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)	)	

STATE'S RESPONSE TO NRC STAFF'S AND GENERAL ATOMICS' JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

COMES NOW the Attorney General of the State of Oklahoma, through Assistant Attorney General Jeannine Hale, and files this Response to the NRC Staff's and General Atomics' Joint Motion For Approval of Settlement Agreement, and states as follows:

INTRODUCTION

An interested state may comment without taking an adversarial position with respect to the positions of the parties to this proceeding. In that regard, the State acknowledges the efforts of NRC staff in trying to resolve the issues in this matter but, based solely upon the content of the NRC and General Atomic's Joint Motion and Proposed Settlement Agreement without supporting documentation, the parties have not provided adequate support for a determination that the proposed agreement is in the public interest. Further, the General Atomics (GA) Settlement Agreement (viewed alone or in conjunction with the earlier Sequoyah Fuels (SFC) Settlement) does not provide financial assurance for decontamination and decommissioning in compliance with regulations of the Nuclear Regulatory Commission (NRC). Therefore, it follows

that the Board may not approve the proposed GA Agreement unless and until adequate supporting documentation or financial assurance is provided. Final approval of the proposed SFC and/or GA Settlement Agreement(s) is premature since environmental review of alternative methods under the National Environmental Policy Act (NEPA) is still in progress, no final decommissioning plan or method has been approved and estimated costs to complete decontamination are highly uncertain. In support of these comments, the following is presented to the Board for consideration.

HISTORICAL PERSPECTIVE

The Order issued by NRC staff on October 15, 1993, pleadings filed in related proceedings by the NRC staff and the limited financial information released to the public in connection with the Gore facility, all verify the validity of the State's continuing concern that there is not adequate assurance that decommissioning of the site will be completed. The licensee, SFC, has not filed financial assurance as required by NRC regulations at 10 CFR 40.36 in an amount sufficient to cover the estimated cost of decommissioning per SFC's preliminary plan (about $86 million), which would allow contaminated soil to be disposed of onsite. NRC staff has asserted that General Atomics (GA), the party to the proposed settlement agreement now being submitted to the Board, is jointly responsible for decommissioning costs. GA challenged this position and the Court of Appeals for the Ninth Circuit refused to entertain GA's lawsuit relating to this issue until final agency

action by the NRC. See, General Atomics v. United States Nuclear Regulatory Commission, 75 F.3d 536 (1996); See also, EXHIBIT 1 - Litigation Report of February 26, 1996 from John F. Cordes, Solicitor to the Commission. The proposed settlement agreement with Sequoyah Fuels did not provide adequate financial assurance for decommissioning in the manner contemplated by 10 CFR 40.36 and neither does the proposed Settlement Agreement with GA.

The history of the State's participation in matters concerning the Gore facility before the NRC is of interest, as it demonstrates a continuing concern regarding potential environmental impacts to water quality and other resources of the State. First, the Oklahoma Water Resources Board (OWRB) pointed out the NRC's failure to require a Water Quality Certification under Section 401 of the Clean Water Act, as a prerequisite to issuance or renewal of the NRC license, and made recommendations regarding terms and conditions needed to protect water quality and regulate raffinate. See, EXHIBIT 2 - correspondence to NRC from OWRB and responses thereto during the period 1988 to 1990. Again in 1993, the Oklahoma Department of Wildlife Conservation made recommendations and comments regarding biomonitoring, the 401 certification and financial assurance in connection with the application for renewal and withdrawal of that application. See, EXHIBIT 3. Finally, in proceedings related to the proposed settlement agreement with SFC, the State maintained its interests and commented with regard to concerns regarding the funding for decontamination and decommissioning activities at the Gore site. See, EXHIBIT 4, State

of Oklahoma's Amicus Curiae Brief.

The above referenced comments and pleadings of the State's agencies raise issues and arguments which remain valid and pertinent in this proceeding and they are hereby incorporated by reference. At this juncture, the NRC has yet another chance to address these concerns, by way of making sure that there is adequate financial assurance to address decontamination, decommissioning and environmental concerns important to public health, safety and welfare. The fact is, at present, there is contamination of the environment at the Gore site, remediation is required and there is no adequate financial assurance to cover the entire cost of the remediation as required by NRC regulations. Will the Board require compliance by potentially responsible parties with NRC financial assurance requirements designed to protect the public interest and, if not, who will pay the costs of the remediation?

ARGUMENT

It is the State's position that persons and entities responsible for causing pollution or allowing the contamination to occur should bear the costs of remediation, not the state or its citizens. The provisions of 10 CFR 40.36 are consistent with that position and require types of financial assurance that are designed to ensure the protection of public health and safety. The terms of the proposed settlement agreements with GA and SFC do not meet the requirements of 10 CFR 40.36 and do not provide any acceptable means which may be substituted to meet that purpose. To the extent

federal law allows the NRC to require responsible parties to post financial assurance and fund decommissioning, the NRC must do so in order to protect the public interest. To the extent administrative staff or regulations may allow situations to arise where the public health and safety are not provided adequate safeguards, the burden necessarily falls upon the courts and administrative judges to impose the necessary safeguards required by law. It is recognized in this instance that regulatory amendments have been made to make the requirement of posting financial assurance in the full amount of decommissioning costs absolutely clear in the future.

As to the Gore facility, the Board must now ensure compliance with the financial assurance requirements and protect the public interest, as explained herein, in reviewing the proposed GA settlement agreement. The Board's review and order has special significance where, as here, there is a risk that the State, if left with a contaminated site, could be precluded from requiring remediation of some contaminants due to federal preemption. See, e.g., Kerr McGee Chemical Corp. v. West Chicago, 914 F.2d 820 (7th Cir. 1990). If the state is preempted from addressing matters subject to the NRC's jurisdiction at the Gore facility, then it is of utmost importance that the NRC make certain that the proposed settlements will provide for complete remediation of contamination by these materials.

The standard for determining whether the proposed settlement should be approved is whether it is in the public interest. See, for example, 40 C.F.R. 2.203 Settlement and compromise, which

states as follows:

> "... At any time after the issuance of an order designating the time and place of hearing in a proceeding to modify, suspend, or revoke a license or for other action, the staff and a licensee may enter into a stipulation for the settlement of the proceeding...The stipulation or compromise shall be subject to approval by the designated presiding officer or, if none has been designated, by the Chief Administrative Law Judge, according due weight to the position of the staff. The presiding officer, or if none has been designated, the Chief Administrative Law Judge, may order such adjudication of the issues as he may deem to be required in the public interest to dispose of the proceeding..." (emphasis added)

Likewise, the Commission may consider the public interest in exercising its discretion to afford review of a decision or action of a presiding officer. 10 C.F.R. 2.786(b)(4)(v).

Consideration of the public interest must necessarily account for the states' interests and the need to coordinate regulation and have responsibilities of the state and Commission clearly defined. The provisions of 42 USC Section 2021 recognize "(1)...the interests of the States... and the need to clarify "respective responsibilities under this chapter of the States and the Commission with respect to the regulation of byproduct, source and special nuclear materials" and "(4) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source and special nuclear materials..."

