UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of	)	
	)	
SEQUOYAH FUELS CORPORATION and GENERAL ATOMICS	)	Docket No. 40-8027-EA
	)	
	)	
(Gore, Oklahoma Site Decommissioning and Funding)	)	October 11, 1996

GENERAL ATOMICS' RESPONSE TO THE OPPOSITION OF THE INTERVENORS AND THE ATTORNEY GENERAL OF OKLAHOMA TO THE JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT BETWEEN NRC STAFF AND GENERAL ATOMICS

INTRODUCTION

In accordance with the September 17, 1996 Order of the Atomic Safety and Licensing Board ("Board"), General Atomics respectfully submits this response to the briefs filed by the Intervenors' and the Attorney General of Oklahoma in opposition to the NRC Staff-General Atomics (July 11, 1996) Joint Motion for Approval of Settlement Agreement.

In their effort to obstruct a Settlement Agreement between the NRC Staff and General Atomics which was intensely negotiated by senior officials of both entities over a several month period, Native Americans for a Clean Environment, the Cherokee Nation (collectively, the "Intervenors") and the Attorney General of

Oklahoma ("Attorney General") have offered argumentative papers in opposition to the Settlement Agreement which urge (1) Board adoption of a standard of approval that is unlawful, contrary to reason, and unworkable, and (2) endless litigation. For the reasons which are set forth below, General Atomics respectfully submits that the Settlement Agreement is fair and reasonable, that it is not patently arbitrary or contrary to law, and that for these reasons, it must be approved.

STATEMENT OF FACTS

In their continuing efforts to prolong litigation and to prevent a peaceful settlement of a contested proceeding between the NRC Staff and General Atomics that has already taken almost three years, the Intervenors and the Attorney General again assume as fact, or presume to state or imply as "factual background," matters which have never been adjudicated, which are baseless or untrue, or which are speculative by any standard.

First, the Intervenors attempt to inject into the proceeding a new and baseless legal concept which they characterize as fact. It has never been disputed that General Atomics is not a licensee of the Commission in connection with the Sequoyah Fuels Corporation ("SFC") facility in Gore, Oklahoma that is the subject of this proceeding. General Atomics is not engaged in licensed activities at that facility nor does it possess licensed materials in connection with it. The Intervenors now state as "fact,"

however, that General Atomics has "licensed" responsibilities at the SFC Facility.[1]

Whatever motive may lie behind this new concept, the fact is that General Atomics continues to perform the same oversight and audit functions that it has performed since it agreed to do so at the time the ownership of the facility changed in 1988. The new responsibilities were accepted then solely in order to ensure the safety of the SFC facility (e.g., by auditing safety-related activities involving health physics, radiation protection, etc., and by verifying SFC compliance with NRC license conditions and applicable federal and state regulations).

Second, the Intervenors state that "after finding significant radioactive and chemical contamination on the [SFC] site, the NRC issued a series of enforcement orders, and the plant was shut down for 5 months in late 1991 and early 1992."[2] The clear and apparently intended implication is that the Commission ordered the permanent closing of the SFC facility and that it did so because of significant radioactive and chemical contamination.

In fact, operations at the facility were shutdown by SFC itself in September 1991 for regular annual maintenance. The NRC later modified the license of SFC requiring the plant to remain

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[1] Intervenors' Opposition to Joint Motion for Approval of Settlement Agreement Between NRC Staff and General Atomics (hereinafter, "Intervenors' Opposition"), pp. 4-7.

[2] Id. at pp. 7-8.

shut down until certain changes were made in health, safety and environmental procedures.[3] In April 1992, SFC received permission from the Commission to begin a phased restart of operations at its facility. Operations were, in fact, subsequently resumed.

In November 1992, and after an accidental release of nitrogen dioxide at the facility, SFC voluntarily and temporarily ceased operations while it determined the cause of the release. During the same month, the Board of Directors of SFC concluded that uranium hexafluoride conversion operations were no longer profitable, that the company could not continue to operate its facility economically, and that a new business arrangement was the best alternative for providing for SFC's decommissioning and remediation costs. As a result of the Board's decision, SFC permanently ceased operations, but the termination of operations was not the result of radioactive or chemical contamination.

General Atomics also rejects the Intervenors' statement as "fact" that the decision by the NRC to permit SFC to resume operations at its facility was "based in part on oral and written commitments by GA CEO J. Neal Blue to fulfill any decommissioning funding requirements that could not be met by SFC," and that the "NRC ordered the restart in reasonable reliance on GA's promise to fulfill this commitment."[4] Even if the purported statements of

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[3] Over the course of the next several months and at a cost in excess of $25 million, SFC took numerous actions to meet the requirements imposed by the NRC.

[4] Intervenors' Opposition, p. 7.

General Atomics' CEO were relevant to any issue in this proceeding -- which General Atomics has always denied -- the Intervenors have offered no evidence that the Commission reasonably relied upon them. Moreover, since the concerns that caused the SFC facility to remain shut down had already been adequately resolved, the NRC had no choice but to permit the restart of operations.[5]

Third, the Intervenors state as "fact," certain legal arguments regarding the NRC Staff-SFC Settlement Agreement[6] which have already been rejected by the Board and which are totally irrelevant to the question now before the Board.

Fourth, in advancing as "factual" background various arguments in opposition to the Settlement Agreement, the Intervenors misstate the terms of the Agreement. The Intervenors assert, for example, that the Settlement Agreement "appears to preclude the NRC from taking enforcement action against GA with respect to any of its other 'licensed' responsibilities for SFC, such as quality assurance."[7] In fact, the Settlement Agreement makes no refer-

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[5] Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-9, 21 NRC 1118, 1124 (1985); Pan American Airways v. C.A.B., 684 F.2d 31 (D.C. Cir. 1982); Northwest Airlines v. C.A.B., 539 F.2d 846 (D.C. Cir. 1976); Airline Pilots Ass'n, International v. C.A.B., 458 F.2d 846 (D.C. Cir. 1972), cert. denied, 420 U.S. 972 (1975).

[6] Intervenors' Opposition, at pp. 9-11.

[7] Id. at pp. 12-13.

ence whatsoever to the oversight/audit activities which General Atomics continues to perform.

Fifth, the Intervenors state that the NRC is "an executive agency" and as such is "required by Presidential directive" to consult "to the greatest extent practicable with tribal governments prior to taking actions that affect federally recognized tribal governments."[8] In fact, unlike federal agencies which are subject to Presidential supervision through consultation with the Cabinet officers, independent agencies like the NRC are charged by Congress to remain independent of the rest of the executive branch.[9]

Sixth, the Intervenors state that the trust fund agreement which is referred to in paragraph 1 of the Settlement Agreement does not even exist.[10] The facts are that the Trust Agreement does exist; that it has already been executed by General Atomics and the Trustee, Sanwa Bank in Los Angeles, California; and that on October 9, 1996, the Trust was initially funded with a wire transfer of $600,000.00 to Sanwa Bank pursuant to the terms of the Settlement Agreement.[11] Even though it is a private docu-

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[8] Intervenors' Opposition, p. 16.

