LBP-96-24

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
Alternate Board Member

In the Matter of SEQUOYAH FUELS CORPORATION AND GENERAL ATOMICS (Gore, Oklahoma Site Decontamination and Decommissioning Funding)	Docket No. 40-8027-EA Source Material License No. SUB-1010 ASLBP No. 94-684-01-EA November 5, 1996

MEMORANDUM AND ORDER
(Approval of Settlement Agreement and Dismissal of Case)

Pending Board approval in this proceeding is a Settlement Agreement (agreement) between the Nuclear Regulatory Staff (Staff) and General Atomics (GA).[1] Objections to the agreement have been filed by Native Americans For A Clean Environment and the Cherokee Nation (Intervenors) and the State of Oklahoma (State) with

[1]Staff and General Atomic Joint Motion For Approval Of Settlement Agreement (July 11, 1996)

responses thereto by the Staff and GA.[2] The Board approves the agreement herein, and terminates the proceeding.

Background

This case involves an October 15, 1993 Order by the NRC to Sequoyah Fuels Corporation (SFC) and its parent corporation, GA, holding both organizations responsible for decommissioning funding of SFC's licensed facilities in Gore, Oklahoma. The agreement, appended hereto, proposes *inter alia* to release GA from liability in exchange for a payment of either $9 million or $5.4 million, the amount to be determined by Internal Revenue rulings on tax status of the payments. The Staff, through a GA created trust fund arrangement, is to approve the distribution of the funds, with GA having no control over the fund or the payments deposited therein. The Joint Motion for Approval of the Agreement requests suspension of all discovery activities in the proceeding pending any further reviews of this decision.[3]

The Board has previously approved a settlement agreement submitted by the Staff and SFC. That Order and agreement, wherein SFC pledges its net assets and revenues to

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[2]Intervenors' Opposition to Joint Motion (August 9, 1996); State's Response to Joint Motion (September 5, 1996); Staff Reply to Intervenors' Opposition and State's Response (October 11, 1996; General Atomic's Response to Intervenors and State's Opposition (October 11, 1996)

[3]In light of the decision herein, it is not necessary to act on this request.

decommissioning of its facility and which culminated in a dismissal of SFC from the proceeding, is presently under review by the Commission.[4]

The Intervenors and State assert the agreement before us neither meets the financial assurance regulatory requirements for decommissioning nor demonstrates that the public interest objectives of the 1993 Order are met. In sum, the parties request additional information concerning the agreement and an adjudication of its terms. See State Response at 13 and Intervenors' Opposition at 31.

Discussion

The pending agreement reads it is in full settlement of the NRC's 1993 Order to GA with both signatories affirming it represents a good faith, voluntary and major effort to resolve their differences. In its basic arrangement, the following provisions are stipulated:

> *GA to establish trust fund with $9 million contribution but obligated for only $5.4 million pending IRS tax rulings*
>
> *Payments from trust fund to be approved by NRC alone*
>
> *GA to refrain from interference with SFC settlement*
>
> *Two GA Officers to resign from SFC Board of Directors*
>
> *Staff to rescind October 1993 Order and refrain from other action against GA based on SFC affiliation*
>
> *Staff to forego any claim against GA based on defacto licensee theory*

[4]Memorandum and Order (October 26, 1995)

If agreement not upheld, funds to be returned and status quo of controversy restored

The State's Response[5]

It is argued that those responsible for causing pollution or allowing contamination to occur at SFC's site must bear the costs of remediation, not the State or its citizens. The State views the settlement as falling short of the mandate of 10 C.F.R. § 40.36 which requires those responsible for the contamination to provide financial assurance of decommissioning costs. It contends the Board must protect the public interest by declining to accept the settlement agreement. State Response at 4-5.