Due consideration of the public interest in this case does not mean that the Board may simply rely upon NRC staff recommendations. The list of "Whereas"s in the proposed settlement agreement provide some insight into the potential conflict faced by the NRC staff at this at this point - these statements do not reflect public health

and safety interests and are not reflective of the public interests that the Board must consider. NRC staff have made a 180 degree turn in position, from vigorous pursuit of enforcement to reluctant compromise in the face of a well financed corporate defense. Assuming that the NRC staff's concerns about agency resources are true, this does not mean that the settlement reflects the public interest.

As to GA's complaints related to financial impairment (pp 4-5 of the proposed agreement), they are not supported in the record and are therefore irrelevant in the Board's review. If GA has "other decommissioning obligations" not before the Board, we must assume that NRC staff has required GA to comply with applicable financial assurance requirements at those facilities as provided by law. If the Board determines that GA's financial responsibilities at other facilities are pertinent to the public interest determination in this case, the public has a right to information concerning the same. Likewise, if GA's ability to finance decommissioning at this site is a pertinent part of the public interest inquiry, that public interest in disclosure of that information must override any proprietary interest in the information GA may have - particularly since GA has raised this allegation and the staff is apparently relying on it as truth. Some basic information might be helpful in that regard, for example, current GA salaries, revenues, expenditures, debts, etc.

While the issues raised by staff and GA may be of practical and individual concern to them, they must not be the determining factor where public health and safety issues are likely to go unaddressed if staff recommendations prevail. The determining factor must be whether public health and safety will be protected if the two settlement agreements are approved. This requires an analysis of the adequacy of information upon which to make an informed decision, whether the agreements provide adequate financial assurance to meet the requirements of 40 CFR 40.36 and other requirements, and the risks if the agreements do not ensure completion of decommissioning to protect public health and safety.

In that respect, the following is pertinent:

1. It is clear that there is a relationship between General Atomics and Sequoyah Fuels. The NRC staff has raised allegations in pleadings that pertain to GA's liability for decommissioning costs; the State of Oklahoma has previously raised questions as to whether it is appropriate, in such a situation, to allow SFC resources to be transferred to GA via 1) substitution of SFC collateral for the GA cash security on the reserve account; 2) monies payable to SFC used to finance improvements for the benefit of the Converdyn venture (according to 847 F.Supp 866, footnote 5, the actual parties to the Converdyn partnership agreement are ASI and General Atomics Energy Services, Inc., SFC's parent company); and 3) payments of amounts owed on two promissory notes to GA in the approximate amounts of $2,500,000 and $4,500,000. The combined

effect of the two settlement agreements will be to allow GA to receive all of these payments and benefits from SFC, allow SFC to continue to incur new debts, and allow SFC to pay Kerr-McGee (another potentially responsible party for the clean up costs) some $10.6 million. SFC's 1996 annual budget report reflects the cessation of GA advances and debt repayment of over $1 million by SFC. Further, the NRC has concluded that SFC may transfer property (See, October 23, 1995 decision by the Commission, at page 16-17) not necessary for licensed activities, thus eliminating that property from assets available to meet decommissioning costs. The NRC staff has recognized that SFC is probably incapable of providing financial assurance for decommissioning. NRC Staff's Answer in Opposition to Intervenors' Petition for Review of LBP 95-18, dated December 1, 1995, at p.10.

2. There is no final plan for decommissioning. There is no estimate of decommissioning cost for any NRC-approved method of decommissioning. This is because environmental impact analyses have not been completed for the SFC proposed method of clean up and NRC has made no final decision on a selected alternative. We are therefore in the position of commenting on a proposed settlement to determine GA's contribution toward decommissioning when the cost of the decommissioning is uncertain. The only available estimate of decommissioning cost is from SFC 1995 figures, which place it somewhere near $84,000,000 if contaminated soil is left onsite. See, EXHIBIT 6, Table 10-2(Revision 1).

3. The SFC plan is totally dependent upon fees from the

Converdyn agreement. The State does not have access to detailed information about Converdyn arrangements and finances, since this has only been provided to NRC, and information about GA has similarly been withheld as confidential. It is clear that GA is a partner in Converdyn and thus potentially may control payments or other dealings with SFC via that contractual relationship. The agreement terms are not adequate to protect against interference or other failure of the contractual arrangements to produce the estimated revenues. SFC has admitted that these revenues are only estimates and are based upon unverified assumptions. This source of decommissioning funding is therefore highly speculative and unreliable. SFC fees are to be paid by the GAES and ASES partnership, subject to profits and available cash of the partnership and recovery of cost for SFC cleanup expenditures. See, EXHIBIT 5, 1996 SFC Financial Assurance Annual Budget Report for 1996 at page 1, footnote 1. Profits and available cash of the partnership are obviously subject to the partners' influence and GA-related entities are partners.

4. By the agreement, it appears that GA will be relieved of any claims by NRC for responsibility related to the SFC site. As to any material for which state regulation is preempted, what recourse is available if SFC can not finance the remaining costs of $85 million or more? 5. The net financial effect is to limit costs imposed upon GA to less than ten percent of the estimated cost of cleanup. GA will receive its $750,000 cash collateral, plus repayment of up to $7,000,000 (promissory notes), plus an

unknown amount via profits and payments related to Converdyn, for a estimated total of more than $8,000,000. GA will pay a maximum of $ 9,000,000 to the "trust". Thus, the estimated net amount that GA will pay out for clean up will be somewhere around $1,000,000. Even if GA pays $9 million into the fund and SFC does not repay the promissory notes, GA will receive any Converdyn profits, reducing its actual contribution to clean up. Regardless of whether the public is left footing the bill for decommissioning, the settlement absolves GA of any liability and they are free to continue to receive taxpayer funding for research and through government contracts (At one point, GA received fees via government contracts of up to $2.5 mil a year at its San Diego facility, and has costs reimbursed in addition to that - See, U.S. v. County of San Diego, 965 F.2d 691,693 (9th Cir 1992)).

As to Sequoyah Fuels, the net cash available for cleanup will be reduced by the amounts paid to GA and Kerr-McGee. If the Converdyn arrangement falls through, the public will be left with a site requiring decommissioning costing anywhere from 0 to over $80,000,000 (more if estimates are wrong or another alternative is required).

6. Legal implications and risks include more than just the risk of NRC staff losing at the administrative level against GA. If both settlement agreements are approved, the NRC will have released the licensee and parent company from providing any financial assurance in the form of cash, bond or other reliable means. NRC will not be able to pursue GA further if the SFC

funding plan fails. It seems unlikely that NRC staff will pursue the matter at all since they obviously do not wish to commit further resources to this case. The risks then fall upon others.

Unless the State, Cherokee nation or EPA are able to successfully pursue claims for cleanup against SFC and/or GA as to remaining radioactive contamination, that cost will be borne by the public or else the contamination will continue to create potential risks to public health and safety. Whether such claims by the state are preempted by federal law is a critical question - if so, then the present settlement proposals are the public's last real hope for achieving a fair commitment from these parties for financing cleanup.

7. The public interest is in conserving resources, but it may be most efficient to proceed with litigation against GA. The issue of the liability of GA as a parent corporation is one of significant interest and the ninth circuit has left that for determination by the agency prior to judicial consideration. The Board has authority necessary to manage that litigation, discovery and information submittals, timing and thus eliminate unnecessary delays or expenditures by the parties. The Board may aid the Court by establishing the administrative record.