[9] Westinghouse Electric Corporation v. United States Nuclear Regulatory Commission, 598 F.2d 759 (3d Cir. 1979).

[10] Intervenors' Opposition, pp. 12, 22.

[11] See the Affidavit(Declaration) of General Atomics' Senior Vice President - Administration which is attached hereto as Appendix 1, paragraph 17.

ment, a copy of the Trust Agreement is attached hereto as Appendix 2.

Finally, the Attorney General states that "persons and entities responsible for causing pollution or allowing the contamination to occur should bear the costs of remediation."[12] By clear implication, the Attorney General has assumed that General Atomics caused or allowed pollution or contamination at the facility of SFC, its third-tier subsidiary. That assumption is absurd. It is undisputed that nothing in the NRC Staff's October 15, 1993 enforcement order (the October 15, 1993 Order) charges General Atomics with having caused any contamination which may exist at the SFC facility or with having engaged in any form of activity that is wrongful or dangerous to the public health and safety.

ARGUMENT

I. THE ISSUE PRESENTED FOR BOARD CONSIDERATION IS NOT WHETHER THE SETTLEMENT AGREEMENT ABSOLUTELY SATISFIES ALL OF THE DESIRES OF THE INTERVENORS AND THE ATTORNEY GENERAL, BUT WHETHER IT IS FAIR AND REASONABLE.

It comes as no surprise to General Atomics that the Intervenors and the Attorney General continue to oppose a settlement of this proceeding. The desire of the Intervenors to continue

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[12] State's Response to NRC Staff's and General Atomics' Joint Motion for Approval of Settlement Agreement. (hereinafter, "Attorney General's Opposition"), p. 4.

litigation has been apparent at each stage of the proceeding. Even during the early stages of the settlement negotiations between the NRC Staff and General Atomics, the Intervenors made unwarranted assertions concerning the progress of the negotiations.[13] They sought to expand discovery beyond the threshold issue of the Commission's jurisdiction over General Atomics to include discovery on the merits of the NRC Staff's October 15, 1993 Order ("October 15, 1993 Order"), all contrary to the Board's June 30, 1995 Memorandum and Order (Denying General Atomics' Motion Regarding NRC Staff "Reliance" Issues and Establishing Schedule for Bifurcated Issue of Agency Jurisdiction) bifurcating the proceeding.[14] They sought to broaden discovery against both the NRC Staff and General Atomics regarding "the relationship of this case" with decommissioning funding issues involving facilities which are not owned by SFC, but by General Atomics and which are not referred to even indirectly in the October 15, 1993 Order.[15]

The Intervenors and the Attorney General now seek to prevent Board approval of the Settlement Agreement. Because they are

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[13] See General Atomics' Reply to the Opposition of the Intervenors to the (NRC Staff-General Atomics) Joint Motion for an Additional Stay of Discovery, October 11, 1995, pp. 5-7.

[14] Native Americans for a Clean Environment's and Cherokee Nation's Opposition to Joint Motion for Additional Stay of Discovery (October 11, 1995), pp. 5, 7-8.

[15] Id., at p. 8.

unable to demonstrate that the Agreement does not meet the requirements of the law, they seek to change the law. They urge the Board to reject long-established and binding precedent, as well as the express provisions of the Commission's Rules of Practice, and to adopt instead, a standard of approval that would prevent the settlement of any proceeding. In their view, the Settlement Agreement cannot be approved unless it guarantees all of the funding which is necessary to the decommissioning and remediation of the SFC facility[16] and otherwise meets their own definition of the "public interest."

The question before the Board, however, is not whether the sums to be contributed by General Atomics will turn out to be superfluous or necessary. Nor is it a question of whether the Settlement Agreement absolutely satisfies all of the personal wishes and desires of the Intervenors and the Attorney General, material or otherwise. Rather, the narrow issue presented is whether the Settlement Agreement is "fair and reasonable." 10 C.F.R. § 2.759 expressly provides, and the Commission has consistently stressed, that the fair and reasonable settlement of contested proceedings is encouraged.[17] The Settlement Agreement

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[16] See, e.g., Intervenors' Opposition, p. 13; Attorney General's Opposition, p. 5.

[17] Philadelphia Electric Company (Peachbottom Atomic Power Station, Unit 3) ALAB-532, 9 NRC 279, 283 (1979); Statement of Policy on the Conduct of Licensing Proceedings, CLI 81-8, 13 NRC 452, 456 (1981).

must be approved unless it is "patently arbitrary or contrary to law."[18]

In deciding this issue, the Board may not adjudicate questions raised by the Intervenors and the Attorney General about the various provisions of the Settlement Agreement. The only issues which could have been adjudicated by the Board prior to the settlement are those which were raised by the NRC Staff's October 15, 1993 Order. All of those issues have been subsumed in, and resolved by, the Settlement Agreement. Nothing is left for adjudication.[19]

A. The Staff is in a far better position than the Intervenors or the Attorney General to evaluate what is fair and reasonable.

The "fair and reasonable" standard does not have the preciseness of a mathematical formula,[20] but approval of a settlement cannot be withheld merely because an interested state, an intervening party, or even the Board itself might not have accepted one or more of its terms if it had been one of the negotiating parties. So long as an agreement fits within the broad

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[18] In the Matter of New York Shipbuilding Corporation, 1 AEC 842, 844 (1961).

[19] Id., at pp. 844-845.

[20] The term "fair" may be defined as even-handed, as between the conflicting interests of the parties. Black's Law Dictionary, West Publishing Co., 1968, p. 713. Similarly, an agreement is "reasonable" if it is governed by reason and is not immoderate or excessive. Id., at 1431.

parameters of reason, it is not necessary that it be perfect in every respect in the eyes of all who might have occasion to judge it. Moreover, other clear guideposts do exist. In deciding whether to approve a settlement agreement the Board is expressly required to accord "due weight to the position of the [NRC] Staff." 10 C.F.R. § 2.203.

The NRC Staff has clear enforcement authority and responsibility to regulate the disposal of low-level radioactive waste such as that which exists at the SFC facility.[21] The Staff is assumed to be fair and capable of judging a matter on its merits, and to have properly discharged is official duties.[22] The Staff also has first-hand knowledge of the SFC facility, including the nature and extent of any contaminated material there.[23] Certain-

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[21] The Settlement Agreement was executed on behalf of the Staff by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support. The Office of Nuclear Material Safety and Safeguards is expressly responsible for protecting the public health and safety and the environment and is specifically charged with management of the decommissioning of facilities and sites when their licensed functions are over. 10 C.F.R. § 1.42(a), (b)(9).