The State opines further it will be precluded from litigating additional liability claims against GA if the settlement agreement is accepted due to an unexplained claim of federal preemption under law. Moreover, the State contends, provisions of the Atomic Energy Act (42 U.S.C. § 2021) require the Board to take into consideration the State's interest in its public interest determination under 10 C.F.R. § 2.203. The State suggests the settlement agreement does not meet the public interest threshold because the "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." Id. at 5-6.

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[5]Due to the lengthy course of this proceeding - encompassing a three year period - the arguments of the State and Intervenors are set forth herein in detail.

It is the State's view that a public interest determination by the Board should not be based on the practical and individual concerns raised by the Staff and GA, but rather on an analysis of the adequacy of information pertaining to whether the agreements provide adequate financial assurance to meet the requirements of 10 C.F.R. § 40.36 and the risks if the agreement does not ensure completion of decommissioning.

In support of its position of prematurity for the Board to find the agreement in the public interest, the State alleges the following:

1) The settlement agreement between the NRC Staff and SFC, coupled with the present agreement allows the transfer of funds from SFC to GA which will not be available to pay for decommissioning costs;

2) There is no accurate prediction of the final cost of decommissioning at the SFC site;

3) SFC's ability to pay decommissioning costs is dependent upon its agreement with Converdyn and there is little public knowledge of the terms of that agreement. Moreover, GA may be able to influence payments by Converdyn to SFC;

4) The State, due to federal regulatory preemption, will have no recourse against GA if the settlement agreement is accepted;

5) GA has retained the ability to receive profits and taxpayer funds from other government contracts beyond the amount it is obligated to pay under the terms of the settlement agreement;

6) The NRC is in the best position to force GA to pay for decommissioning costs;

7) The public interest would best be served if the question of NRC jurisdiction over GA is litigated to its fullest extent;

8) In absolving GA of responsibility as a parent corporation, the Board is establishing a "chilling effect" upon any tribunal considering the future of the settlement agreement. Id. at 8-13.

The State requests the Board to order the Staff and GA to provide further information that will demonstrate that the settlement agreement meets the requirements of 10 C.F.R. § 40.36; to determine whether additional discovery concerning financial information is needed; to allow "appropriate participation" by the State and Intervenors in the Board's public interest determination; to stay the effectiveness of the settlement agreement signed between the NRC Staff and SFC; to delay a final decision on both settlement agreements until a final decommissioning cost estimate is obtained; and if the GA agreement is accepted, to rescind and litigate the settlement agreement executed between the NRC Staff and SFC. Id. at 13-14.

The Intervenors' Response

Intervenors assert the Staff has traded its claim that GA must share the full cost of cleanup for the minor sum of $9 million or less. This settlement deprives the public of reasonable assurance that the site cleanup will be completed in a safe and effective manner and, this they contend, will pose a threat to the Intervenors' health. Accordingly, the settlement agreement must be rejected because it lacks essential information on funding of decommissioning and fails to provide sufficient information to allow a positive public interest finding. Intervenors' Response at 1-2; 13-14.

It is claimed the Board is obligated to assure that Intervenors have a meaningful opportunity to participate in the proceeding for resolution of the conflict and is required by presidential directive to consult with tribal governments prior to taking action that affects them. Insufficient funding of the cleanup, it alleges, would have an adverse impact on the Cherokee Nation's sovereign interests in protecting its citizens, property and trust lands. Id. at 14-17. And, in order to assure meaningful participation, there must be sufficient disclosure to allow Intervenors to evaluate the proposed settlement. Intervenors claim they were deprived of essential information on the terms of the trust agreement, the degree of GA's continuing control of SFC, the costs of decommissioning, the adequacy of resources

to pay for cleanup, and GA's decommissioning costs for its facilities in San Diego. Id. at 17-18.

