

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'99 DEC 16 P2:22

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

OFFICE  
FUEL  
ADJUSTMENT

Charles Bechhoefer, Presiding Officer  
Thomas D. Murphy, Special Assistant

**SERVED DEC 16 1999**

In the matter of:

SEQUOYAH FUELS CORPORATION

Gore, Oklahoma Site  
Decommissioning

Docket No. 40-8027-MLA-4

ASLBP No. 99-770-09-MLA

December 16, 1999

MEMORANDUM AND ORDER  
(Granting Request for Hearing)

Pending before me is the State of Oklahoma's [Oklahoma] Supplemental Request for Hearing, filed September 3, 1999,<sup>1</sup> seeking, pursuant to 10 C.F.R. § 2.1205, an informal hearing on Sequoyah Fuels Corporation's [SFC] proposed amendment to its Source Material License No. SUB-1010, to decommission SFC's uranium conversion facility located near Gore, Oklahoma. Oklahoma's Subpart L request alleges that SFC fails to comply with applicable NRC regulations, thus endangering the interests and health and safety of the citizens and environment within its borders.

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<sup>1</sup>Filing of the Supplemental Request was authorized by my Memorandum and Order (Supplement to Request for Hearing), dated Aug. 12, 1999 (unpublished), and by my Memorandum and Order (Denying Motion for Reconsideration), LBP-99-37, 50 NRC 210 (Aug. 30, 1999).

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SFC and the NRC Staff each filed timely responses to Oklahoma's Supplemental Request, dated September 24, 1999 and October 1, 1999, respectively. SFC opposes Oklahoma's request for lack of standing and an adequate area of concern. The NRC Staff concludes that Oklahoma has satisfactorily demonstrated its standing, has stated areas of concern germane to the challenged action, and interposes no objection to my granting Oklahoma's request.<sup>2</sup> For reasons hereinafter set forth, I am granting Oklahoma's hearing request and, following receipt by the Presiding Officer, his Special Assistant, and the parties of the hearing file (see 10 C.F.R. § 2.1231), am scheduling a prehearing conference to consider and define more precisely issues to be litigated and schedules for further filings.

A. Background. SFC submitted its First Revised Decommissioning Plan on December 15, 1998, but it was rejected by the Staff as providing an inadequate basis for Staff review of the plan's compliance with applicable NRC regulations. SFC's proposed amendment, currently

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<sup>2</sup>On October 15, 1999, SFC filed a motion for leave to reply to the Staff's response, together with its reply. On October 25 and November 1, respectively, Oklahoma and the Staff each filed motions to reject SFC's proposed reply or, alternatively, to provide them with opportunities to respond to SFC's reply. I hereby grant SFC's motion to file a reply. I also agree with Oklahoma and the Staff that SFC's reply raises substantive matters. Because of the result I am reaching based on other considerations, however, I am declining to invite Oklahoma or the Staff to file their responses to SFC's reply at this time. Later in this Order, I am establishing a schedule for Oklahoma and the Staff to respond to SFC's reply.

denominated as the Second Revised Site Decommissioning Plan [SRSDP], was submitted on March 26, 1999, and seeks authority to decommission the facility based upon restricted release pursuant to 10 C.F.R. § 20.1403. (Based on information provided by Oklahoma, SFC's existing license currently calls for unrestricted decommissioning:)

Following publication of a Notice of Opportunity for Hearing,<sup>3</sup> Oklahoma on July 7, 1999 filed a timely request for a hearing that was opposed both by SFC and the NRC Staff. SFC claimed the State lacked a sufficient demonstration of standing and also failed to define adequately Oklahoma's areas of concern.<sup>4</sup> The Staff, although recognizing an adequate statement of injury in fact (one aspect of standing), faulted Oklahoma for failing to explain how its interests may be affected by the results of the proceeding and for failing to identify an area of concern adequately.<sup>5</sup>

Because I believed that Oklahoma's request only marginally failed to demonstrate standing, and under my authority set forth in 10 C.F.R. § 2.1209, I afforded Oklahoma the opportunity--identical to that explicitly provided for the more formal and structured 10 C.F.R. Part

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<sup>3</sup>64 Fed. Reg. 31,023 (June 9, 1999).

<sup>4</sup>SFC Answer in Opposition to Request for Hearing of Attorney General of Oklahoma, dated July 19, 1999.

<sup>5</sup>NRC Staff's Response to Request for Hearing Filed by the State of Oklahoma, dated August 6, 1999.

2, Subpart G proceedings, see 10 C.F.R. § 2.714(a)(3)--to file an amendment to its initial filing.<sup>6</sup> Oklahoma filed a timely supplement to its initial hearing request, and SFC and the Staff each filed timely responses.<sup>7</sup>

In response, SFC again asserts that Oklahoma fails both to demonstrate its standing adequately and to indicate with adequate specificity its areas of concern. For its part, the NRC Staff concludes that Oklahoma adequately sets forth its standing and that many, although not all, of its areas of concern are set forth with adequate specificity and comprise permissible matters for adjudication. I turn now to describe the requirements for a hearing under 10 C.F.R. Part 2, Subpart L, and the manner in which the Oklahoma Supplement addresses them.