8. The nature of the public interest in this matter is essentially that of a creditor of SFC and the public holds a constructive trust on funds and revenues in the hands of SFC, owed to SFC or other assets of SFC. The public's interest in safety and health is not protected by conceding that other claims, including

those of GA and KM, shall take priority over the public's interest in decontamination and decommissioning. It is a violation of that public trust to allow such assets and revenues to be given away to other potentially responsible parties, leaving the public with no one but an insolvent licenses to look to for funding of decommissioning costs. This public interest is mirrored in NRC regulations requiring a secured type of financial assurance in the full amount of estimated decommissioning costs.

9. The NRC staff have gone farther than necessary to relieve GA of responsibility. The agreement actually reduces GA responsibility if SFC does not repay them or if appeals are initiated and not resolved quickly. These provisions have a chilling effect on efforts of the state or others to seek a "priority claim " to SFC funds or to protest this settlement. Likewise, it has a chilling effect upon any tribunal which may consider this matter and determine that a portion of the agreement is not appropriate or that further litigation is appropriate.

CONCLUSION

In public interest, the State requests that the Board consider taking a course consistent with the following suggestions:

I. Order that the NRC staff and GA provide the Board, State and intervenors with additional, adequate documentation to support the assertion that, due to financial or other considerations, the parties' proposed settlement is in the public interest or otherwise meets the financial assurance requirements of 10 CFR 40.36.

II. Upon review of the additional financial and other information submitted to support staff's position that the public interest will be served, determine if additional discovery or orders are necessary to obtain all relevant information.

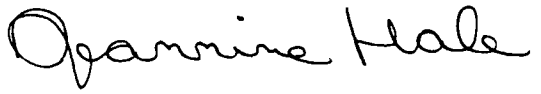
III. Allow appropriate participation by the state and intervenors and briefing on the public interest issues.

IV. Retract its previous approval, or stay the effectiveness of the approval, of the SFC settlement until final determination of the combined effect of the two settlement agreements.

V. Wait to render a final decision on both proposed agreements until an EIS is completed and costs are more accurately estimated and order interim requirements for both GA and SFC regarding payment of decommissioning and site characterization costs. Or, allocate costs based upon a percentage of actual costs, or provide for reopening of the Board's orders approving any allocation of costs to parties if the cost of an approved decommissioning alternative is greater than the present cost estimate.

VI. If the Board approves the GA settlement, then the approval of the SFC settlement must be rescinded or modified since the effect of approving both agreements in current form would be to allow the parties to avoid posting adequate financial assurance to ensure that public health and safety are protected by completion of decommissioning. If the Board disapproves the GA Settlement Agreement, it should issue appropriate orders to ensure speedy progress toward a final determination regarding the factual and legal issues relating to GA's liability.

RESPECTFULLY SUBMITTED



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CERTIFICATE OF MAILING OR DELIVERY

I certify that I mailed a true and correct copy of the forgoing Response to NRC Staff and General Atomic's Joint Motion, by overnight mail to the ~~Commission~~, Administrative Law Judges, Board and NRC counsel, and by first class mail, postage prepaid to all others listed below, the 5th day of September, 1996, addressed to the following:

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Washington, D.C. 20555

Kenneth C. Rogers, Commissioner
U.S, Nuclear Regulatory Commission
Washington, D.C. 20555

Office of Commission Appellate Adjudication
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Washington, D. C. 20555

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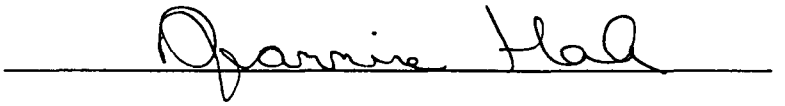

Exhibit 1

February 26, 1996 SECY-96-041

For: The Commission

From: John F. Cordes, Jr. /s/
Solicitor

Subject: LITIGATION REPORT - 1996 - 1

General Atomics v. NRC, No. 95-55520 (9th Cir., decided Jan. 30, 1996)

In this case General Atomics (GA) is trying to persuade the federal courts to halt an ongoing NRC enforcement proceeding. A GA subsidiary, Sequoyah Fuels Corporation, owns a contaminated site in Gore, Oklahoma. The NRC enforcement staff has alleged that given prior GA commitments and given GA's relationship with Sequoyah Fuels, GA may be held jointly responsible for cleanup of the Gore site. GA is participating in a Commission adjudicatory proceeding on this question, but also filed suit in federal court on the ground that the Commission lacks all regulatory jurisdiction over a non-licensee like GA. The federal district court dismissed GA's suit for lack of jurisdiction, and GA appealed to the United States Court of Appeals for the Ninth Circuit.

In January the court of appeals (Hug, Alarcon & Leavy, JJ.) issued a decision entirely favorable to the NRC. The court first held that NRC orders are reviewable only on petitions for review filed directly in the courts of appeals, not in lawsuits filed in federal district courts. The court next held that litigants in NRC administrative adjudications may not go to court in the middle of the administrative process to challenge the NRC's underlying enforcement jurisdiction. The court stated that "[j]udicial review of an agency's jurisdiction should rarely be exercised before a final decision from the agency" (Slip op. at 643). This ruling allows the NRC adjudicatory process to run its course without premature judicial oversight.

GA has 45 days to seek rehearing in the court of appeals and 90 days to seek certiorari in the Supreme Court.

CONTACT: Daryl M. Shapiro
415-1631

United States v. Construction Products Research, Inc., No. 95-6067 (2d Cir., decided Jan. 2, 1996)

[THIS CASE DELETED FROM SECY PAPER TO SAVE SPACE ON PRINTER]

OKLAHOMA WATER RESOURCES BOARD · 1957 ·

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OKLAHOMA CITY, OKLAHOMA (405) 271-2555
73152

JAMES R BARNETT
Executive Director
MICHAEL R MELTON
Assistant Director

EXHIBIT
2

October 4, 1988

Mr. Robert L. Fonner, Attorney
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RE: Water Quality Certification
Sequoyah Fuels Facility
Gore, Oklahoma

Dear Mr. Fonner:

You may recall that we recently discussed the issue of water quality certifications under Section 401 of the Clean Water Act as those provisions may apply to NRC licensing.

As you may know, Section 401(a)(1) of the Clean Water Act requires any applicant for a Federal license to conduct any activity which may result in any discharge into navigable water, to provide the Federal licensing agency with a certification from the state in which the discharge originates that the discharge will comply with applicable water quality standards. To our knowledge, SFC has not obtained a water quality certification from the Board for its NRC license.

You indicated in our previous telephone conversation that perhaps the U.S. Supreme Court decision of Train v. Colorado Public Interest Research Group, Inc., 426 U.S. 1 (1976), exempted the NRC from the Clean Water Act requirements. My preliminary review of the Train case indicates that it involved a question of whether the Environmental Protection Agency's regulation (under Section 402 of the Clean Water Act) of the discharge of "pollutants" included source material, special nuclear material or byproduct material. The Supreme Court found that the word "pollutants" as used in Section 402 of the Clean Water Act does not include such material. However, it is relevant to note that Section 401(a)(1) does not use the word "pollutant" in describing what the discharge (subject of the required state certification) may contain. In fact, the statute refers to "any" discharge which may result from the federally licensed activity. In view of that broad language, it appears that water quality certification of the

NRC license for the SFC facility which allows for the discharge of radioactive material should be required.

Please advise as to NRC's position on this matter.