Intervenors argue the agreement fails to provide assurance of adequate funds to complete decommissioning as contemplated in the Staff 1993 order. Instead of responsibility for any funding shortfall by SFC demanded by the October 1993 Order, GA can commit a single payment possibly yielding, after taxes, to as little as $3.9 million for the cleanup effort. This settlement should be rejected, say Intervenors, because the potential cost of cleanup might be $150 million more than cited in the order and the Staff has no independent knowledge of what the actual costs might be. The agreement is also assertedly defective because it says nothing about the expected contribution of SFC to the cleanup effort; it does not provide that GA supply funding in a timely manner in relation to the need for funds; and it has an undisclosed impact on an EPA mandated cleanup effort since it provides for the retirement of two large loans being used to finance the EPA cleanup. It is contended that GA and the Staff must explain the impact of this measure on the EPA cleanup before a public interest finding can be made. Id. at 18-22.

Intervenors argue the settlement agreement fails to disclose the terms of the trust agreement; to resolve two tax liability issues related to obtaining an IRS opinion on whether the $9 million trust fund is taxable; and to provide

support for GA's claim that it would suffer financial ruin if a large adverse judgement were to be entered against it. Id. at 22-25.

Intervenors urge the Board not to approve the settlement agreement without first requiring full disclosure of the costs of cleanup of GA's San Diego facilities. They reject the Staff and GA assertion that these costs are outside the scope of this proceeding. According to Intervenors, if GA's liability for the San Diego facilities has had any impact on the amount of settlement for the SFC site, the accuracy and reliability of its assertions is relevant in this case and must be subject to evaluation by the Board and parties. Id. at 25-26.

The Intervenors urge the Board to reject the Staff's and GA's arguments concerning litigation risk because the prospects of winning any case are never certain. In this case, they argue, the Staff position was assertedly a strong one and it should not have been given up in exchange for an amount of money small in comparison to the cost of cleanup. It alleges the Staff did not secure a fair bargain for Intervenors or the public and any litigation expenses are minor in comparison with the cost of cleanup for the SFC site. Id. at 27-28.

Intervenors renew their questions over the SFC agreement concerning whether SFC will be required to pay a $10.6 million debt; concerns over the degree of control that GA

exercises over Converdyne; uncertainty whether GA officials could later be appointed to the SFC Board; and concerns whether GA could exercise control over SFC through its subsidiaries Sequoyah Holding Corporation and Sequoyah Fuels International. These issues, it contends, must be resolved before the settlement agreement can be approved. Id. at 29.

Intervenors state the settlement providing for the resignation of two GA officers from SFC's Board of Directors runs counter to SFC's license which is based on expectation of close GA involvement with management of its safety operations. It also precludes the Staff's claim that GA is a *de facto* licensee which may preclude future enforcement action against GA for matters such as quality assurance. This goes beyond the scope of the 1993 order and effectively amends SFC's license without notice in violation of the Atomic Energy Act and NRC regulations. Id. at 30.

The Staff and GA propound different responses to the issues raised by the objecting parties. They concur that the agreement represents a fair and reasonable compromise of their positions. The possibilities of not prevailing in protracted litigation, in their view, with time, expense and other financial considerations involved, attest that the agreement is in the public interest.

The Staff Reply

The Staff counters Intervenors' allegations by arguing that reasonable people can differ on the terms of an

agreement, but the Board is required, under the standards set forth in 10 C.F.R. § 2.203, to accord due weight to the Staff's position; that it has available information concerning GA's financial position which, under the Commission's regulations (10 C.F.R. § 2.790(a)(4)) it is unable to disclose publicly; that even the lower amount of funds from GA--$5.4 million--justifies the agreement and the $72 million projected from Coverdyne to SFC should not be ignored in reviewing the funds pledged by GA.[6] Staff Reply at 4-15.

The Staff contends that disclosure of GA's financial information could threaten the company's competitive position and the agreement's funding. It is claimed that irrespective of the final cost of decommissioning, the agreement was in the public's interest and its provisions preclude GA from manipulating SFC's present or future assets and revenues. On the State's contention that continued litigation of GA's liability was "of significant interest," the Staff asserts that GA contributions were more in the public's interest than a lengthy and expensive adjudication. To the State's claim that the SFC agreement should be rescinded if the agreement under consideration is approved, the Staff avers the SFC agreement is beyond the jurisdiction of the Board. Staff Reply at 15-24.