B. Requirements for Hearing.

1. General requirements. To be granted a hearing in an informal Subpart L proceeding of this type, the Commission requires, inter alia, that a petitioner demonstrate its standing and also specify its areas of

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<sup>6</sup>In my Memorandum and Order of August 30, 1999, LBP-99-37, 50 NRC 210, I denied SFC's motion for reconsideration of my Order affording Oklahoma an opportunity to supplement its initial hearing request.

<sup>7</sup>State of Oklahoma's Supplemental Request for Hearing, dated September 3, 1999 [Oklahoma Supplement]; Sequoyah Fuels Corporation's Response to State of Oklahoma's Supplemental Request for Hearing, dated September 24, 1999 [SFC Response]; NRC Staff's Answer to State of Oklahoma's Supplemental Request for Hearing, dated October 1, 1999 [Staff Answer].

concern about the licensing activity that is the subject matter of the proceeding. 10 C.F.R. § 2.1205(e). As in a formal 10 C.F.R. Part 2, Subpart G proceeding, the standing requirement in an informal proceeding stems from Section 189a(1) of the Atomic Energy Act, 42 U.S.C. § 2239(a), which affords a hearing to "any person whose interest may be affected by the proceeding" (emphasis supplied)."

Commission practice requires that a petitioner seeking a hearing or intervention demonstrate its standing in accord with contemporaneous judicial concepts of standing. See, e.g., Metropolitan Edison Co. (Three Mile Island Nuclear Station), CLI-83-25, 18 NRC 327, 332 (1983) (formal proceeding); Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976) (formal proceeding); Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 80-81 (1993) (informal proceeding); Sequoyah Fuels Corp. (Source Materials License No. SUB-1010), LBP-91-5, 33 NRC 163, 164-65 (1991) (informal proceeding, involving same license at issue here); Chemetron Corp. (Bert Avenue, Harvard Avenue, and McGean-Rohco Sites, Newburgh Heights and Cuyahoga Heights, Ohio), LBP-94-20, 40 NRC 17 (1994) (informal proceeding). To be granted a hearing, a non-applicant, like Oklahoma, must demonstrate "[its] interest

. . . in the proceeding" and "how [its] interests may be affected by the results of the proceeding, including the reasons why [it] should be permitted a hearing." 10 C.F.R. § 2.1205(e) (1), (2).

A contemporaneous judicial exposition of standing appears in a recent U.S. Supreme Court decision, Bennett v. Spear, 520 U.S. 154 (1997). The Court there denominated as the "irreducible constitutional minimum" requirements for standing that (1) the plaintiff (here, petitioner) suffer an "injury in fact" which is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical"; (2) there be a causal connection between the alleged injury and the action complained of [the proposed license amendment authorizing restricted decommissioning]; and (3) the injury will be redressed by a favorable decision. Id. at 167-68; see also Steel Co. v. Citizens for a Better Environment, 118 S.Ct. 1003, 1016-17 (1998) (focusing in particular on the element of redressability); Atlas Corporation (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 423 (1997); Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). In addition, a petitioner must meet the "prudential" standing requirement that the complaint "arguably" falls within the "zone of interests" of the governing law, here the Atomic

Energy Act and the National Environmental Policy Act (NEPA).  
Bennett v. Spear, supra, 520 U.S. at 175.<sup>8</sup>

2. Oklahoma's Alleged Injuries. Although Oklahoma has the burden of establishing its standing, its statements in support of its standing are to be construed in its favor. See Georgia Institute of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995); Atlas Corporation, LBP-97-9, supra, 45 NRC at 424; see also Kelley v. Selin, 42 F.3d 1501, 1507-08 (6th Cir. 1995). I turn first to the interests Oklahoma seeks to protect and how it believes they may be affected by the SRSDP.

Oklahoma alleges that approval of the SRSDP will affect its "significant property, financial and other interests, such as the air, land, waters, environment, natural resources, wildlife, and citizens of Oklahoma."<sup>9</sup> Initially, it asserts that, as a sovereign, it is a parens patriae and has a duty to protect the health, safety, and welfare of all

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<sup>8</sup>The latter determination must be made with particular reference to whether "the requester meets the judicial standards for standing," (emphasis supplied) considering, among other factors, (1) the nature of the requester's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's property, financial or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding upon the requester's interest. 10 C.F.R. § 2.1205(h).

The requestor must also demonstrate the timeliness of its petition. 10 C.F.R. § 2.1205(d)(4). Both Oklahoma's initial hearing request and its supplement were timely filed.

<sup>9</sup>Oklahoma Supplement at 11.

its citizens, particularly those who live, work, travel, or recreate at or near the site.<sup>10</sup> The State goes on to claim that the SRS DP will affect groundwater in the vicinity of the site and the waters of the Illinois and/or Arkansas Rivers which are used for drinking, irrigation and livestock, thus injuring those interests and Oklahoma's natural resources.<sup>11</sup>

Oklahoma next asserts a quasi-sovereign interest in the physical and economic health of its citizens, including protecting the integrity of ground and surface waters, the area's tax base, and Oklahoma's tax revenues. Oklahoma further claims a proprietary interest in the air, land, waters, wildlife, and other natural resources found within its borders, claiming it owns the waters in certain defined streams on the SFC site, as well as the waters in nearby streams and lakes.<sup>12</sup> Oklahoma also asserts ownership of all wildlife in the State and claims it operates and manages the Robert S. Kerr Unit of the McClellan-Kerr Wildlife Refuge,

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<sup>10</sup>Id. at 11-12. Oklahoma named four of its citizens living near the SFC site, although it did not explicitly state that those citizens authorized Oklahoma to represent them. In the case of a State, such explicit authorization is not necessary. International Uranium (USA) Corporation (Receipt of Material from Tonawanda, New York), LBP-98-21, 48 NRC 137, 145 (1998); Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142 (1998).