[22] Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 4 (1980). See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-89-4, 29 NRC 62, 73 (1989), aff'd on other grounds, ALAB-918, 29 NRC 473 (1989), remanded on other grounds, Massachusetts v. NRC, 924 F.2d 311 (D.C. Cir. 1991), appeal dismissed as moot, ALAB-946, 33 NRC 245 (1991).

[23] When the SFC facility was in operation, teams of 1-8 NRC Staff representatives would inspect the facility at least monthly (e.g., in 1991, 17 inspections were conducted; in 1992, 32 inspections took place, some of which covered several days). Even now, almost four years after operations terminated, the facility receives two scheduled inspections each year and other

ly, the Staff has far greater capability to appraise the effectiveness and costs of disposal alternatives, than private parties which are concerned only with their own special interests. Thus, the Staff is clearly in the best position to gauge the extent to which the Settlement Agreement is fair and reason-able and otherwise meets the Staff's regulatory objectives.

Since the Settlement Agreement was approved and entered into by the Commission's Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support after 10 months of arduous negotiations between senior officials of both the NRC Staff and General Atomics, a very heavy presumption exists that the settlement is fair and reasonable. Neither the Intervenors nor the Attorney General have presented any evidence that rebuts that presumption, or which demonstrates that the Settlement Agreement is patently arbitrary or contrary to law.

B. The Settlement Agreement is fair and reasonable because it avoids the uncertainty of continued litigation and the substantial risk that General Atomics would not be required to pay any part of the cost of the reclamation and decommissioning of the SFC Facility.

In seeking the continuation of the litigation, the Intervenors and the Attorney General incorrectly assume several other

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non-routine site visits by Staff personnel. In addition, the SFC files semi-annual, compliance-based Effluent Reports and annual environ-mental reports with the Staff, submits to Staff oversight during the site characterization process, and remains in close contact with the Staff through correspondence and telephone conferences with the Staff's Project Manager.

fundamental and highly disputed matters. First, they assume that after full administrative adjudication and judicial review of the several complex issues presented by the Staff's October 15, 1993 Order, it would be finally determined both that the Commission does have jurisdiction over General Atomics, and that the law and the facts support the Staff's theory of liability. After three years of litigation, however, the NRC Staff is in the best position to know what is legally obtainable under its October 15, 1993 enforcement order and what it could and could not prove in an adjudicatory hearing. The Staff obviously recognizes that a substantial question exists as to the Commission's jurisdiction and that the Staff's efforts to hold General Atomics liable for the remediation and decommissioning obligations of SFC could fail totally. In such circumstances, General Atomics would not be required to pay any of the decommissioning costs, much less the substantial payments to the Trust which it has voluntarily agreed to make in the Settlement Agreement.

It is undisputed that General Atomics is not a licensee of the Commission in connection with the SFC facility. It is also undisputed that the October 15, 1993 Order contains no allegations whatsoever that the Company caused any contamination which exists at the facility or that it engaged in any other form of wrongdoing.

The "de facto" licensee liability theory upon which the October 15, 1993 Order against General Atomics is based has never

been adopted by the Commission. In order for General Atomics to be held liable for the obligations of its third-tier subsidiary company, a fundamental doctrine of law would have to be overcome. It has long been accepted as one of the first principles of American law that those who own shares in corporations, whether such shareholders are individuals or are themselves corporations, are normally not liable for the debts or other obligations of their corporations, especially where fraud or other wrongful conduct is not present.[24]

If a legal basis for the NRC Staff's liability theory was established by the Commission, it is not certain that the Staff could prove facts to support the theory. Indeed, General Atomics believes that the only certainty is that the Staff could not prove such facts. Moreover, the Board has already acknowledged doubt about its own authority to analyze the merits of business transactions.[25] Even if the Board had such authority, it is not clear what criteria should be applied and the business transactions of General Atomics are precisely what would be at issue.

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[24] See, e.g., the Revised Model Business Corporation Act, § 6.22(b), which states that "Unless otherwise provided in the articles of incorporation a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct." See also, Joslyn Manufacturing Company v. T.L. James & Co., Inc., 893 F.2d 80 (5th Cir. 1990), cert. denied, 111 S.Ct. 1017 (1991).

[25] Memorandum and Order (Approval of Settlement Agreement), October 26, 1995, p. 7.

Even if all of these obstacles were surmounted, it is not clear that a federal court would sustain such a broad alteration of law in an area in which the federal statutory regulation is comprehensive and detailed.[26] General Atomics has also raised certain due process and other issues which have yet to be considered by a court of law and whose resolution cannot be predicted with certainty.[27]

The NRC Staff is also in the best position to evaluate the likelihood that it could ever collect any money from General Atomics, even if it succeeded in obtaining a judgment after additional years of litigation. An uncollectible judgment after years of delay and major litigation costs, is hardly in the public's interest.

The Settlement Agreement eliminates these risks. The terms of the Agreement require General Atomics to contribute millions of dollars to the Trust, which, at the discretion of the NRC, may be used for the decommissioning and remediation of the SFC facility starting immediately. These funds will be contributed irrespective of the Commission's jurisdiction over the Company; irrespective of the facts; and irrespective of the adverse

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[26] See, e.g., O'Melveny & Myers, __ U.S. __, 114 S.Ct. 2048 (1994).

[27] These issues are set forth with particularity in General Atomics' Brief in Support of Motion for Summary Disposition or for an Order of Dismissal, February 17, 1994.

economic impact the contributions may have on the Company's business opportunities.

C. The Settlement Agreement is fair and reasonable because it commits General Atomics to provide substantial financial assurance over and above the capital resources which are reasonably available for the decommissioning and reclamation of the site.

Contrary to the assertions of the Intervenors and the Attorney General, there are good and sound reasons for believing that the large sums to be contributed by General Atomics to the Trust will not even be necessary to the decommissioning and remediation of the SFC facility. Upon the basis of actual experience to date, General Atomics and SFC continue to believe that SFC's net revenues and net assets, as defined in the NRC Staff-SFC Settlement Agreement, will provide adequate capital resources to allow SFC to conduct its ongoing standby operations and to complete the decommissioning and reclamation pursuant to the SFC decommissioning plan.

The terms of the Settlement Agreement generally speak for themselves, but an important principle should be expressly noted. General Atomics has voluntarily agreed to pay up to $9,000,000.00 to the Commission. The funds may be used in any lawful manner which the Commission deems most appropriate to the public interest, including the decommissioning of the SFC facility. General Atomics will have no control whatsoever over the funds.

If, as General Atomics expects, SFC's net assets and net revenues provide adequate capital resources to permit SFC to complete decommissioning and reclamation of the SFC facility, the funds contributed by General Atomics can be used by the Commission to meet other public needs.

D. The Settlement Agreement is fair and reasonable because it avoids the dissipation of limited financial resources and manpower in endless litigation.

In their unfettered zeal to continue the litigation, the Intervenors and the Attorney General make light of the costs which are associated with it. They conveniently ignore the facts.