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[6]The Staff correctly characterizes as moot the Intervenors' argument against a provision authorizing GA to review NRC press releases on the agreement.

General Atomics' Response

In countering the Intervenors' and State's contentions together, GA argues that settlement of contested proceedings are encouraged by the Commission and the only consideration is whether the agreement is fair and reasonable. Citing NRC case law, decided prior to the regulation on settlement of enforcement orders, GA argues that a settlement agreement must be approved unless "patently arbitrary or contrary to law".[7] Citing a number of considerations involved in the settlement discussions as constituting the agreement as "fair and reasonable," GA argues that the opposing parties seek discovery on matters beyond the Board's jurisdiction, such as decommissioning costs at GA's NRC licensed facilities in San Diego. GA concludes no evidence had been submitted to rebut a "heavy presumption" that the agreement was fair and reasonable. GA Response at 7-31.

Decision

The substance of the several positions iterated by Intervenors and the State is that the agreement negotiated by the Staff and GA is not in the public interest and a variety of matters related to it require adjudication prior to its approval by the Board. These include, *inter alia*, current cost estimates of SFC's decommissioning, GA's financial condition, information on GA's licensed San Diego facilities

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[7] *In the Matter of New York Shipbuilding*, 1 AEC 842,844(1961)

and the Coverdyne arrangement. The Board's function in reviewing settlement agreements, as delineated in 10 C.F.R. § 2.203, calls for settlements to be approved by the Board and an adjudication of any issues that may be required in the public interest to dispose of the proceeding. The Board is enjoined therein to provide "due weight to the position of the Staff." The settlement of contested proceedings has long been encouraged by the Commission. See 10 C.F.R. §§ 2.759, 2.1241. And guidance on the subject encourages Licensing Boards to hold settlement conferences. *Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 456 (1981).

A review of NRC cases concerned with settlements disclose limited information on standards utilized in support of Board approval of such agreements. These decisions are accompanied generally by succinct references that on the basis of Board review, the agreements involved were found in the public interest. See, e.g., *Radiation Oncology Center*, LBP-96-4, 43 NRC 101, 102 (1996); *North American Inspection, Inc.*, ALJ-86-2, 23 NRC 459, 460 (1986). It would appear that, in enforcement cases, the weight provided the Staff's position has uniformly resulted, without more, in Board acceptance of the agreements. The rationale for such judgments may be grounded on the merited understanding that, in the end, the Staff is responsible for maintaining protection for the health and safety of the public and in the

absence of evidence substantiating challenges to the exercise of that responsibility, the Staff's position should be upheld. And the lack of such evidence appears to be the case here in considering approval of the agreement before us.

Nothing the Intervenors or State have propounded evidences a conclusion that, due to the terms of the agreement before us, the public's health and safety will not be protected. On the fundamental question of whether adequate funds will be available for decommissioning SFC's facility, GA in its response, submitted a Declaration of its Vice President-Administration conveying information that SFC is receiving revenue from Coverdyne and the latter firm is performing as expected under its agreement with SFC. Declaration at paragraphs 9-11. The Staff, which the Declaration alleges, has been receiving financial spreadsheets of Coverdyne's substantial performance to date, comments that the total projected revenues to SFC--approximately $72 million--should not be overlooked in the consideration of approving the agreement. And, the agreement itself cites that "based upon SFC's actual experience to date, General Atomics and SFC believe that SFC's net assets and revenues, as defined in the Settlement Agreement between the NRC Staff and SFC, will provide adequate capital resources to allow SFC to conduct its ongoing standby operations and to complete environmental remediation and decommissioning."