<sup>11</sup>Oklahoma Supplement at 12.

<sup>12</sup>Specifically, Salt Branch, the Illinois River (as to which the SFC site is assertedly located on a bend), the Arkansas River, Lake Tenkiller, and Robert S. Kerr Lake.

located near the SFC site, and leases to others certain agricultural rights and privileges inside that refuge. Further, Oklahoma alleges that it owns, operates and maintains certain roads and thoroughfares in close proximity to the site--namely, State Highway 10, which runs adjacent to the site.<sup>13</sup> Oklahoma asserts that all of these interests will be affected by the SRDC. Finally, Oklahoma states that it has an interest in the correct application and enforcement of laws, rules and regulations governing NRC-licensed facilities in Oklahoma because this decision will impact similar facilities within the State.<sup>14</sup>

Oklahoma claims these interests are affected by the numerous areas of concern it has listed. There need only be one such area for a hearing to be granted (see Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-130, 6 AEC 423, 424 (1973)) and, to be acceptable as a basis for a hearing, such area need only be "germane" to the subject matter of the proceeding.

In particular, Oklahoma claims that the SRSDP involves a significant source of radioactivity leading to obvious potential for offsite consequences and that a presumption of standing based on geographic proximity to its interests may

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<sup>13</sup>Oklahoma Supplement at 13-15.

<sup>14</sup>Id. at 16-17. Oklahoma states there are several other facilities like the one at issue in this proceeding, and it specifically names the Fansteel, Inc. Facility in Muskogee, Oklahoma.

be applied. It cites the on-site, above-grade disposal cell for the permanent disposal of decommissioning wastes which, it claims, would have a volume of 5-11 million cubic feet, a foot-print of 10-20 acres, and a height of approximately 40 feet above grade. Such cell, according to Oklahoma, would be sited in "very close proximity" to both the Illinois and Arkansas Rivers, as well as defined on-site streams.

Although Oklahoma does not specify how much radioactivity is involved or how it is significant, it claims that the cell and the SRSDP thus produce an "obvious potential for offsite consequences."<sup>15</sup>

3. Other Parties' Positions Concerning Standing. SFC asserts that the Oklahoma Supplement fails to adequately demonstrate various elements of standing, such as "injury in fact" and how Oklahoma's stated interests will be affected by the SRSDP. SFC cites a lack of specificity as to each element of standing, particularly a failure to demonstrate "concrete harm."<sup>16</sup> SFC further faults the Supplemental Request for failing to specify adequately each of the five asserted injuries in fact on which it is premised. According to SFC, each is based "essentially on speculation" and lacks evidentiary support.<sup>17</sup> For example, with respect to groundwater, SFC claims that the "Supplemental Request

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<sup>15</sup>Id. at 18, n.17.

<sup>16</sup>SFC Response at 6.

<sup>17</sup>Id. at 7.

provides no specific description of what this harm will be, when it will occur, what levels of releases will supposedly occur, or how approval of the [SRSDP] will increase (rather than reduce) the likelihood of those releases."<sup>18</sup> SFC adds that the Supplemental Request provides no "evidence" indicating that releases would exceed levels specified in NRC regulations or within the 1000-year time span allegedly covered by the regulations.

SFC goes on to claim that the Supplemental Request fails to identify any plausible connection between approval of the SRSDP and the alleged harm. It contrasts the contaminated structures, equipment, soil, and water already on site with the alleged decrease in risk to be provided by the SRSDP, and faults the Supplemental Request for not providing a "clear or plausible" explanation how the alleged harms might result from approval and implementation of the SRDC. SFC concludes that, to the extent the harms are plausible at all, they are due to preexisting conditions and are more probable if the SRSDP is not approved than if it is.<sup>19</sup>

Finally, SFC asserts that the harms alleged by Oklahoma cannot be redressed by a decision in the State's favor. SFC in this regard equates rejection of the SRSDP with continuation of the current on-site contamination. SFC

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<sup>18</sup>Id.

<sup>19</sup>Id. at 15-16.

criticizes Oklahoma for failing to provide suggestions or strategies for how decommissioning might be better accomplished.<sup>20</sup>

For its part, the NRC Staff reiterates its previous position that Oklahoma has demonstrated injury in fact to certain interests within the zone of interests protected by the Atomic Energy Act or NEPA. The Staff also acknowledges that a presumption of injury in fact for standing purposes may be applied in nonpower reactor cases when the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences, citing Georgia Tech, CLI-95-12; 42 NRC at 116 (which itself cites Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994)); and Armed Forces Radiobiology Research Institute (Cobalt-60 Storage Facility), ALAB-682, 16 NRC 150, 153-54 (1982). Finally, the Staff points to cases holding that even minor radiological exposures can create the requisite injury in fact for standing purposes. E.g., Yankee Atomic Electric Co. (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 70, aff'd, CLI-96-7, 43 NRC 235, 246-48 (1996).