Three years have lapsed since the NRC Staff issued its October 15, 1993 Order. During that period, approximately 330 documents, totalling approximately 3,039 pages, have been filed in the proceeding, even though a hearing date has not yet been set. Discovery requests, including several unreasonably broad requests by the Intervenors, have required the collection, review (and in the case of General Atomics, the shipment from California) by NRC Staff and General Atomics personnel of tens of thousands of documents. If the Settlement Agreement had not been entered in to and the litigation had been recommenced, substantial resources would be exhausted simply responding to pending

discovery requests.[28] Endless discovery disputes would be certain,[29] especially since the scope of permissible discovery is in substantial doubt.[30]

Perhaps even more costly would be the investment of substantial time by senior Staff officials and senior management personnel of General Atomics and SFC. They would not be pursuing matters which have much higher public priority or business opportunities which might ensure the continued viability of the Company, but rather responding to discovery requests.

Nor is it at all clear how long the litigation would continue. By its Memorandum and Order of June 30, 1995, the Board

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[28] Prior to the commencement of settlement negotiations, the Intervenors served two sets of interrogatories upon General Atomics, two sets of interrogatories upon its third-tier subsidiary, SFC, and lengthy requests for production of documents upon each company.

[29] The Intervenors have already filed two motions to compel additional responses by General Atomics to its discovery requests, and two motions to compel additional responses by SFC to separate discovery requests.

[30] In addition to the Intervenors' efforts to expand the scope of permissible discovery as described above, they also seek to expand discovery in other ways. On August 25, 1995, General Atomics and SFC applied to the Commission for a temporary housekeeping stay of the effectiveness of the Board's August 21, 1995 Order (Ruling on Intervenor's Motion to Compel Answers to First Interrogatories). That order would permit the Intervenors to seek discovery on a jurisdictional theory which General Atomics and SFC assert is outside the scope of the Staff's October 15, 1993 Order. General Atomics and SFC further informed the Commission on August 25, 1995 of their intent to seek Commission review of the Board's order. On August 30, 1995, the Commission granted the stay. Nuclear Regulatory Commission, Order, August 30, 1995.

bifurcated this proceeding in order that the issue of agency regulatory jurisdiction over General Atomics could be adjudicated before proceeding to the "merits" of the October 15, 1993 Order as it related to the adequacy of SFC decommissioning funding. Even if the continuing litigation never reached the merits phase, the jurisdiction issue would undoubtedly be fully litigated before the Board, the Commission, and a U.S. Court of Appeals. If the "merits" phase was reached, it too would undoubtedly be fully litigated before all three tribunals. It is thus highly possi-ble, if not likely, that completion of the litigation would take longer than the decommissioning process itself. The unnecessary prolongation of the dispute and all of these unnecessary costs will be avoided as the Settlement Agreement is implemented.

E. The Settlement Agreement is fair and reasonable because it removes the threat to General Atomics' existence as a viable business entity, thereby ensuring its ability to contribute funds which may be used for the decommissioning of the SFC facility, to continue its oversight and audit responsibilities, and to meet its own decommissioning obligations.

It is self-evident that it is in the public interest that General Atomics retain the financial capability to contribute to the Trust, funds which may be used for the decommissioning of the SFC facility. It is also in the public interest that General Atomics continue the health and safety oversight/audit respon-

sibilities at the SFC facility which it voluntarily assumed in 1988, and that it meet certain decommissioning obligations which it has in connection with other facilities that do not involve SFC and which are not within the scope of this proceeding or the jurisdiction of the Board.

As a direct result of the NRC Staff's mere issuance and attempted enforcement of its October 15, 1993 Order, and irrespective of the lawfulness or the merits of the order, the Company's credit rating and its ability to engage in its regular business activities have been adversely affected.[31] In addition, since this proceeding commenced, the business of the Company, which is based to a great extent on government contracts, has suffered from the loss of substantial funding. In 1995, Congress voted not to continue funding for the Company's Gas-Turbine Modular Helium Reactor (GT-MHR) program. During the previous four (4) years, the Company and its affiliates had received an average of $53 million in revenue per year for that program. In 1995, Congress also reduced funding for the Company's nuclear fusion research program by twenty (20) percent.[32]

By its October 15, 1993 Order, the NRC Staff sought a judgment against General Atomics in the amount of $86 million. Because the Company's revenues are based to a great extent on

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[31] The injuries are described in Appendix 1, paragraphs 13-14.

[32] Id., at paragraph 15.

government contracts which are renewable or funded annually, the entry of an invalid judgment in that amount would, in all likelihood, preclude the Company from obtaining renewal of existing contracts and from competing successfully for new contracts. Those developments would place the economic survival of the Company in serious jeopardy, even if the invalid judgment was later set aside in a court of law.[33]

Thus, if General Atomics should become financially unable to continue its business operations as a result of the cost of continued litigation, an adverse judgment, or otherwise, its promise to contribute substantial funds to the Trust Fund would become meaningless. It would also be unable to continue its oversight responsibilities at the SFC facility and to pay for the decommissioning and remediation of its own facilities.

The financial condition of General Atomics is highly confidential. The Company is not a public company and its competitive position in the marketplace could be gravely affected if such proprietary information became known. Nevertheless, during its confidential settlement negotiations with the NRC Staff, the Company did offer financial information to the Staff. Presumably, the information was fully evaluated by the Staff and was a significant factor in the Staff's decision to accept the Com-

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[33] Id., at paragraph 16.

pany's offer of a substantial, voluntary, and immediate contribution to the Trust Fund.

II. THE INTERVENORS AND THE ATTORNEY GENERAL URGE AN UNLAWFUL STANDARD FOR BOARD APPROVAL OF THE SETTLEMENT AGREEMENT.

A. If the standard sought by the Intervenors and the Attorney General were adopted, settlement of administrative proceedings would be made impossible, all in violation of the law and established public policy.

It requires no great citation of authority to state that the President, Congress, the Courts, and the Commission have all separately and forcefully encouraged the compromise and settlement of disputes like that which is the subject of this proceeding. An Executive Order on Civil Justice Reform ordered federal agencies to make reasonable efforts to settle litigation.[34] The Administrative Procedure Act and Federal Rule of Civil Procedure 16 encourage settlement.[35] The United States Supreme Court and other federal courts have long encouraged the resolution of controversies and uncertainties through compromise and settlement rather than through litigation.[36] And, the Commission itself has

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[34] Executive Order No. 12778 (Civil Justice Reform), October 23, 1991, 56 F.R. 55195.

[35] 5 U.S.C. § 554(c); F.R.C.P. 16(a)(5).

[36] See, e.g., Williams v. First National Bank of Pauls Valley, 216 U.S. 582, 30 S.Ct. 441 (1910).

expressly encouraged the fair and reasonable settlement of contested proceedings.[37]

The standard of approval urged by the Intervenors and the Attorney General, however, would make compromise and settlement impossible, all in violation of the law and this established public policy. Presuming both to speak for the "public interest" at large, rather than for the special interests which they in fact represent, and to be better advocates for the public interest than the Commission staff, the Intervenors and the Attorney General are unequivocal in their objective. In their view, a settlement agreement in circumstances like those which exist here should be approved only if it provides 100 percent of the funding which they believe to be necessary to complete what they believe to be an appropriate decommissioning of a site which is the subject of the contested proceeding.