Sincerely,

Dean A. Couch
General Counsel

DAC/lc

cc: James R. Barnett

OKLAHOMA WATER RESOURCES BOARD • 1957 •

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October 5, 1988

Mr. Lando Zech, Jr., Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RE: Sequoyah Fuels Corporation -
Gore, Oklahoma

Dear Mr. Zech:

Enclosed are copies of the Findings of Fact, Conclusions of Law, Order and waste disposal permit no. WD-75-074 adopted and issued by the Oklahoma Water Resources Board (Board) on September 14, 1988. These copies, along with recommendations, were ordered by the Board to be forwarded to the Nuclear Regulatory Commission.

As you know, the Sequoyah Fuels Corporation (SFC) operates a nuclear fuels processing plant located near Gore, Oklahoma. The Oklahoma Water Resources Board issued a waste disposal permit to SFC in 1977. That permit contained monitoring requirements for uranium, radium, gross alpha and gross beta particles and discharge limitations for other non-radioactive parameters. That permit was scheduled to expire in 1982. A timely application to renew was filed by SFC. Therefore, the permit continued in effect.

In considering the application to renew, the Board's staff thoroughly reviewed all activities conducted by SFC which may affect surface water and groundwater quality, including those subject of its NRC license. As part of this review, the Board's staff contacted the NRC staff to determine precisely the extent of NRC regulation over the facility. The NRC license was also reviewed. After getting verbal input from the NRC staff, but no response from NRC's legal department to our letter of August 13, 1986, regarding pre-emption, the Board's staff finalized a draft waste disposal renewal permit. That draft would have required discharge limits for uranium, radium 226, gross alpha particles and gross beta particles, based on the chemical toxicity (and not radioactivity) of these constituents. The draft permit also would have required a thorough groundwater quality monitoring program to

address the facility's raffinate waste disposal activities. Raffinate, a byproduct of SFC's process, is treated and stored in several surface lagoons at the facility. The treated raffinate is then land applied onto approximately 10,000 acres of land in two counties. Some of the land is near the facility site, most is several miles away.

The findings and conclusions enclosed resulted from a lengthy hearing process which took over one year to complete. The subject of the hearing was the draft waste disposal renewal permit prepared by Board staff. As indicated in its findings and conclusions, the Board ultimately determined that its regulation of the discharge of uranium, radium 226, gross alpha particles and gross beta particles, as well as of the disposal of the raffinate, is pre-empted by federal NRC regulation. Such a determination, however, does not eliminate the Board's duty to protect the waters of the state. Therefore, the Board recommends that the following items be carefully reviewed and considered by the NRC, and that, if necessary, the NRC license for this facility be amended to fully protect the waters of the State of Oklahoma.

1. The constituents of uranium, radium 226, gross alpha particles and gross beta particles in the wastewater discharge should be limited to such levels as will meet Oklahoma's Water Quality Standards for the ephemeral streams into which the discharge flows, as well as for the Illinois River and Arkansas River/Kerr Reservoir. The NRC license should include discharge limitations adequate to prevent toxicity (for protection of the designated uses of public and private water supply and fish and wildlife propagation) and to prohibit the lowering of water quality. In determining such limitations and other effectiveness, in-stream monitoring of the water and sediments should be conducted. A determination as to whether there is or has been any bio-accumulation of such constituents should also be made.

2. Regulation of the disposal of the raffinate waste should be reviewed and additional requirements made to protect the groundwater quality, as follows:

(a) A thorough study of the construction and effectiveness of the surface impoundments used to treat and store the raffinate should be conducted. Clean up of the groundwater underlying the impoundments, which has already been shown to have higher than naturally occurring levels of nitrates or other constituents, should be required through a schedule of compliance after submittal and approval of plans to evaluate the extent of such contamination and to conduct such clean up. Additionally, those surface impoundments found to be leaking should be properly repaired or removed from service after approval and implementation of a proper closure plan by the licensee.

(b) A review of the data from existing and abandoned/plugged monitoring wells on the test plots used for the spraying of treated raffinate should be conducted to determine whether such activities have caused degradation to the groundwater underlying the test plots. If the data shows that nitrates or other constituents in the groundwater are higher than natural levels, a clean up of the groundwater should begin immediately and further application of the treated raffinate at any location should cease. In any event, NRC should require the licensee to submit results and data from existing monitoring wells located on the additional tracts of land used for disposal of treated raffinate. Furthermore, NRC should review the locations of the existing monitoring wells and monitoring procedures to determine whether additional monitoring wells should be constructed by the licensee or different procedures adopted. A stormwater runoff monitoring plan for the off-site tracts used for treated raffinate disposal should also be required to protect surface water quality.

As you can see, the two major areas discussed above involve highly technical and complex issues relating to water quality and hydrology. The staff of the Oklahoma Water Resources Board stands ready to provide specifics about its recommendations, and to provide every assistance to the NRC, ensuring that all efforts to protect waters of the State of Oklahoma through NRC's license requirements.

Our staff looks forward to working with the NRC in protecting and improving the waters of the State of Oklahoma. If you have any questions regarding any of the above-discussed matters, please contact me at your convenience.

Sincerely,

James R. Barnett
Executive Director

JRB/lc

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JAMES R. BARNETT
Executive Director
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FAX (405) 271-2740

July 10, 1990

Mr. Stuart A. Treby
Office of General Counsel
United States
Nuclear Regulatory Commission
Washington, D. C. 20555

RE: Sequoyah Fuels Corporation, Section 401 Certification

Dear Mr. Treby:

Thank you for your letter of February 1, 1989, regarding the above-referenced facility. Please accept my apologies for having taken so long in getting back to you.

The Board appreciates NRC's acknowledgment that Section 401(a)(1) of the Clean Water Act (CWA) not only applies to NRC's initial licensing of the Sequoyah Fuels Corporation (SFC) facility but also to each subsequent renewal of the license. However, NRC's assertions that a state certification made when the Water and Environmental Quality Standards Act of 1970 was in effect is sufficient to meet requirements under the 1972 Federal Water Pollution Control Act and that the issuance of a state waste disposal permit for an activity are the functional equivalent of Section 401 certification for the facility, are unsupported by law and thus unacceptable to the Board. Additionally, the bootstrap arguments used by NRC based upon its earlier assertions that the Board waived certification by not renewing its SFC's state waste disposal permit within one year, and that because the new permit contains a provision requiring compliance with amendments to standards there is no necessity to afford Oklahoma the opportunity to certify each NRC license renewal, are likewise unsupported by any reasonable reading of the law, are inconsistent with one another, and are also not accepted by the Board.

As you are well aware, there are some activities and pollutants being discharged from the SFC facility which, as determined by the Board in its order issuing a new state waste disposal permit, cannot be subject of a state permit. However, a plain reading of Section 401(a)(1), which NRC has agreed is applicable, clearly

states that any activity which may result in any discharge is subject to the certification requirement. Therefore, NRC's argument that the state permit is equivalent to certification is clearly contrary to the Clean Water Act. The Board's previous or current waste disposal permit cannot fulfill the requirement for certification.

Furthermore, there has been no waiver of the certification requirements of Section 401(a)(1) by Oklahoma, because no applicant has requested such certification. It therefore appears that the NRC license has not been issued in compliance with the Clean Water Act.