The Staff goes on to spell out which of Oklahoma's alleged injuries in fact have been adequately demonstrated to be affected by the SRSDP and which have not been. The Staff further agrees with Oklahoma that an order rejecting

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<sup>20</sup>Id. at 16-18.

the SRSDP would redress Oklahoma's alleged injuries.

4. Ruling on Standing. Oklahoma has met the Commission's standing requirements in a number of ways. First, as a sovereign with a duty to protect all its citizens (including those listed in its Supplement at 11-12, n.9, who assertedly live, work, travel, or recreate near the site), it has demonstrated an interest in that capacity. Because it has catalogued a number of asserted injuries to its citizens carrying out activities near the site (such as contamination of the groundwater on which they rely, or alternatively limitation of their use of the Robert S. Kerr Unit of the McClellan-Kerr Wildlife Refuge), it clearly, in its sovereign capacity, has standing to challenge the SRSDP. Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant), LBP-99-25, 50 NRC 25, 29 (1999); Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Organization), CLI-98-13, 48 NRC 26, 33 (1998) (holding "the strong interest that a governmental body . . . has in protecting the individuals and territory that fall under its sovereign guardianship establishes an organizational interest for standing purposes.")

Second, as the owner of streams, lakes, air, and property on or near the site, Oklahoma has catalogued a number of asserted injuries to those interests resulting from alleged pollution and discharges emanating as a result of the SRSDP. That such pollution or those discharges may

conform to regulatory criteria is not controlling for standing purposes--the State's interests will nevertheless be affected by the SRSDP. Atlas Corporation (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 425 (1997); General Public Utilities Nuclear Corp. (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 158 (1996). Indeed, a statement of asserted injury that is insufficient to found a valid contention (in a formal proceeding) may well be adequate to provide a basis for standing. See Consumers Power Co. (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 115 (1979).

In that connection, permissible radiation doses under 10 C.F.R. § 20.1403 (authorizing license termination under restricted conditions such as is sought here) includes not only specified maximum doses but also a requirement that the doses be "as low as is reasonably achievable" (ALARA). To the extent that SFC may have performed an ALARA calculation, Oklahoma may challenge the adequacy of that calculation and has done so here in its statement of concerns.

Oklahoma's stated interest in the correct application of decommissioning regulations, however, to the extent it may be applied to other facilities in Oklahoma, is not one that may be litigated here. This is not a rulemaking proceeding governing a number of facilities. Each licensing proceeding is confined to the application of governing rules to a particular facility. Oklahoma should be able to

express its views with respect to each of such facilities within the State, which are likely to be the subject of an opportunity for a hearing (as was this facility). To apply its standards throughout the State, Oklahoma would have to challenge decommissioning at each facility within the State when there is an opportunity for an NRC hearing.

As I determined earlier, Oklahoma's initial request for a hearing was timely filed. (Its Supplement was also timely submitted, on the schedule I established for that purpose.) Finally, relative to the "redressability" question, I set forth a number of Oklahoma's areas of concern that qualify as bases for issues to be litigated. That being so, Oklahoma has clearly established its standing to be granted a hearing in this matter. If I should agree with Oklahoma in its allegations concerning the SRSDP, the result could be either the substantial modification of the SRSDP to meet Oklahoma's concerns or, possibly, the disapproval of the proposed amendment incorporating the SRSDP and the resulting continued effectiveness of the current licensing condition requiring unrestricted decommissioning for the entire site-- both potential results completely in accord with what Oklahoma seeks in this proceeding.<sup>21</sup>

5. Areas of Concern. In an informal proceeding such as this one, areas of concern constitute the general subject matter of issues that a petitioner seeks to litigate. As

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<sup>21</sup>See Oklahoma Supplement at 26-27 and Exhibit 10.

such, they are analogous to contentions in formal adjudications, although not freighted with the same technical requirements. Indeed, about the only requirement that must be met is that they be "germane" to the subject matter of the proceeding. 10 C.F.R. § 2.1205(h).

SFC claims that none of Oklahoma's areas of concern are identified with enough detail to show that they are germane to this proceeding.<sup>22</sup> However, SFC invokes standards of detail that clearly are not appropriate at this early stage of the proceeding, prior to issuance to parties of the hearing file. As correctly described by Oklahoma,<sup>23</sup> an area of concern is "germane" if relevant to whether the sought license amendment should be denied or conditioned. As set forth in the Statement of Considerations for 10 C.F.R. Part 2, Subpart L, the statement of concerns need not be extensive but must be sufficient to establish that the issues a petitioner seeks to raise fall "generally" within the range of matters that are properly subject to challenge in the proceeding. 54 Fed. Reg. 8269, 8272 (Feb. 28, 1989). The concerns must also be "rational." Babcock and Wilcox Co. (Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania), LBP-94-12, 39 NRC 215, 217 (1994).