The Intervenors thus assert that the key issue before the Board is whether the Settlement Agreement "assure[s] the sufficiency of funding to complete the safe clean-up of the SFC site,"[38] and that the Agreement must guarantee that General Atomics satisfies whatever shortfall may arise as a result of SFC's inability to "fully cover" decommissioning costs.[39] The

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[37] 10 C.F.R. § 2.759.

[38] Intervenors' Opposition, p. 13.

[39] Id., at p. 19.

Attorney General argues that the Settlement Agreement must provide for what he believes to be "the entire cost of the remediation" of the SFC facility[40] and that a settlement of the litigation cannot even be considered until an environmental impact statement is completed and a final decommissioning plan has been approved.[41]

Such a standard is not required by the law. The reason why it is not is clear. It would absolutely prevent the settlement of contested proceedings. Why would any party in a dispute with the NRC Staff waste time negotiating if the end result of the negotiations could never be better than an adverse judgment after a full adjudication? Why would any party voluntarily contribute substantial funds to a trust, which could be used for decommissioning and remediation costs if, as is the situation in the instant proceeding, it believes that it could succeed in litigation and not be required to pay anything? The clear incentive would be for parties adverse to the Staff to take their chances in continued litigation.

Moreover, such a standard would prohibit compromise, which is the very essence of settlement, and require interminable delay. If the NRC Staff could not compromise claims which it makes in its own enforcement orders, the parties against whom

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[40] Attorney General's Opposition, p. 4.

[41] Id., at pp. 2, 4, 9, 14.

such orders are directed would have no choice but to aggressively defend themselves through litigation. And, why would a party enter into settlement negotiations at all if it knew that any potential settlement agreement could not be approved until the completion of a time-consuming and costly environmental impact statement and the final administrative approval of a decommissioning plan?

The standard urged by the Intervenors is also unrealistic and unworkable in other ways. It bears no relationship to the actual financial condition of parties who are the subject of Staff enforcement orders. Just because a party is the subject of an enforcement order does not mean that it has the capability to pay any judgment that might be entered against it. Were the Board to adopt such an absolute standard of approval, the only "settlements" that would ever be possible would be those involving parties which decide not to contest the enforcement orders against them and which have adequate resources to pay whatever amount is sought by the Staff.

III. THE ATTEMPT OF THE INTERVENORS AND THE ATTORNEY GENERAL TO CONTINUE LITIGATION AT ALL COSTS IS ALSO CONTRARY TO LAW.

A. The Intervenors and the Attorney General seek to re-litigate the NRC Staff-SFC Settlement Agreement which the Board has already approved.

The Intervenors and the Attorney General clearly desire to continue litigation against General Atomics and SFC at all costs.

They seek to re-litigate the NRC Staff-SFC Settlement Agreement even though it has already been formally approved by the Board. They also seek to continue discovery against General Atomics as if a settlement agreement had not been reached and an adjudicatory hearing was imminent.

First, they complain that for several reasons which they previously advanced, the "purported" NRC Staff-SFC Settlement Agreement should not have been approved by the Board.[42] The Intervenors attack the NRC Staff-General Atomics Settlement Agreement on the ground that issues which they previously raised in connection with their opposition to the NRC Staff-SFC Settlement Agreement have still "not been resolved" to their satisfaction.[43] The Attorney General magnanimously gives the Board "yet another chance" to get things right before arguing that the Board's approval of the NRC Staff-SFC settlement "must be rescinded" and retracted.[44]

It is sufficient to note that the issues raised by the Intervenors and the Attorney General in connection with the NRC Staff-SFC Settlement have already been adjudicated by the Board and are thus no longer within the Board's jurisdiction. Nor are they relevant to the Board's consideration of a settlement

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[42] Intervenors' Opposition, p. 9; Attorney General's Opposition, pp. 3, 8-9, 11.

[43] See, e.g., Intervenors' Opposition, p. 29.

[44] Attorney General's Opposition, p. 14.

agreement between the Staff and a non-licensee. As a practical matter, a second adjudication of the NRC Staff-SFC Settlement Agreement would achieve nothing because, as the Board has noted, SFC pledged to furnish "all of its assets and revenues that it would have to provide if a judgment were to issue against it in the proceeding."[45]

B. The Intervenors and the Attorney General seek discovery on matters which, if discoverable at all, would only be subject to discovery as part of a fully-litigated proceeding.

The Intervenors further claim that their inevitable objection to any settlement agreement cannot be "meaningful" unless they are given the right to continue what would essentially be unlimited discovery. In the context of this proceeding, the Intervenors seek discovery on such ultimate litigation issues as "whether GA continues to have any control over SFC,"[46] "the costs of decommissioning the SFC site,"[47] and "the adequacy of SFC's and GA's existing and anticipated resources."[48]

The Attorney General candidly concedes his desire to continue the litigation.[49] He also seeks open-ended discovery on

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[45] Memorandum and Order (Approval of Settlement Agreement), October 26, 1995, pp. 10-11.

[46] Intervenors' Opposition, p. 17.

[47] Id., at p. 18.

[48] Id.

[49] Attorney General's Opposition, p. 12.

such commercially-sensitive and proprietary information as the current salaries of all General Atomics personnel, the Company's "revenues, expenditures, debts, etc."[50] and "detailed information about [the] ConverDyn arrangements and finances."[51]

Leaving aside the question of whether such proprietary information could ever be discoverable, it can at least be said that the discovery that the Intervenors and the Attorney General seek would involve matters that could only be the subject of an evidentiary hearing during either the jurisdictional phase or the merits phase of the bifurcated proceeding. A major purpose of any settlement, of course, is the avoidance of protracted discovery. If such discovery were permitted, a major purpose to be achieved by the Settlement Agreement would be eliminated.

C. The Intervenors and the Attorney General seek discovery on matters which are far outside the scope of this proceeding and over which the Board has no jurisdiction.

The Intervenors are not content to seek unfettered discovery on matters which go to the merits of this proceeding. They also seek discovery on "the size of GA's claimed liability for decommissioning costs at its San Diego facility," including "all documents related to the consideration of the clean-up costs for the San Diego facilities, and GA's ability to pay them."[52]

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[50] Id., at p. 7.

[51] Id., at p. 10.

[52] Intervenors' Opposition, pp. 18, 25-26.

Similarly, the Attorney General seeks discovery regarding "GA's financial responsibilities at other facilities,"[53] i.e., facilities which are not the subject of this proceeding.