It is the opinion here, that in addition to the foregoing assurances concerning the likely availability of decommissioning revenues, an approval of settlement of the enforcement order should also receive our affirmation after weighing the consideration given to other factors in the public interest.[8] These factors concern the intensity of negotiations, the complexity of questions of law and fact in the proceeding placing its ultimate outcome in doubt, the value of an immediate recovery compared to the mere possibility of prevailing after protracted and expensive litigation and the judgment of the parties concerning the fairness and the reasonableness of the settlement.[9]

Despite the concerns expressed by the Intervenors and State, the issue is not whether the matter before us presents the best settlement that could have been obtained. Our obligation instead is merely to determine whether the agreement is "within the reaches of the public interest." United States v. Gillette Company, 406 F. Supp. 713, 716 (1975). Here, the Staff and GA negotiated the terms of this agreement over a period of ten months, a fact which supports a recognition by the parties of the seriousness of resolving the litigative differences involved; both signatories, in the

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[8]See Sequoyah Fuels Corporation and General Atomics, CLI 94-12, 40 NRC 64,71 (1994)

[9]A leading case in settlement proceedings where similar factors were delineated. Gottlieb v. Wiles, 11 F.3d 1004, 1014 (1993).

agreement and responding briefs, cite the complexity of the legal and factual issues between them and the heavy financial and manpower resources required if the proceeding continues; in comparing the value of GA payments under the agreement against the possibilities of ultimately prevailing in the litigation, the Staff recognizes the risk of not receiving any funds if, either, its unique legal theory of holding GA liable as a *defacto licensee* does not prevail or the Company's finances are depleted as a competitive business entity; and finally, both parties, in consideration of the total circumstances of the controversy, assent to the fairness and reasonableness of the agreement. From the terms of the agreement and the briefs submitted by the signing parties, it is clear that the interests of the public have not been neglected in the document before us. It requires our approval.

There is no necessity for this opinion to discuss extensively the arguments raised by the opposing parties: no basis exists for concluding that NRC's regulatory requirements for funding decommissioning will not be met; the trust fund called for in the agreement has been instituted and its provisions made public; any judicial review here of the Staff-SFC settlement agreement is now beyond this Board's jurisdiction; consideration of GA's license responsibilities at its facilities in San Diego, California, or anywhere else, does not bring the Staff review of such matters within our

jurisdictional boundary; this Board has no jurisdiction to consider impacts that the agreement's provisions might have in regard to cleanup requirements of the Environmental Protection Agency; both the Intervenors and State have had their interests acknowledged by being allowed to participate in this proceeding and to express their concerns; and finally, although the current financial estimates of SFC's decommissioning costs, if different from those previously submitted to the Staff, may have some bearing on the Staff's determinations leading up to the agreement, they have no bearing on the Board's responsibility in approving the agreement itself. On its part, the Staff has acknowledged that these estimates may have increased and nevertheless, the lowest figure mentioned in the agreement--$5.4 million--would still justify its acceptance.*

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*The dissent to this opinion by our colleague, like his similar dissent to the Board's approval of the Staff/SFC settlement agreement, requires additional information from the Staff to secure his concurrence herein. The majority declines to follow that course because it projects the Board's role as one of overseeing the Staff's function of assuring decommissioning funding of the Sequoyah facility. The information requested might be necessary at a trial on the merits. Here, the inquiry is inappropriate because it would, in our view, make us a participant in settlement negotiations.

The majority opinion recognizes that our role at a settlement stage is limited to a review that consideration has been provided to the public interest. The Board's approval of the agreement is not based on the merits of the

In light of the foregoing, the settlement agreement is approved.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

James P. Gleason, Chairman
ADMINISTRATIVE JUDGE

Jerry R. Kline
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 5, 1996

1993 Order but the merits of the agreement itself. The majority declines to intrude into the merits of the issues of the case because that would ignore the fact that a settlement is a compromise of the issues framed by the Order; it would invade an area of Staff responsibility; and would not give appropriate weight to the Staff's position as required by 10 C.F.R. § 2.203. It is apparent that the Staff is now willing to forego claims for total funding assurance based on its theory that GA is a *defacto licensee* in exchange for limited but guaranteed contributions from GA. No conclusions can or should be reached from that decision that decommissioning of SFC's facility has been abandoned or threatened. That matter is not before us and to suggest it might be is to provide little, if any weight to the Staff's position in the settlement as we are directed by NRC's regulations to do.