It thus appears that further discussions among NRC, SFC and Board staff are needed to resolve this matter. We will be happy to host a meeting at a time convenient to all those interested. Please contact Dave Dillon, Chief of the Water Quality Division at (405) 271-2541 to arrange the meeting.

Sincerely,

Dean A. Couch
General Counsel

/kw

cc: Reau Graves, Sequoyah Fuels Corp.

EXHIBIT
3

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Ivan Selin, Chairman
Kenneth C. Rogers
James R. Curtiss
Forrest J. Remick
E. Gail de Planque

In the matter of:	)	
SEQUOYAH FUELS CORPORATION	)	Docket No. 40-8027-MLA
(Source Material License No. SUB-1010)	)	

OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION'S REQUEST THAT CONDITIONS BE PLACED ON THE APPLICATION TO WITHDRAW FILED BY SEQUOYAH FUELS CORPORATION

I. INTRODUCTION

The Oklahoma Department of Wildlife Conservation (the Department) has the following concerns with respect to the ongoing activities at Sequoyah Fuels Corporation (Sequoyah Fuels) during the decommissioning phase: 1) that a biological evaluation be made to determine what impacts the facility's operations have had and continue to have on natural resources; 2) that the decommissioning requirements include correcting natural resource damage identified by the biological evaluation; 3) that the decommissioning plan ensure that non-source material contamination will be identified and corrected; 4) the obtainment of a guarantee of adequate funding to accomplish decommissioning; and 5) that the Federal Water Pollution Control Act, Section 401, Certification

requirements are satisfied. As a result, the Department asks that the Nuclear Regulatory Commission (the Commission) exercise its discretion and impose the requirements listed below as conditions to allowing Sequoyah Fuels to withdraw its license renewal application.

II. THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION REQUESTS THAT THE NUCLEAR REGULATORY COMMISSION PRESCRIBE CONDITIONS ON LICENSE WITHDRAWAL

The Nuclear Regulatory Commission has the authority to establish the conditions for license withdrawal as follows:

> The Commission may permit an applicant to withdraw an application prior to the issuance of a notice of hearing on such terms and conditions as it may prescribe, or may, on receiving a request for withdrawal of an application, deny the application or dismiss it with prejudice.

10 C.F.R. § 2.107(a). The Department of Wildlife does not object to the withdrawal of Sequoyah Fuels' application. However, it does request that the Commission exercise its discretion by placing certain necessary restrictions on the withdrawal. To protect the State's interests if Sequoyah Fuels is allowed to withdraw its renewal application, the Commission must require as an express condition of granting the withdrawal, by an amendment of the existing license or by appropriate order, the following:

A. A BIOMONITORING PLAN

Attached as exhibit A is a proposed fish and wildlife monitoring plan prepared by Oklahoma State University on behalf of the Oklahoma Department of Wildlife Conservation with the assistance of the U.S. Fish and Wildlife Service. The objective of

this biomonitoring program was to assess the impacts of Sequoyah Fuels on fish and wildlife and wildlife habitat. This plan was prepared to provide insight into the impact of Sequoyah Fuels' operation not provided by previous monitoring efforts.

Although the attached plan was prepared in anticipation of Sequoyah Fuels' continued licensed operations, many of the evaluations inherent in this monitoring proposal apply to the decommissioning action. Therefore, a more focussed biomonitoring plan tailored to decommissioning is appropriate. It is important that wildlife oriented biomonitoring be part of decommissioning activities. The Department requests the opportunity to present a revised proposal tailored to decommissioning.

The Commission should exercise its discretion, under 10 C.F.R. § 2.107, and require that such a biomonitoring evaluation be completed to safeguard the State's interest on behalf of the public. First, Decommissioning activities must assure that any detrimental impacts to the fish and wildlife in the area have been identified and corrective action required. Second, the Commission must ensure that licensed activities continuing during the decommissioning phase do not endanger natural resources.

In conclusion, the Department requests that the Commission require, as a condition to allowing the withdrawal of the license, that Sequoyah Fuels will complete a biomonitoring assessment tailored to decommissioning activities.

B. SEQUOYAH FUELS MUST ENSURE FUNDING ADEQUATE TO COMPLETE DECOMMISSIONING

The Department agrees with the concerns raised by NACE that Sequoyah Fuels be required to ensure funding adequate to complete decommissioning. Sequoyah Fuels must provide, at this time, adequate financial assurance to ensure that it will satisfactorily complete decommissioning and closure in a timely manner. The Department requests that the Nuclear Regulatory Commission exercise its discretion, under 10 C.F.R. § 2.107, and require as a condition for license application withdrawal that Sequoyah Fuels prove funding adequate to complete decommissioning of source material as well as to correct natural resource damage caused by non-source material contamination. In addition, the Department requests that it have the opportunity to review and comment upon the financial assurances offered by Sequoyah Fuels or by any other entity on its behalf before a final evaluation is made by the Commission.

C. SEQUOYAH FUELS MUST OBTAIN A CLEAN WATER ACT SECTION 401 CERTIFICATION PRIOR TO CONDUCTING DECOMMISSIONING ACTIVITIES

The Commission must require that Sequoyah Fuels apply for and obtain a water quality certification as required by Section 401 of the Federal Water Pollution Control Act (Clean Water Act) and by State law. Section 401 of the Clean Water Act provides as follows:

> Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water

> pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of section 1311, 1312, 1313, 1316, and 1317 of this title.

Sequoyah Fuels must be required to provide such a certification to the Commission prior to any federal licensing or permit action to insure that any federal license or permission to operate issued by the Commission to Sequoyah Fuels will comply with Section 401. Compliance with state water quality requirements can usually be assured by including within the permit or license any specific conditions deemed necessary by the 401 Certification to protect the quality of waters of the State, including both surface and ground water. A "license" includes "... the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission ". 75 Okla. Stats. 1991, § 250.3(3). The Commission actions which require water quality certifications include the amendment or renewal of the existing license, the issuance of a new license, approval of any decommissioning plan, and approval of any closure plan by the Commission. Any of these actions involve the Commission giving Sequoyah Fuels permission to operate.

D. SEQUOYAH FUELS MUST BE REQUIRED TO EVALUATE, CONTAIN, AND ENSURE FUNDING ADEQUATE TO REMOVE HAZARDOUS WASTE-NOT SOURCE MATERIAL-THAT HAS CONTAMINATED THE NATURAL RESOURCES IN THE AREA

As a condition to withdrawal of the license, Sequoyah Fuels must be required to also ensure that decommissioning will encompass the non-source material contamination.

E. THE COMMISSION MUST REQUIRE AS A CONDITION TO SEQUOYAH FUELS' LICENSE WITHDRAWAL THAT ANY DECOMMISSIONING ACTIVITIES OR CONTINUED OPERATION WILL PROTECT NATURAL RESOURCES

The Oklahoma Department of Wildlife asks that the Commission ensure, prior to license withdrawal, that any operations conducted by Sequoyah Fuels prior to the approval of a decommissioning plan will safeguard environmental resources. The Department asks that it be given the opportunity to review and comment upon the propriety of any activities that Sequoyah Fuels seeks to conduct prior to the completion of a decommissioning plan.

In conclusion, the Oklahoma Department of Wildlife Conservation asks that the Nuclear Regulatory Commission require, as a condition for Sequoyah Fuels' license withdrawal, the provisions listed above.