Nor must the areas of concern be set forth at this stage of the proceeding with the degree of detail or

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<sup>22</sup>SFC Response at 19.

<sup>23</sup>Oklahoma Supplement at 27-28.

specificity that might be appropriate for an issue that will be litigated. Babcock and Wilcox Co. (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-92-24, 36 NRC 149, 153-54 (1992). In fact, they are more like the "aspects" requirement in formal litigation, setting the stage for formal contentions in those proceedings and definitive issues for litigation in informal proceedings. Combustion Engineering, Inc. (Hematite Fuel Fabrication Facility), LBP-89-23, 30 NRC 140, 147 (1989).

I turn now to the areas of concern identified by Oklahoma, to ascertain whether at least one is "germane" to this proceeding so as to warrant granting Oklahoma's hearing request.

1. Whether the restricted decommissioning option under 10 C.F.R. § 20.1403 may be applied to the SFC site.

Oklahoma, citing the Statement of Considerations for 10 C.F.R. § 20.1403, claims that NRC intended the restricted decommissioning option to apply only to facilities where radioactive contaminants will decay to unrestricted dose levels within a finite period of institutional control and that, in contrast, the radioactive contaminants at the SFC site will remain potentially hazardous for billions of years. Oklahoma also cites the provision in SFC's current license calling for unrestricted decommissioning.<sup>24</sup>

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<sup>24</sup>Id. at 30.

The applicability of restricted decommissioning to the SFC site is a question of law that is manifestly germane to this proceeding. Contrary to the conclusions of SFC and the Staff, Oklahoma is not attempting to challenge the regulation, only various parties' interpretations of the regulation--a practice that is not proscribed by 10 C.F.R. § 2.1239(a). Oklahoma is merely attempting to advance its own interpretation of the regulation, backed by substantive references to support its view.

Even though this area of concern is germane to this proceeding, as a matter of law Oklahoma is incorrect in asserting that restricted decommissioning is not appropriate for the Sequoyah site. As both SFC and the Staff observe, and notwithstanding the Statement of Considerations from which an intent to limit applicability may perhaps be gleaned, the restricted decommissioning option as finally adopted in the final rule does not appear to be limited by the types of radioactive contaminants under consideration.<sup>25</sup> True, the Statement of Considerations expresses the Commission's belief that unrestricted decommissioning is generally preferable to restricted decommissioning. 62 Fed. Reg. 39058, 39069 (1997). Recognizing, however, that there may be situations where there may be net public or environmental harm in achieving unrestricted use for a site, the Commission adopted the restricted-decommissioning option

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<sup>25</sup>SFC Response at 21-24; Staff Answer at 15-16.

to preclude the need for granting numerous exemptions for sites where unrestricted decommissioning was either not achievable or not practical. Thus, if a licensee meets the particular criteria set forth in the rule for restricted license termination, it is authorized to use such decommissioning for its site.

Moreover, the provision of SFC's current license calling for unrestricted decommissioning (invoked by Oklahoma) is not controlling or even persuasive. For, in this proceeding, SFC is seeking to delete the license provision requiring unrestricted decommissioning (the only type available when SFC sought its license).<sup>26</sup> For this reason, Oklahoma's first area of concern, although germane, does not present a litigable question. However, whether a licensee has satisfied the conditions for restricted decommissioning may be litigated. Oklahoma's second area of concern seeks such litigation.

2. Whether the SRSDP complies with the ALARA requirement of 10 C.F.R. § 20.1403. Oklahoma claims that the SRSDP fails to demonstrate that such further reductions in residual radioactivity as would be necessary to achieve unrestricted decommissioning of the SFC site would result in net public or environmental harm. Oklahoma further claims that the SRSDP fails to demonstrate that its levels of residual radioactivity are ALARA. Thus, Oklahoma claims

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<sup>26</sup>SFC Response at 23.

that the SRSDP does not comply with the explicit terms for invoking restricted decommissioning.<sup>27</sup>

SFC asserts that this area of concern is inadequate because it does not identify any specific basis for concluding that the SRSDP does not comply with 10 C.F.R. § 20.1403. In particular, SFC faults Oklahoma for failing to mention any remedial measure alleged to be a reasonably achievable method of dose reduction. SFC also claims that the SRSDP need not show both net public or environmental harm and ALARA, claiming the licensee has the option of meeting either test, that the ALARA calculation has been incorporated into the SRSDP by reference, and that Oklahoma has provided no specific reason why the ALARA analysis is inadequate. Thus, this area is said to be not germane to the proceeding.<sup>28</sup> In addition, SFC claims this area of concern is late-filed without justification, inasmuch as Oklahoma's initial hearing request assertedly failed to mention the ALARA requirement.<sup>29</sup>

On the other hand, the Staff asserts that the challenge to SFC's ALARA study sets forth an area of concern germane to the proceeding. The Staff reiterates that, at this stage of the proceeding, Oklahoma is not obliged to put forth a comprehensive exposition in support of this litigable

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<sup>27</sup>Oklahoma Supplement at 32-33.

<sup>28</sup>SFC Response at 24-25.