Dissenting Statement by Bollwerk, J.

Previously, when the Sequoyah Fuels Corporation (SFC) and the NRC staff sought Licensing Board approval of their proposed agreement to settle this litigation as between them, I declined to consent and filed a separate statement. In that statement, I delineated several matters about which I needed additional information before I could make the requisite "public interest" finding pursuant to 10 C.F.R. § 2.203. See LBP-95-18, 42 NRC 150, 156-59 (1995) (separate statement of Bollwerk, J.), petition for review granted, CLI-96-3, 43 NRC 16 (1996). Now, more than a year later, I find myself in the same position relative to the pending settlement agreement between General Atomics (GA) and the staff. Below, I outline my central concerns about the GA/staff agreement and the questions I would seek to have answered.

The staff's October 1993 enforcement order was rooted in three premises:

> (1) The existing sources of revenue for cleanup of the SFC Gore, Oklahoma facility consist of (a) the ConverDyn agreement that, while estimated to result in revenues totaling no more than $72 million, was "based on inherently speculative assumptions" such that it did not provide the requisite "reasonable assurance" of adequate decommissioning funding under 10 C.F.R. § 40.36; and (b) $17 million from other sources.
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> (2) Based on SFC estimates of the cost of its preferred decommissioning alternative (which had not been approved by the staff), decommissioning costs would run at least $86 million, but there was "uncertainty" over these preliminary projected costs such that the estimated total of $89 million

> from the ConverDyn agreement and other sources was "unlikely to be sufficient" to cover the costs of decommissioning the SFC facility if the NRC imposed additional requirements.
>
> (3) In light of SFC's apparent inability to cover the total costs of decommissioning, to obtain the necessary "reasonable assurance" under section 40.36, it was necessary to make GA -- as the parent corporation exercising "de facto" control over SFC's day-to-day business -- liable for any shortfall in decommissioning funds.

58 Fed. Reg. 55,087, 55,089, 55,091-92 (1993). In toto, the order was an apparent attempt by the staff to ensure the "public interest" was protected by providing the requisite reasonable assurance that the total decommissioning costs for SFC's Gore, Oklahoma facility would be covered by those entities purported to have regulatory responsibility for such costs.

As I understand the terms of the present settlement, the staff now has forsworn its quest to make GA the general (and seemingly unlimited) guarantor of decommissioning funding for the SFC facility and has instead chosen to settle for a specific (but limited) contribution. The apparent theory behind this decision to compromise is that, with all the uncertainties, difficulties, and expense involved in this litigation and the financial problems of GA (about which the Board has no direct knowledge), the settlement the staff and GA have arrived at is the "best bargain in the public interest." NRC Staff's Reply to Intervenors' Opposition to Joint Motion for Approval of Settlement Agreement Between NRC Staff and General Atomics

and to the State of Oklahoma's Response to NRC Staff's and General Atomics' Joint Motion for Approval of Settlement Agreement (Oct. 11, 1996) at 9 [hereinafter Staff Reply].

Before I can accede to this formulation of what serves the "public interest," at a minimum I need a fuller understanding about the implications of the settlement agreement's terms on the "public interest" as the staff framed it in its original enforcement order by its reliance on the need for "reasonable assurance" under 10 C.F.R. § 40.36. See LBP-95-18, 42 NRC at 159 n.6. I would, therefore, pose the following questions to the staff as the proponent of that order and, under 10 C.F.R. § 2.203, the party whose "position" must be given "due weight":

1. As was noted in the staff's 1993 enforcement order, it was estimated by SFC that decommissioning costs for its Gore, Oklahoma facility would total at least $86 million. What is the staff's present best estimate of the total costs of decommissioning the facility?