Respectfully submitted

SUSAN B. LOVING
ATTORNEY GENERAL

BRITA HAUGLAND CANTRELL
ASSISTANT ATTRONEY GENERAL

On behalf of the Oklahoma Department of Wildlife Conservation

EXHIBIT 4

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
Sequoyah Fuels Corporation	)	Docket No. 40-8027EA
and General Atomics	)	Source Materials
Gore, Oklahoma Site Decontamination	)	License No. SUB-1010
and Decommissioning Funding	)	

STATE OF OKLAHOMA'S AMICUS CURIAE BRIEF

I. Introduction

On November 16, 1995, the State of Oklahoma ("Petitioner" or "State") filed a Petition for Review of the Memorandum and Order of the Atomic Safety and Licensing Board (ASLB) issued October 26, 1995, which approved a Settlement Agreement between staff of the Nuclear Regulatory Commission (NRC) and licensee Sequoyah Fuels Corporation (SFC). The State restated its concerns that any proposed agreement or order should adequately protect the public interest and questioned the adequacy of financial assurance for decommissioning necessary at SFC's facility near Gore, Oklahoma. The State later filed an amended Petition and Requested Leave to File a Brief regarding the issues. This request was granted.

The State's concerns are consistent the views expressed in the separate statement issued by Administrative Judge Bollwerk in the ASLB Order of October 1995. Judge Bollerk's declined to approve the agreement and asked for additional information,

stating that he was not prepared to make the requisite "public interest" finding pursuant to 10 C.F.R. 2.203. Although the State has subsequently reviewed additional materials and the SFC has submitted additional information, the State's concerns still remain. The underlying basis for these concerns is that the agreement is inconsistent with the prior position taken by NRC staff, the terms of the agreement do not contain financial assurance as clearly required by the NRC's regulations, the agreement releases SFC from a mandatory responsibility without supporting reasons or documentation, and the public receives no reassurance that remediation of the property will be completed.

It appears that SFC and GA are willing to commit significant resources to effect a maze of business entities, limit liability, and engage in vigorous legal disputes, all the while complaining that they are unable (or unwilling) to comply with the regulations for financial assurance. The GA and SFC entities contend that this agreement is the most we can hope for. It appears however, that SFC income could be deposited to a trust account, insurance or similar method of financial assurance not subject to SFC's control, rather than being diverted to the benefit of potentially responsible parties (GA and Kerr-McGee). GA/SFC's aggressive pursuit of private profit may be understandable and certainly makes things difficult, but it does not relieve the NRC or other regulatory agencies from their responsibility to enforce the law and ensure that any settlement protect *public health and safety and the environment.*

Viewed in light of current information, there is no evidence to support a finding that this agreement is in the public's interest. On the contrary, it creates new and additional obstacles to agency enforcement action if that becomes necessary. The State believes that there can be a satisfactory resolution of the issues which complies with the law and achieves both public and private goals. Therefore, pursuant to 10 CFR 2.715d and the Order of the Nuclear Regulatory Commission (the Commission) CLI-96-3, the State of Oklahoma hereby submits its Brief and respectfully requests that the Commission deny approval of the Settlement Agreement as proposed at this time.

II. SUMMARY OF FACTS

The State hereby incorporates by reference the facts and allegations set forth in its earlier comments, Petition, Second Amended Petition and Request to file Brief, and supporting documents. The Intervenors' summary of the Factual Background contained at pp 2-7 of "Intervenors' brief on Appeal of LBJ-95-18 sets forth the relevant history of this matter. See also, the summary of facts by the Court in Bradley v. Sequoyah Fuels Corp., 847 F.Supp. 863 (E.D.Okla. 1994).

The Gore facility has been operated by SFC since 1970, when it was a wholly owned subsidiary of the Kerr McGee Corporation (KM). KM sold SFC in 1988 to General Atomics (GA), retaining liability for pending lawsuits related to violations at the plant. See Kerr McGee SEC 10-K filed 4/4/89 at page 6. The

SFC is owned by SF International (SFI), which is owned by Sequoyah Holding Corporation SHC), which is owned by GA, which is owned by another GA related entity. Since the SFC and GA entities are private entities and appear to be somewhat secretive, details of their relationship and finances are not known and will require discovery of additional information. The Oklahoma Secretary of State recoreds indicate that Kerr McGee, SFC and SFI are currently registered and in good standing with the Oklahoma Secretary of State. SHC and GA are not registered to do business in Oklahoma.

In August of 1990, SFC applied for license renewal. In September 1991, the facility shut down for routine maintenance and violations were discovered. NRC ordered a shutdown in October 1991 which lasted until April 1992. Operations started back up in June, but in November 1992, a release of nitrogen dioxide caused another shutdown. SFC met with GA management on November 21, 1992. GA decided to stop advancing funds to SFC and SFC decided not to continue operations due to loss of revenue and lack of financing. SFC requested to be allowed to "withdraw" its application for renewal; the state and Intervenors filed responsive comments and pleadings. The State identified the need for an adequate decommissioning plan and financial assurance.

SFC submitted a proposed decommissioning plan in February 1993 which was based upon estimated revenues from a joint venture named "ConverDyn", an entity formed and owned by GA entities and Allied Signal Energy Services. No financial assurance as required

by the regulations was submitted with the plan. Since SFC did not have adequate financial assurance, in October of 1993, the NRC Staff issued an order that held that both SFC and its parent corporation General Atomics (GA) were jointly and severally responsible for the site in question. The order further held that the costs to fully decommission the facility were in excess of $86 million, and directed GA and SFC to put up funds in that amount. Both SFC and GA have protested the order. SFC says it can't put up the funds and GA denies that it is liable and asserts that NRC has no jurisdiction. The ASLB decided that it would address GA's jurisdictional claims first, and then would deal with the matter of the funding needed for the SFC site. GA sued the NRC in the Federal District Court.. Ultimately the 9th Circuit held that there had been no final agency action yet and denied GA's appeal.

In the meantime, all discovery has been stayed. GA negotiations and financial information submitted to NRC staff have been kept strictly confidential. SFC submits abbreviated financial status reports. There continues to be inadequate information available to the public concerning GA and SFC's assets, liabilities, contract obligations and benefits, distributions of assets, related entities' involvement. SFC continues to negotiate with NRC over the current guarantee by GA of $750,000 line of credit for decommissioning, trying to release GA from this obligation. Costs of clean up are estimated at $86 Million.

III. ARGUMENT

A. The Agreement Does Not Comply with Federal Law or Mandatory Requirements of Commission's Regulations

Apparently, due to the wording of regulations in 10 CFR Part 40, a "loophole" existed whereby SFC had not been required to file a decommissioning plan and financial assurance adequate to cover the costs of decommissioning by the time of their license renewal appliction. This wording has now been "fixed" to prevent this in the future. See, 60 Fed. Reg. 38235, July 26, 1995, whereby decommissioning funding requirements are clarified to require that both a plan and full financial assurance is now required at the time of renewal application. Under the new amendments, licensees who submitted an application for license renewal before July 27, 1990, such as SFC, must submit financial assurance in compliance with 40.36(a) and (b) by November 24, 1995. 10 CFR 40.36(c) provides that a plan with a cost estimate for decommissioning and financial assurance in the amount of the cost estimate must be provided no later than the renewal application. NRC's position appears to be that this was required all along under the old rules.