<sup>29</sup>Id. at 39.

question but need provide only minimal information necessary to assure that the area is germane. The Staff considers this area to be germane. In addition, it regards the area of concern reasonably to be considered as supplementary to the generalized statements in Oklahoma's initial request and, hence, not late-filed.<sup>30</sup>

I agree that this area of concern is germane. I also agree that the ALARA issue is sufficiently related to generalized statements in Oklahoma's original request to be considered timely.<sup>31</sup> The specific issues in this area that are to be litigated, if any, must be particularized at a later date, following distribution of the hearing file. In that connection, the information that SFC claims to have already made available to Oklahoma cannot be considered as a substitute for the hearing file requirement. Therefore, the precise issues for litigation in this area (if any) will be further delineated through the prehearing conference authorized by this Order.

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<sup>30</sup>Staff Answer at 16-18. The Staff in this respect cites Atlas Corporation; LBP-97-9, 45 NRC at 423; Hydro Resources, Inc. (Leach Mining License), LBP-98-9, 47 NRC 261, 281-82 (1998); Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-92-24, 36 NRC 149, 154 (1992); and Sequoyah Fuels Corp., LBP-94-39, 40 NRC 314, 316 (1994).

<sup>31</sup>By comparison, the supplement in a Subpart G formal proceeding may include information current as of its date of filing. Given my other reasons for treating areas of concern spelled out in the Oklahoma Supplement as timely filed, I need not here decide whether a supplementary filing in a Subpart L proceeding (where authorized) may include information current as of the date of its filing.

3. Acceptability of the SRSDP's Total Effective Dose Equivalent (TEDE) Modeling. Oklahoma claims that the dose rate from residual radioactivity, which must satisfy the 25 mrem standard to qualify for restricted decommissioning under 10 C.F.R. § 20.1403(b), is not being calculated correctly in the SRDC. The State asserts that the models, assumptions and input parameters in the SRSDP are either erroneous, inapplicable, or extremely liberal, making it doubtful that the TEDE from residual radioactivity distinguished from background will not exceed the 25 mrem regulatory limit.<sup>32</sup>

As particular examples for its general claim, Oklahoma specifies (1) the legitimacy of the scenario to determine the 25 mrem/year TEDE from Derived Concentration Levels; (2) the failure to include groundwater in the analysis, in light of the "resident farmer" scenario; (3) other unsubstantiated assumptions about the "resident farmer" scenario that are not in compliance with U.S. Environmental Protection Agency (EPA) guidance; and (4) failure of the models to include the production of radon at the SFC site.<sup>33</sup>

In response, SFC claims that the SRSDP uses a computer code (identified therein) used by the NRC Staff and others for this purpose and asserts that the Supplemental Request does not specify any particular model, assumption, or input

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<sup>32</sup>Supplemental Request at 33-34.

<sup>33</sup>Id. at 34 n.28.

parameter assertedly in error or otherwise explain why SFC's use of a particular model is unacceptable. SFC concludes that the Supplemental Request fails to include enough information to ascertain whether the area is germane. SFC adds that the issues of groundwater and radon are not identified adequately and, further, that under Commission guidance, radon need only be considered in designing mitigation techniques, not in performing an ALARA analysis.<sup>34</sup>

As for the Staff, it criticizes the Supplemental Request for failing to identify the unsubstantiated assumptions about the resident family scenario not in compliance with EPA guidance, and it would reject this aspect of the area of concern. But the Staff asserts that the SRSDP uses a site-specific model (the resident farmer scenario) that considered some but not all groundwater paths and would accept the specific arguments concerning groundwater as an area of concern germane to the proceeding.<sup>35</sup>

Although the alleged failure of models adequately to consider EPA guidance may be significant, Oklahoma's failure to specify what particular aspects of the model fail to adhere to EPA standards makes it impossible to determine whether the claims in this regard are germane. I agree with

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<sup>34</sup>SFC Response at 25-27.

<sup>35</sup>Staff Answer at 18-19.

the Staff, however, that the allegations concerning groundwater are clearly germane to the proceeding and suitable for litigation. To this extent, I am accepting this area of concern. Specific issues for litigation will be further delineated at a future prehearing conference.

4. Failure of SRSDP to Conform with Institutional Control Requirements of 10 C.F.R. § 20.1403(e).

Requirements for restricted decommissioning include a demonstration that, were institutional controls no longer in effect, residual radioactivity at the site will not exceed certain levels. Oklahoma claims that the SRDC fails to adequately make such a demonstration. As a basis, it cites the allegedly deficient models discussed in its third area of concern (one of which I have found to be germane). It deems these models not to be "prudently conservative."<sup>36</sup>

SFC asserts that since, in its view, area 3 does not identify particular flaws in the dose assessment models and is unacceptably vague, area 4 is likewise unacceptably vague. SFC adds that there is no applicable standard for models as "prudently conservative." For its part, the Staff finds a germane area of concern with respect to the groundwater pathways it found germane in area 3 (and which I also find to be germane). The Staff does not comment on "prudently conservative."

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<sup>36</sup>Oklahoma Supplement at 34-35.

This area of concern is germane insofar as it relates to groundwater modeling pathways set forth in area 3 as deficient. SFC is correct, however, that the reference to "prudently conservative" models, to the extent it may be intended as anything other than descriptive, invokes a standard not incorporated into NRC rules and, hence, does not portray the appropriate standard for my evaluating the issue emanating from this area of concern. Specific issues for litigation will be further delineated at a future prehearing conference.