To fully appreciate the impropriety and overreaching nature of this request, it must be remembered that it is undisputed that absolutely nothing in the NRC Staff's October 15, 1993 Order relates to facilities owned by General Atomics in San Diego or elsewhere. Nor are facilities in San Diego or elsewhere the subject of any proceeding before either the Commission or an Atomic Safety and Licensing Board. Adjudicatory boards do not, of course, have plenary subject matter jurisdiction in Commission proceedings.[54] Boards are delegates of the Commission and, as such, they may exercise authority over only those matters that the Commission commits to them.[55] Nothing in the Commission's delegation of jurisdiction for this proceeding relates in any way to General Atomics' San Diego facilities. Consequently, the NRC Staff has exclusive authority currently to take regulatory action involving those facilities and that action may not be the subject of inquiry in this proceeding.

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[53] Attorney General's Opposition, p. 7.

[54] Duke Power Company, (Catawba Nuclear Station, Units 1 and 2), ALAB - 825, 22 NRC 785, 790 (1985).

[55] Id.

The information sought by the Intervenors and the Attorney General is also beyond the scope of permissible discovery generally. The instant proceeding is not a licensing proceeding. General Atomics is not a licensee in connection with the SFC facility. It seeks nothing more than the dismissal of the October 15, 1993 Order. Even in licensing proceedings, an intervenor may not proceed on the basis of allegations that the NRC Staff has somehow failed in its performance.[56] Moreover, the scope of discovery under the Commission's Rules of Practice is similar to discovery under the Federal Rules of Civil Procedure.[57] Federal Rule of Civil Procedure 26(b)(1) limits discovery to that "which is relevant to the subject matter involved in the pending action" (emphasis added). The information sought by the Intervenors regarding facilities owned by General Atomics (not SFC), which are located in California (not Gore, Oklahoma), which are not the subject of a licensing or any other proceeding, and which are not even remotely referred to in the October 15, 1993 NRC Staff enforcement order, can have no possible bearing on the subject matter of this pending proceeding.

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[56] Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, 18 NRC 445, 565 n. 29 (1983), citing, Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2, ALAB-728, 17 NRC 777, 807 (1983), review denied, CLI 83-32, 18 NRC 1309 (1983).

[57] Pacific Gas and Electric Co. (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1040 (1978).

CONCLUSION

The Settlement Agreement between the NRC Staff and General Atomics was concluded only after intensive negotiations. It eliminates the risks, uncertainties, costs, and delay of continued litigation. It provides substantial funding to a trust which is immediately available to the NRC for the decommissioning and remediation of the SFC facility. The Settlement Agreement is fair and reasonable. It is not patently arbitrary or contrary to law. It must, therefore, be approved.

Respectfully submitted,

By: Stephen M. Duncan
Of Counsel

Stephen M. Duncan
Bradfute W. Davenport, Jr.
MAYS & VALENTINE, L.L.P.
8201 Greensboro Drive
Suite 800
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(703) 734-4334

ATTORNEYS FOR GENERAL ATOMICS

October 11, 1996

Declaration

I, John E. Jones, declare:

1. This Declaration is submitted in connection with the General Atomics Response to the Opposition of the Intervenors and the Attorney General of Oklahoma to the Joint Motion for Approval of the Settlement Agreement between the NRC Staff and General Atomics.

2. I am the Senior Vice President-Administration of General Atomics and I have served in that capacity since September, 1986.

3. General Atomics was founded in 1982. The first of its corporate predecessors was founded in 1955 with an initial charter to explore peaceful uses of atomic energy. The staff of General Atomics and its affiliate companies include scientists who specialize in diversified research and development activities related to gas-cooled nuclear power reactors, fusion technology, defense materials, and other advanced technologies, many of which are developed for environmentally sensitive applications. General Atomics presently employs approximately 1,150 people, primarily located in California.

4. On November 23, 1992, General Atomics Energy Services, Inc. (GAES), an affiliate of General Atomics, and Allied-Signal Energy Services, Inc. (ASES) an affiliate of Allied-Signal, Inc., formed a Delaware general partnership named "ConverDyn." The purpose of ConverDyn was and is to market UF_6 conversion and other services, to worldwide public utility companies.

5. In November 1992, Sequoyah Fuels Corporation (Sequoyah), a third-tier wholly-owned subsidiary of General Atomics (GA), ceased purification and conversion operations at its sole operating facility in Gore, Oklahoma pursuant to a long-

term contract (Standby Agreement) with ConverDyn. Pursuant to cessation of operations and in order to meet its existing commitments to customers, Sequoyah contracted with ConverDyn to provide ongoing UF_6 conversion services on its behalf.

6. The Standby Agreement provides for Sequoyah to maintain its facility in standby status, which provides for the cessation of uranium conversion, and allows Sequoyah, at its discretion, to proceed to decommission its facility and clean up its site. The original Standby Agreement was a long-term cost reimbursement contract which provided for reimbursement of substantially all standby costs to be incurred by Sequoyah, in excess of certain amounts calculated pursuant to the Standby Agreement. The original agreement further limited payments to the lesser of certain actual expenses incurred by Sequoyah, ConverDyn's available cash, or specific dollar amounts by year or period.

7. During 1994, Sequoyah received permission from the NRC to withdraw its application for license renewal at Sequoyah. Management of Sequoyah has developed an estimate of the costs for the ultimate reclamation and decommissioning of its facility in accordance with rules and regulations of the Environmental Protection Agency (EPA) and the NRC (the Regulatory Agencies).

8. In 1995, the Standby Agreement was amended to convert from a cost reimbursement contract to a contract that provides for a fixed annual fee intended to fund standby costs, plus a CPI adjustment, but retains certain of the above payment limitations.

9. In addition to the standby fees referred to above, the original agreement provides for Sequoyah to receive an Additional Standby Fee equal to the lesser of one-third of ConverDyn's annual taxable income before any deduction for Additional Standby Fee or available cash. The payment of this Additional Standby Fee will terminate the earlier of December 31, 2004 or at such

time as Sequoyah has received $20,000,000 of Additional Standby Fees. During 1995, $2,824,000 of Additional Standby Fees were recorded as revenue.

10. Although there can be no absolute assurances, Sequoyah's management believes that revenues from the Standby Agreement will provide adequate capital resources to allow Sequoyah to conduct its ongoing standby operations and to complete reclamation and decommissioning pursuant to Sequoyah's decommissioning plan.

11. On several occasions, the NRC staff and their financial advisors, have been provided financial spreadsheets which set forth ConverDyn's financial performance through that date, as well as its projections through 2005. Those financial reports show ConverDyn performing substantially as projected to perform when it was formed in 1992. Further, as the years have passed and experience has been gained, ConverDyn's forward looking projections have become refined.

12. As a consequence, the management of ConverDyn is confident that its financial projections are reasonable, subject to any unforeseeable changes in the UF_6 conversion services market. Based on ConverDyn's experience and these projections, it is expected that Sequoyah will receive the Standby Fees and Additional Standby Fees on the schedule and in the amounts shown on the financial projections presented to the NRC Staff.