The proposed agreement would, in effect, allow SFC to provide "self assurance" and retain access and control of all monies to be used for decommissioning. This is clearly contrary to the approved methods itemized by the regulations. Under the terms of the agreement, SFC retains complete control of financial decisions and is allowed to pay back GA, a potentially

responsible party. SFC may make payments on existing loans from GA and Kerr McGee, another potentially responsible party, in excess of approximately $13 million. SFC will make payments to ConverDyn, a joint venture between GA entities and Allied Signal. ConverDyn will also receive income from SFC contracts and GA will receive a portion of these proceeds through its partnership interest in ConverDyn. SFC is allowed to incur additional debts, including debts to GA and other related entities. There are no terms in the agreement providing for oversight or regular review/supervision of SFC's transactions. No security is provided for decommissioning. There is requirement for disclosure of assets or liabilities of SFC .

The previous and amended regulations for financial assurance in 10 CFR Part 40 require that financial assurance be provided in a form that either "guarantees" payment of decommissioning costs via secured instruments or insurance, or via another mechanism which places funds out of the licensees' reach and control. This is consistent with the provisions of the Atomic Energy Act, 42 USC 2012 (purposes include protection of health and safety of the public), Section 2201 (x) (standards to ensure an adequate financial arrangement will be provided to complete all decommissioning and other requirements) and cases construing such requirements as valid. See, e.g. Quivira Mining Co. v. U.S. Nuclear Regulatory Commission, 866 F.2d 1246 (10th Cir 1989).

The proposed agreement fails entirely to provide financial assurance in the form that is required by the applicable regulations.

B. The Commission Must Require Financial Assurance For The Entire Cost of Complete Decommissioning

It is obvious that NRC staff and the Commission have interpreted the Act and their duties of protecting public health and safety as requiring financial assurance as evidences by the language of the regulations. The regulations contain no exemption. Even if an exemption could be allowed, in light of their history of noncompliance and admitted unstable financial condition, SFC certainly would not be entitled to one. We can not reasonably rely on securing financing from GA, because as the issues raised by GA are of first impression and, as SFC points out, it is not safe to assume any agreement with GA will be reached.

The new regulations expressly require financial assurance in an amount adequate to cover the cost estimate for the decommissioning plan. The explanation for the revisions clarify that the amendments are for "clarification" of what NRC intended to require under the previous version of the regulations. It is difficult to understand how NRC staff or SFC can argue that they have complied with these requirements. There is no letter of credit, trust fund, insurance or other authorized mechanism

provided in the agreement for funding adequate to meet the cost estimate of $86 million.

C. Approval by Commission At This Time Will Result in Prejudice and Irreparable Harm to the Public's Interests and the Government's Ability to Enforce Remediation Requirements

Contrary to SFC and NRC staff's argument, the proposed settlement agreement does negatively affect pending proceedings with GA and the likelihood of success in obtaining recovery or assurance from GA, SFC or any related entity. The prejudice will affect not only NRC's ability to enforce decommissioning requirements, but also the ability of EPA and the State to ensure that remediation will proceed as to pollutants under their jurisdictions since the theories of liability are similar. This is obvious by examining settled principles of law and by comparison of the existing situation with the potential results due to activities allowed under the agreement:

STATUS QUO/EXISTING SITUATION

Potentially responsible parties = 1) GA and related entities: A. due to relationship of GA and SFC entities and alter ego/piercing corporate veil theories, B. as guarantor of the $750,000 credit line, C. per verbal commitment; 2) SFC, SHC, SIC and related entities as owners/operators and alter egos; and (3)

Kerr Mcgee: A. as prior owner/operator, and B. availability of monies received by GA/SFC via the $10 mil "loan" by KM for financing the purchase of SFC .

Assets: ConverDyn income - contract between GA entities and Allied Signal

Assets and equipment remaining after prior dispositions

Decommissioning reserves

Other cash reserves

Indemnity agreement Allied to GA on behalf of SFC

PROPOSED SETTLEMENT

Potentially responsible parties = 1) GA , if alter ego theory prevails, will assert new defenses of waiver, accord and satisfaction; will no longer be guarantor since SFC wants to substitute its own money or another credit agreement; 2) SFC, SHC, SIC and related entities as alter egos have all settled their responsibilities via SFC agreement; 3) Kerr McGee proceeds of $10 mil "loan" not available anymore since SFC can pay them back. Constructive trust theory as to that amount subject to defense of waiver.

Assets: Routing of ConverDyn income to SFC may be terminated at anytime through control of GA as partner in converdyn..

Assets and equipment may be distributed to GA or related entities or innocent third parties

Decommissioning reserves and other cash reserves depleted before we ever know what is there

Indemnity agreement may be independently cancelled or superseded by GA and Allied

$ 750,000 guarantee by GA no longer exists, making this available for use by GA in other transactions

$ GA's percentage of income from SFC contracts through ConverDyn diverted by GA to other entities

Under the agreement, SFC may incur a new debt of $750,000 to third party, new secured and/or unsecured debts, and may be held liable only if prove breach of the agreement, fraud or misrepresentation. Under existing situation, SFC is subject to penalties for noncompliance with regulations and any order to provide financial assurance.

D. The Settlement With SFC is Premature Until Discovery is Allowed, Information is Disclosed to the Public, and a Determination Is Made Regarding GA/SFC's Relationship and NRC's Jurisdiction

As before, it is obvious that:

"Because of these shortcomings the SFC funding plan based on the ConverDyn arrangement does not fully satisfy the requirements of 10 CFR 40.36 and 40.42. No financial assurance mechanism, as required by 10 CFR 40.36, is in place, and the ConverDyn arrangement does not constitute the equivalent. ...If more costly decommissioning alternatives are required by NRC as a result of its decommission plan, the $89 million in revenues from the ConverDyn arrangement and other sources are unlikely to be sufficient. ...Accordingly,

> to satisfy the Commission's requirements, the ConverDyn arrangement must be supplemented by funding assurances to protect against SFC revenue shortfalls, and to assure additional funding if more costly decommissioning alternatives are required. ... However, since the ConverDyn arrangement appears to be SFC's only source of income. SFC does not appear to be able to satisfy the Commission's financial assurance standards. Accordingly, supplemental financial assurance is required from SFC's parent corporation, GA". 58 Fed Reg 55089.

The Board has previously found both SFC and GA jointly and severally liable for the decommissioning costs of the SFC site. While SFC has held the actual license to the facility since it was acquired from the Kerr McGee Corporation, GA has exercised corporate oversight and audit responsibilities. NRC Report (October 28, 1988). The issue of GA's degree of control over SFC, whether SFC is a corporate alter ego of its corporate parent, is of vital concern to all parties, including the State of Oklahoma. The financial information furnished by SFC does not indicate that it has the financial resources to fund decommissioning costs and is totally inadequate to assess the situation and determine the relationship among the GA/SFC entities.

As Judge Bullwerk noted in his dissent to the approval of the Settlement Agreement::

> "there is a clear linkage between GA and SFC by reason of their parent-subsidiary relationship and the involvement of GA and its subsidiaries, including SFC, in the ConverDyn partnership agreements under which a substantial portion of any SFC revenue purportedly is to be generated. In light of these interrelationships, it would seem that

> the Board's best opportunity fully to understand and assess the implications of any staff settlement with either GA or SFC would come when the Board has before it staff settlements with both parties that would resolve this case in toto." LBP-95-18 at 19.