5. Institutional Control and Long-term Custodianship at the SFC Site. This area of concern encompasses several potential issues. Oklahoma claims that the SRSDP fails adequately to demonstrate legally enforceable institutional controls, as required by 10 C.F.R. § 20.1403(b), so as to provide reasonable assurance that the TEDE from residual radioactivity will not exceed 25 mrem/yr. Among other matters, Oklahoma claims that the SRSDP fails to (1) identify a long-term custodian; (2) map out adequately long-term custodial care of the site; and (3) address adequately maintenance and replacement of the disposal cell, rip-rap, rolling the clay liner, fence, etc., factors said to directly impact the TEDE. Finally, Oklahoma claims that deed restrictions (including those proposed by SFC) are of doubtful value for long-term institutional control,

especially for the extreme lengths of time at issue in the SRDP.<sup>37</sup>

SFC portrays this area of concern as too vague and additionally as misstating the legal requirements applicable to decommissioning of the SFC site. It portrays the area of concern as a "challenge" to NRC regulations. It thus concludes that Oklahoma's statements are not adequate to identify an admissible area of concern.<sup>38</sup>

For its part, the Staff finds certain portions of this area of concern to be germane.<sup>39</sup> Specifically, it points to the alleged failure of SFC to identify a long-term custodian and failure to map out long-term custodial care adequately. The Staff disagrees with SFC's position that a long-term custodian is not required because deed restrictions and government ownership are alternatives for establishing institutional controls, asserting that, for restricted release, all sites must have not only institutional controls but also a custodian.<sup>40</sup>

This area of concern brings to the fore SFC's reply (see n.2), which asserts that the regulatory standards giving rise to this area of concern, set forth in 10 C.F.R. Part 40, Appendix A, are not applicable to the SFC site. At

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<sup>37</sup>Id. at 35-36.

<sup>38</sup>SFC Response at 28-30.

<sup>39</sup>Staff Answer at 23.

<sup>40</sup>Staff Answer at 23, n.18.

this stage, I am deferring my ruling on such applicability. I note, however, that the Notice of Opportunity for Hearing in this proceeding, to which Oklahoma has responded, refers explicitly to this Appendix as a foundation for the Staff review of SFC's SRSDP. See 64 Fed. Reg. 31,023 (June 9, 1999).<sup>41</sup> Thus, where a request for a hearing is founded upon review under that criterion, together with an asserted failure of the Licensee's plan to conform to such criterion, failure to conform in specified ways represents a permissible area of concern.

Thus, this area of concern is germane. Following submission of responsive briefs by Oklahoma and the Staff, as authorized in this Memorandum and Order, I will deal with the effect that Appendix A may play in this proceeding. In particular, does the Notice of Opportunity for Hearing reflect a case-specific order to the effect that Appendix A is applicable? What other criteria, if any, would govern the Staff's review of the restricted-decommissioning proposal? In the consideration of specific issues for hearing at the forthcoming prehearing conference, the applicability of Appendix A will be further considered.

6. Failure to Comply with NRC Public Participation Requirements. Oklahoma asserts that the SRSDP is "fatally

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<sup>41</sup>"The SDP proposes placing radiologically contaminated materials in a single, on-site above-grade disposal cell constructed to the technical criteria of 10 CFR Part 40, appendix A." 64 Fed. Reg. at 31,023.

flawed" for failing to include adequate documentation as to how the advice of individuals or institutions in the affected community was taken into account, as required by 10 C.F.R. § 20.1403(d). It asserts that little or no advice of individuals or institutions in the community was incorporated into the SRSDP.<sup>42</sup>

SFC states that Oklahoma's Supplemental Request seeks to create a regulatory requirement that a licensee modify its plans to adopt all or some unstated portion of changes proposed in public comments and, as such, constitutes an impermissible challenge to the regulation. SFC also views this area of concern as impermissibly vague.<sup>43</sup> Similarly, the Staff views this area of concern as lacking the specificity necessary to determine germaneness.<sup>44</sup>

This area of concern is too vague to be considered germane. In particular, Oklahoma does not specify any particular advice that was proffered but not referenced in the SRSDP. The regulation only requires discussion "as appropriate," but Oklahoma fails to specify why the discussion in the SRSDP is not appropriate. Accordingly, I find this area not to be germane.

7. Financial Assurance. Oklahoma asserts that the SRSDP fails to comply with NRC financial assurance

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<sup>42</sup>Oklahoma Supplement at 36-37.

<sup>43</sup>SFC Response at 30-31.

<sup>44</sup>Staff Answer at 24.

requirements, as set forth in 10 C.F.R. § 1403(c). Oklahoma states that the \$21,244 provided for annual costs of long-term site control fails to include the following items:<sup>45</sup>

- a. Repair of disposal cell;
- b. Replacement of disposal cell;
- c. Repair of disposal cell cap;
- d. Replacement of disposal cell cap;
- e. Short- and long-term testing and analysis of disposal cell performance;
- f. Repair of groundwater monitoring systems;
- g. Replacement of groundwater monitoring systems;
- h. Future remediation, decontamination and decommissioning;
- i. Additional cleanup in the event radiological criteria are not met and residual radioactivity at SFC site poses a significant threat to public health and safety;
- j. Collection and remediation of leachate from disposal cell;
- k. Engineered barrier repair;
- l. Engineered barrier replacement;
- m. Emergency planning and training;
- n. Site security;
- o. Funding for enforcement of institutional controls;
- p. Unforeseen problems, acts of God, or other force majeure events.