13. As a direct result of the Commission's issuance and attempted enforcement of its October 15, 1993 Order, General Atomics has incurred and is continuing to incur substantial injuries to both its current and its future business operations. These include the termination by Citicorp of a Line of Credit facility which had existed since September, 1986. Except for a real estate mortgage, Citicorp was General Atomics' sole, long-

term lender. A substantial Line of Credit had been used by General Atomics as an available source of cash for business acquisitions, to backstop letters of credit and performance bonds required by domestic and foreign customers of General Atomics, to levelize fluctuating cash requirements, and as a source of funds in the event of an emergency.

14. After considerable delay and effort, GA was only able to secure an alternative and replacement credit facility for letters of credit for a reduced amount which is required to be secured by cash to the extent of the amount of any issued and outstanding letters of credit. As a result, General Atomics has been limited in its ability to pursue significant business opportunities. The company has been substantially limited from engaging in bidding for new business contracts which require performance bonds in excess of the Company's ability to backstop those bonds with cash in a bank cash collateral account.

15. In addition, since this proceeding commenced, the business of the Company, which is based to a great extent on government contracts, has suffered from the loss of substantial funding. In 1995 Congress voted not to continue funding for the Company's Gas-Turbine Modular Helium Reactor (GT-MHR) program. During the previous four (4) years, the Company and affiliates had received an average of $53 million in revenue per year for that program. In 1995 Congress also reduced funding for the Company's nuclear fusion research program by twenty (20) percent.

16. The Commission seeks a judgment against General Atomics in the amount of $86 million. Since the Company's revenues are based to a great extent on government contracts which are renewable or funded annually, the entry of an invalid judgment in that amount would, in all likelihood, preclude the Company from obtaining renewal of existing contracts and from competing

successfully for new contracts. Those developments would place the economic survival of the Company in serious jeopardy, even if the invalid judgment was later set aside in a court of law.

17. As of October 1, 1996, the Trust, required pursuant to the terms of the Settlement Agreement between General Atomics and the NRC Staff was established with Sanwa Bank in Los Angeles, CA. On October 9, 1996, the Trust was initially funded by General Atomics with a wire transfer of $600,000 to Sanwa Bank. Pursuant to the terms of the Trust Agreement, General Atomics has no control over the disbursement of any funds transferred into the Trust.

I declare under penalty of perjury under the laws of the State of California and the United States, that the foregoing is true and that this Declaration is executed on this 10th day of October, 1996, in San Diego, California.

John E. Jones

TRUST AGREEMENT

TRUST AGREEMENT, the Agreement entered into as of October 1, 1996, by and between GENERAL ATOMICS, a California corporation, herein referred to as the "Grantor," and SANWA BANK CALIFORNIA, the "Trustee."

WHEREAS, the U.S. Nuclear Regulatory Commission (IINRCII), an agency of the U.S. Government, pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, has promulgated regulations in Title 10, Chapter I of the Code of Federal Regulations, which require that a holder of, or an applicant for a material license issued pursuant to 10 CFR Part 40 provide assurance that funds will be available when needed for required decommissioning activities; and

WHEREAS, on October 15, 1993 the Staff of the NRC issued an Order to its licensee, Sequoyah Fuels Corporation (IISFCII) (58 Fed. Reg. 55087, October 15, 1993), relating to the funding of the site decontamination and decommissioning of the facilities located in Gore, Oklahoma that are licensed under NRC License No. SUB-1010, Docket No. 40-8027 (the IISFC Facility"); and

WHEREAS, the Staff of the NRC also issued the October 15, 1993 Order against SFC's third-tier parent company, the Grantor, alleging inter alia, that the Grantor and SFC were jointly and severally responsible for providing financial assurance for the decommissioning of the SFC Facility in accordance with the requirements of 10 C.F.R. § 40.36 and that Grantor and SFC have not done so; and

WHEREAS, the Grantor and SFC filed separate answers to the October 15, 1993 Order requesting that it be rescinded, or in the alternative, that a hearing be held on it; and

WHEREAS, an administrative enforcement proceeding is now being conducted before an Atomic Safety and Licensing Board of the NRC (the "Administrative Proceeding") and the Grantor and the Staff of the NRC are parties in that proceeding; and

WHEREAS, the Grantor has denied and continues to deny the allegations of the NRC Staff, but desires to amicably resolve the controverted matters in the Administrative Proceeding through settlement and compromise by establishing and funding the trust herein; and

WHEREAS, the Grantor has elected to use a trust fund to provide part of such financial assurance for the SFC Facility; and

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee,

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means General Atomics, who enters into this Agreement and any successor or assigns of the Grantor.

(b) The term "Trustee" means the trustee who enters into this Agreement and any successor Trustee.

Section 2. Purpose. This Agreement pertains to the settlement of all claims by the NRC Staff against the Grantor under the October 15, 1993 Order.

Section 2. Purpose. This Agreement pertains to the settlement of all claims by the NRC Staff against the Grantor under the October 15, 1993 Order.

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund (the "Fund") for the benefit of the NRC. The Grantor and the Trustee intend that no third party shall have access to the Fund except as provided herein.

Section 4. Payments Constituting the Fund. Payments made to the Trustee for the Fund shall consist of cash and shall be made pursuant to the Settlement Agreement entered into between the Grantor and the NRC Staff on July 10, 1996. Such property and other subsequently transferred to the Trustee are referred to as the "Fund," together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount of, or adequacy of the Fund, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor pursuant to its Settlement Agreement with the NRC.

Section 5. - Payment for Required Activities Specified in the Plan. The Trustee shall make payments from the Fund to SFC (1) as the NRC may direct, or (2) upon presentation by SFC to the Trustee of a certificate, in the form of Exhibit "A" hereto, attesting to the following conditions or certifying that the following events have occurred or will occur:

(1) That the NRC has approved the July 10, 1996 Settlement Agreement between the NRC Staff and the Grantor, thereby taking final agency action on thematter, and that all appeals of such final agency action have been exhausted without success;

(2) That the activities at the SFC Facility are proceeding pursuant to an NRC-approved plan, or to comply with NRC regulations, or with NRC written approval and that the funds withdrawn will be expended for activities undertaken pursuant to that plan, or to comply with NRC regulations, or with NRC written approval;

(3) That (a) the remaining cost of decommissioning the SFC Facility is equal to or less than the total amount in the Fund, or (b) SFC has no present or future net assets or revenues as defined in the August 18, 1995 Settlement Agreement between SFC and the NRC Staff;

(4) That the Board of Directors of SFC has adopted [an attached] resolution authorizing the expenditure of funds for the activities described therein which will be undertaken pursuant to the NRC-approved plan, or to comply with NRC regulations, or with NRC written approval; and

(5) That no later than 30 days prior to the submission of the Certificate by SFC to the Trustee, SFC notified the NRC in writing of the amount it intended to withdraw and the purposes for which the withdrawn funds will be expended.