E. Delay of Settlement Would Preserve the Status Quo and Would Not Cause Irreparable Harm to SFC/GA

The Commission has inquired as to whether any prejudice will result if this matter was deferred until a settlement is reached with GA. There will be no prejudicial effect to either party since the agreement requires SFC to devote its remaining assets to decommissioning, an obligation that would not be affected by delay. A requirement to pursue resolution through the pending proceedings and respond to discovery does not constitute irreparable harm to SFC or GA. There is no prejudice in requiring adequate disclosure of necessary financial information and having a procedure for thorough review. This is not provided for in the proposed agreement. Delay of the settlement will apparently not prevent SFC or GA from doing anything it could do under the agreement, since the agreement doesn't really do much.

III. Conclusion

The Board's approval of the settlement in question constitutes an abdication of its responsibility pursuant to 10 CFR 2.203 to insure that settlements be in "the public interest". The failure to enforce compliance with the requirements set

forth in 40 CRF 40.36 regarding funding for decommissioning renders them meaningless, encourages future noncompliance and requests for "exemptions" and sets a dangerous precedent for future proceedings before the Commission. An exemption should not be allowed without adequate documentation and consideration. The public interest requires that the public have access to adequate financial information so that it can participate in a meaningful way, that SFC's resources be maintained for the eventual clean up of the site and that responsible parties, not the taxpayers, be required to pay. The State of Oklahoma respectfully requests that the Commission disapprove of the Settlement Agreement and issue appropriate orders to require that adequate information is obtained/disclosed, the available assets are preserved and the pending issues are resolved in compliance with the law.

Respectfully submitted,

JEANNINE HALE, OBA #13627
ASSISTANT ATTORNEY GENERAL
2300 N. Lincoln Blvd.
State Capitol Building, Room 112
Oklahoma City, OK 73105-4894
(405) 521-3921

12-27-95

EXHIBIT 5

SEQUOYAH FUELS CORPORATION
FINANCIAL ASSURANCE ANNUAL BUDGET REPORT
FOR THE YEAR OF 1996

REVENUE SOURCE	1996 BUDGET
CONVERDYN FEES 1	5,757
G A ADVANCES 2	0
INTEREST INCOME	0
OTHER	37
TOTAL REVENUE	5,794

EXPENDITURES	
CORRECTIVE ACTIONS	950
CORRECTIVE ACTION SUPPORT	875
ADMINISTRATION	2,534
INTEREST EXPENSE	258
DEBT REPAYMENT	1,039
TOTAL EXPENDITURES	5,656

1 ConverDyn fees are monies payable to Sequoyah Fuels Corporation from the partnership formed by GAES and ASES. These fees are based on a recovery of cost for Sequoyah Fuels expenditures on cleanup activities, as well as a percentage of profits based on available cash of the partnership.

2 GA advances are Sequoyah Fuels borrowing against a revolving note with General Atomics. Revenues from the partnership that exceed expenditures in any period will be used to retire this debt.

SEQUOYAH FUELS CORPORATION
ESTIMATED CASH FLOW
(000'S OF DOLLARS)

Table 10-2
Revision 7
2/14/95

	1993 ACTUAL	1994 ACTUAL	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	TOTAL
INCOME														
UF6 CONVERSION REVENUE	1,366	84	83	21	17	18	17	7	4	5	3			6,5??
DUF4 REDUCTION REVENUE	9,507													9,54?
DISPOSITION OF INVENTORY	1,004	169	262	3,000										4,43?
RANCH REVENUE	290	253	342	200	290	290	200	240	700	280	290	280	300	3,9??
CONVERSION FEES	7,966	8,086	1,430	1,444	7,610	3,631	4,470	7,341	13,039	4,730	3,301	2,800	2,685	68,8??
TOTAL REVENUES	21,589	8,666	3,030	3,600	7,90?	3,049	4,667	1,350	13,740	4,041	3,008	3,034	2,885	88,1??
ACTIVITIES RELATED TO DECOMMISSIONING														
CLEAN-UP														
RAFFINATE SLUDGE	483	573							1,382	481				2,71?
FERTILIZER PONDS	672	780	167											1.5??
CaF PONDS									970	323				4,21?
URANIUM/UNUSUAL PRODUCTS	346	884												1,2??
DECOMMISSIONING:														
DECOMMISSIONING PLAN					300									3??
SITE CHARACTERIZATION		167	423	600	300									1,5??
CONSTRUCT CELL								700	1,000	750				2,0??
DECON PLANT BUILDINGS									1,763	2,350	887			4,7??
REMOVAL OF IMPOUNDMENTS								300	1,200	1,000				2,6??
DISPOSE OF SOILS									250	1,000	750			2,0??
CLOSURE OF CELL											4,450	1,450		2,0??
GEN & ADMIN:														
PERSONNEL	3,417	6,078	2,478	1,800	1,600	1,800	1,800	1,600	1,800	2,000	1,800	1,800	1,600	30,0??
PROFESSIONAL FEES	1,181	200	205	208	263	285	280	285	285	208	268	285	288	4,8??
TRAVEL, INSUR & OTHER	4,894	2,765	699	580	600	300	300	600	600	600	500	806	880	10,27?
DUF4 OPERATING	1,775													1,77?
PLANT CLEAN-OUT	1,800	(178)												1,1??
TRANSITION COST	268													26?
INTEREST (INC)/EXP	790	182	223	183	380	29	0	(111)	(284)	(386)	(395)	(171)	(137)	417
FINANCE COSTS	108	108	69	29	29	29	29	29	29	29	29	29	29	692
TOTAL COSTS	29081	11,078	4,080	3,037	3,808	2,828	2,884	1,433	9,895	9,082	6,180	3,873	2,457	94,8??
CASH FLOW FROM OPERATIONS	608	(5,403)	(1,330)	261	3,049	2,220	4,080	1,817	3,846	(4,141)	(2,086)	(847)	408	6,11?
(INCREASE) DECREASE IN RECEIVABLES	2286	243	50	(10)	(206)	83	8	(78)	(351)	846	71	0	14	2,8??
INCREASE (DECREASE) IN PAYABLES	3443	893	480	300	200	(2,890)	(1,336)							802
PROJECTED NET CASH FLOW BEFORE DEBT REPAYMENT	6394	(4,780)	(3,000)	694	3,040	418	2,701	1,030	3,297	(3,065)	(2,838)	(847)	422	8,8??

1 As of 2/1/94 Sequoyah Fuels debt consisted of $2.4 million to General Atomics (not including $1.2? million provided by General Atomics as collateral for two letters of credit held by Sequoyah Fuels) and $1?.6 million on a note to Kerr McGee Corporation. The note to Kerr McGee is collateralized and its terms are presently the subject of ongoing negotiations. Payments of principal and interest to Kerr McGee have been suspended.

EXHIBIT 6

CERTIFICATE OF MAILING

On this 11th day of April, 1996, a true and correct copy of the foregoing was mailed to:

Shirley Jackson, Chair
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Kenneth C. Rogers, Commissioner
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Greta Dicus, Commission
Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge James P. Gleason
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge G. Paul Bollwerk
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge Jerry R. Kline
Atomic Safety and Licensing Board
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Administrative Judge Thomas D. Murphy
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