC specifically "pledges to diligently pursue and use its best efforts to preserve all of its contractual rights under the ConverDyn Arrangements, until the NRC Staff determines that such decommissioning has been satisfactorily completed." Agreement, ¶ 3. 7/ This is a legally binding commitment, and the Agreement itself acknowledges the NRC Staff's continuing authority "to enforce SFC's compliance with this Agreement." Id., ¶ 7. The Intervenors' contention that SFC has no incentive to assure that it receives payment under the ConverDyn arrangements defies logic.

IV. THE SETTLEMENT AGREEMENT ALREADY PROVIDES THAT "ANY OTHER KNOWN OR FUTURE REVENUES DERIVED BY SFC FROM WHATEVER SOURCE" ARE COMMITTED TO DECOMMISSIONING

Intervenors have raised concerns that SFC might engage in some form of commercial activity in the future and that profits derived from such activities would not be used for decommissioning. Response at 15-16. In addition to being wrong, this assertion misunderstands the very essence of the Agreement. SFC is devoting one hundred percent of all of its present and

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7/ It should also be noted that the Agreement contains numerous provisions requiring that all of SFC's business activities be conducted in a reasonable manner. E.g., Agreement, ¶¶ 1(c)(1)-(9), 4(a)-(d). These provisions are commitments that are subject to the NRC Staff's continuing enforcement authority. Id., ¶ 7.

future net assets and net revenues, derived from whatever source, to the decommissioning of the Sequoyah facility. The Agreement specifically defines "gross assets" to include "any other known or future assets owned or acquired by SFC," and defines "gross revenues" to include "any other known or future revenues derived by SFC from whatever source." Agreement, ¶¶ 1(a), 1(b). SFC has pledged to continue to do so "until the NRC Staff determines that such decommissioning has been satisfactorily completed." Id., ¶ 3. SFC has no present plans to resume "some other type of profitable business" as suggested by Intervenors. Response at 15-16. However, if it were to do so, any such profits are committed to decommissioning under the express terms of the Agreement.

Finally, Intervenors' suggestion that the Agreement would "absolve SFC's successors in title to the contaminated property of liability for decommissioning funding" is preposterous. There is nothing in the Agreement that would absolve any "successors in title."

CONCLUSION

FOR THE FOREGOING REASONS, and those previously stated in the NRC Staff and SFC's Joint Motion for Approval of Settlement Agreement dated August 24, 1995, the Settlement Agreement is in the public interest. SFC respectfully requests that the Board approve the Settlement Agreement and dismiss SFC from this proceeding.

Respectfully Submitted,

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ATTORNEYS FOR
SEQUOYAH FUELS CORPORATION

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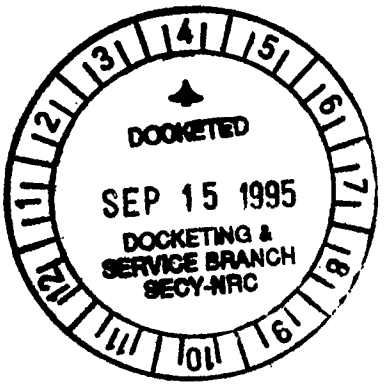

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(Gore, Oklahoma Site) Decontamination and Decommissioning Funding)	)	September 15, 1995

CERTIFICATE OF SERVICE

I hereby certify that copies of "SFC's Reply to Intervenors' Opposition to Settlement Agreement" and "Motion for Leave to File Reply" were served upon the following persons by deposit in the United States mail, first class postage prepaid and properly addressed, and by facsimile (except as otherwise indicated by an asterisk "*"), on the date shown below:

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U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
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(Original and two copies)

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