No withdrawal from the Fund can exceed ten (10) percent of the outstanding balance of the Fund unless written approval of the NRC is attached. Notwithstanding anything in Section 5 to the contrary, no payment from the Fund shall be made by the Trustee if the NRC first provides the Trustee with written instructions not to make a particular payment.

Section 6. Return of Funds to the Grantor. In the event that the NRC does not approve the July 10, 1996 Settlement Agreement between the NRC Staff and the Grantor or the NRC's final approval of that Settlement Agreement is reversed or otherwise set aside by a court of law, all funds which have been paid by the Grantor pursuant to this Trust Agreement, together with all earnings thereon, shall be returned by the Trustee to the Grantor no later than sixty (60) days after an NRC or judicial decision disapproving the Settlement Agreement. The Grantor otherwise shall have no reversionary interest in the Fund or its contents.

Section 7. Trust Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the NRC may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge its duties with respect to the Fund solely in the interest of the beneficiary and with care, skill, prudence, and diligence under the circumstances then prevailing with persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor or any of its affiliates as defined in the Investment Company Act of 1940, as amended (15 U.S.C. BOa-2(a)), shall not be acquired or held;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal government; and

(c) For a reasonable time, not to exceed 60 days, the Trustee is authorized to hold uninvested cash, awaiting investment or distribution, without liability for the payment of interest thereon.

Section 8. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) , including one that may be created, managed, underwritten, or to which investment advice is rendered, or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 9. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale, as necessary for prudent management of the Fund;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that

may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name, or in the name of a nominee, and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities; to reinvest interest payments and funds from matured and redeemed instruments; to file proper forms concerning securities held in the Fund in a timely fashion with appropriate government agencies, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee or such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the U.S. Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal government; and

(e) To compromise or otherwise adjust all investment related claims in favor of or against the Fund.

Section 10. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the income of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 11. Annual Valuation. After payment has been made into this Fund, the Trustee shall annually, at least 30 days before the anniversary date of receipt of payment into the Fund, furnish to the NRC a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days before the anniversary date of the establishment of the Fund. The failure of the NRC to object in writing to the Trustee within 90 days after the statement has been furnished to the NRC, shall constitute a conclusively binding assent by the NRC, barring the NRC from asserting any claim or liability against the Trustee with respect to the matters disclosed in the statement.

Section 12. Advice of Counsel. The Trustee may from time to time consult with counsel with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting on the advice of counsel.

Section 13. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing with the NRC.

Section 14. Successor Trustee. Upon 90 days notice to the NRC, the Trustee may resign; upon 90 days notice to the Trustee, the NRC may terminate the Trustee, but such resignation or termination shall not be effective until

the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee shall specify the date onwhich it assumesadministration of the trust in a writing sent tothe NRC, and thepresent Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the act contemplated by this section shall be paid as provided in Section 9.

Section 15. Instructions to the Trustee. All orders, requests, and instructions to the Trustee shall be in writing, signed by such persons as the NRC may designate in writing. The Trustee shall be fully protected in acting without inquiry in accordance with the NRC's orders, requests, and instructions. If the NRC issues orders, requests, or instructions to the Trustee these shall be in writing, signed by the NRC, or its designees, and the Trustee shall act and shall be fully protected in acting in accordance with such order, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the NRC hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the NRC, except as provided for herein. The Trustee shall be fully protected in relying on any document it receives which it reasonably believes to be genuine.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor and theTrustee. All amendments shall meet the relevant regulatory requirements of the NRC, and be approved by the NRC.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this trust shall be irrevocable and shall continue until terminated at the written agreement of the Trustee and the NRC. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the NRC to be used for the maintenance and long-term surveillance of conditions remaining at the SFC Facility as required by the NRC as part of or following completion of decommissioning of the SFC Facility.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the NRC, issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless from the Fund from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Fund fails to provide such defense.

Section 19. Governing Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of California.

Section 20. Interpretation and Severability. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement. If any part of this agreement is invalid, it shall not affect the remaining provisions which will remain valid and enforceable.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by the respective officers duly authorized and the incorporate seals to be hereunto affixed and attested as of the date first written above.

ATTEST:

By: _____
James R. Edwards,
Secretary

[Seal]

GENERAL ATOMICS

By: _____
John E. Jones,
Senior Vice President,
Administration

ATTEST:

By: _____
Secretary

[Seal]

SANWA BANK CALIFORNIA

By: _____

By: _____

Exhibit "A"

Sanwa Bank California
601 South Figueroa Street
Los Angeles, CA 90017
Attention: Trust Division

Re: Certificate per Trust Agreement

Gentlemen:

In accordance with the terms of the Trust Agreement dated as of October 1, 1996 between General Atomics and Sanwa Bank California, I, _____, President of Sequoyah Fuels Corporation ("SFC") hereby attest to the following conditions or certify that the following events have occurred or will occur:

1. The U.S. Nuclear Regulatory Commission has approved July 10, 1996 Settlement Agreement between the NRC Staffand General Atomics, thereby taking final agency action on the matter, and all appeals of such final agency action have been exhausted without success.

2. The activities at the SFC Facility are proceeding pursuant to an NRC-approved plan, or to comply with NRC regulations, or with NRC written approval, and the funds withdrawn by SFC will be expended for activities undertaken pursuant to that plan, or to comply with NRC regulations, or with NRC written approval;

3. (a) The remaining cost of decommissioning the SFC Facility is equal to or less than the total amount in the Fund, or (b) SFC has no present or future net assets or revenues as defined in the August 18, 1995 Settlement Agreement between SFC and the NRC Staff;

4. The Board of Directors of SFC has adopted then attached resolution authorizing the expenditure of funds for the activities described therein which will be undertaken pursuant to the NRC-approved plan, or to comply with NRC regulations, or with NRC written approval; and

5. No later than 30 days prior to the submission of this Certificate, SFC notified the NRC in writing of the amount it intends to withdraw and the purposes for which the withdrawn funds will be expended.

President of
Sequoyah Fuels Corporation

_____
Date

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of	)	
	)	
SEQUOYAH FUELS CORPORATION	)	Docket No. 40-8027-EA
and GENERAL ATOMICS	)	
	)	
(Gore, Oklahoma Site	)	
Decommissioning and Funding)	)	October 11, 1996

CERTIFICATE OF SERVICE

I hereby certify that the foregoing General Atomics' Response to the Opposition of the Intervenors and the Attorney General of Oklahoma to the Joint Motion for Approval of Settlement Agreement Between NRC Staff and General Atomics was served upon the following persons by telecopier, to those persons marked by an asterisk, and by deposit in the United States mail on October 11, 1996:

Office of the Secretary *
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attention: Docketing & Service Branch
(Original and two copies)

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

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

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

Administrative Judge Jerry R. Kline *
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
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Administrative Judge Thomas D. Murphy *
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Susan L. Uttal, Esq.
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