2. As was also noted in the staff's 1993 enforcement order, it was estimated the ConverDyn agreement would result in revenues of no more than $72 million available to pay decommissioning costs and there would be $17 million from other sources to pay such costs. In light of developments since 1993, what is the staff's present best estimate of (a) the maximum revenue that will be generated for facility decommissioning work under the ConverDyn agreement; and (b) the amount that would be available for such work from other sources (not including funds generated by the proposed GA/staff settlement agreement)?

With the staff's responses to these questions,[1] and any additional relevant information that GA or the intervenors might provide when given a chance to comment on the staff's answers, I believe the Board would have a much clearer understanding of whether, and to what degree, the proposed settlement agreement impacts on the "public interest" in seeing that there is "reasonable assurance" of adequate funding for facility decommissioning.[2]

In addition, borrowing from the medical profession and its well-established principle, as embodied in the Hippocratic Oath, that one should strive to "do no harm," to ensure the GA/staff agreement contains nothing that would

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[1] Although, as the majority observes, see 44 NRC at __ (slip op. at 15-16), in responding to the concerns of intervenors Native Americans for a Clean Environment and the Cherokee Nation the staff commented that the earlier projection of $72 million in revenues from the ConverDyn agreement "should not be ignored," Staff Reply at 10, with the only representations about the validity of this projected revenue figure in the settlement agreement attributed to GA and SFC, see NRC Staff's and [GA's] Joint Motion for Approval of Settlement Agreement (July 11, 1996) attach. 1, at 4, I would seek the staff's explicit views about the soundness of that estimate.

[2] The majority suggests that because the Board's role "is limited to a review that consideration has been provided to the public interest," seeking this information would result in an improper intrusion into the "merits" of the staff's enforcement order. 44 NRC at ___ n.* (slip op. at 17 n.*). I find my proposed inquiry wholly consistent with the Board's authority under 10 C.F.R. § 2.203 to make its own judgment, albeit while "according due weight to the position of the staff," about whether the agreement is in the public interest such that no further adjudication of the issues in the proceeding is warranted.

have an adverse impact on the "public interest," I would make a third inquiry:

> 3. If the total funds available for decommissioning under the SFC and GA settlement agreements with the staff ultimately are insufficient to cover the total costs of decommissioning the Gore facility (a) what, if any, additional cleanup mechanisms are available to complete decommissioning (e.g., Superfund); and (b) if there are additional cleanup mechanisms, would anything in the provisions of the GA/staff settlement agreement have an adverse impact on GA's liability, if any, under those cleanup mechanisms?

Finally, so that the record before the Board is clear, I would seek information on two other, albeit less central points:

> 4. Under paragraph two of the settlement agreement, GA was to request an IRS opinion regarding the tax status of the settlement trust fund "immediately" following execution of the agreement. See NRC Staff's and [GA's] Joint Motion for Approval of Settlement Agreement (July 11, 1996) attach. 1, at 6-7. To the best of the staff's knowledge, what is the status of the GA request for an IRS determination and when is an IRS determination expected?
>
> 5. Under paragraph eight of the settlement agreement, if amounts borrowed by SFC from GA pursuant to certain "Lines of Credit" are not repaid by December 31, 1998, then GA is permitted to delay for one year payment to the trust fund of one-half of the amounts otherwise due no later than December 31, 1998. See id. attach 1, at 8. Because the "Lines of Credit" in question apparently relate to a separate Environmental Protection Agency administrative order, see id. attach. 1, at 3-4, why does their repayment have an impact on payments due

under this settlement agreement between GA and the staff?

With this information, I might well be in a substantially better position to determine, relative to the GA/staff settlement accord, where the "public interest" lies. Without it, I am not prepared to approve their agreement.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (LBP-96-24) SETTLEMENT have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Docket No.(s)40-8027-EA
LB M&O (LBP-96-24) SETTLEMENT

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Dated at Rockville, Md. this
6 day of November 1996

Office of the Secretary of the Commission