SFC would have me reject this area of concern on the grounds that its cost estimate does cover certain of the items, that Oklahoma has not demonstrated why these items are incorrect, that others are not required to be covered and that, collectively, the items pose an impermissible challenge to the regulation.<sup>46</sup>

The Staff takes the position that, although lack of a line item for each individual expense of custodianship does

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<sup>45</sup>These items are designated as in the Oklahoma Supplement at 37-38, except for item p, which is derived from the text of the Oklahoma Supplement at 38.

<sup>46</sup>SFC Response at 31-33.

not necessarily mean that no financial provision has been made for these items, the proposed budget does not provide sufficient detail regarding certain expenses to determine if they are adequately funded. It acknowledges that inadequate funding for proposed activities has been held to be an area of concern germane to a licensing activity, citing Hydro Resources, Inc. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 282 (1998). And it adds that the Staff's technical review will consider whether there is adequate funding for all necessary and reasonably anticipated expenses, including those listed as items a, c and d (considered as one item), f, g, n, and p. With respect to those items, the Staff states that Oklahoma has stated a germane area of concern.

Further, with respect to item j, the Staff indicates that the adequacy of funding for leachate collection and remediation has been found germane in another proceeding and would have me find it germane here. It comments that SFC's opposition on the ground that Oklahoma has failed to assert that groundwater contamination will exceed regulatory limits is erroneous inasmuch as such an assertion is not necessary to demonstrate germaneness.

With respect to item e, the Staff indicates that short-term monitoring of disposal cell performance is the subject of Staff technical review and states a germane area of concern. Because long-term monitoring is only required

where specified circumstances occur, and Oklahoma has not adequately asserted such potential circumstances, the Staff perceives the long-term monitoring aspect of e as not germane. The Staff also states that items b, k, l, m and o are not germane, because they are neither required nor reasonably anticipated expenses or relate to matters not required to be included in the SRSDP.<sup>47</sup>

The Staff's analysis of the financial qualifications area of concern is comprehensive and adequately considers the legal criteria under which the Staff proposes to conduct its review. As was observed previously, the forthcoming prehearing conference will consider defining specific issues to be litigated, including the legal applicability of the standards being used by the Staff--in particular, 10 C.F.R. Part 40, Appendix A. As for now, as advocated by the Staff with respect to this area of concern, items a, c and d (considered as one item), e (short-term monitoring), f, g, j, n and p are germane. Items b, e (long-term monitoring), k, l, m and o are not germane.

8. Failure to Remediate Groundwater. As its eighth area of concern, Oklahoma asserts that, in the SRSDP, SFC proposes to remove and treat only the Terrace Groundwater at the site, leaving the Shallow Bedrock Groundwater untreated. Further, that the SRSDP proposes to leave nitrates in the Alluvial Groundwater System untreated, with the intent of

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<sup>47</sup>Staff Answer at 24-29.

allowing the nitrates to flush into Robert S. Kerr Lake. As a result, Oklahoma asserts damage to various of its natural resources (including air, land, water, and wildlife). In addition, it asserts that no institutional control proposed in the SRSDP is capable of containing migration of existing radioactive contamination outside of the institutional control boundary, deeming this to be a "fatal flaw" in the SRSDP. Finally, it asserts that failure to remediate groundwater will have a "grave impact" on TEDE that is not covered by its modeling efforts.<sup>48</sup>

SFC finds this area of concern to be not germane because, in its opinion, there is no NRC requirement that contamination in groundwater be contained, except as necessary to achieve the peak TEDE from residual radioactivity at not in excess of 25 mrem (and that the doses be ALARA). SFC claims that to contend otherwise would constitute a challenge to the regulations. SFC adds that Oklahoma has provided no basis for questioning SFC's position that migration of groundwater is consistent with its estimate of total all-pathways dose. Finally, SFC asserts that nitrites are not subject to NRC regulatory control, so that releases need not be treated in the SRSDP.<sup>49</sup>

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<sup>48</sup>Oklahoma Supplement at 39.

<sup>49</sup>SFC Response at 33-34, including n.13.

On the other hand, the Staff states that the SRSDP proposes remediation of groundwater by "monitored natural attenuation," which involves monitoring groundwater during attenuation of the existing contamination by natural processes, and that the acceptability of this proposal will be evaluated by the Staff. Further, that although the NRC does not regulate nitrates, per se, it will evaluate nitrate levels in accordance with NRC's NEPA obligations. Thus, the Staff finds this area of concern to be relevant and hence germane, citing Sequoyah Fuels Corporation, LBP-94-39, 40 NRC 314, 316 (1994).<sup>50</sup>

Oklahoma's concerns about groundwater contamination and SFC's failure to remediate groundwater clearly are relevant to its interests, if such failure may result in doses exceeding regulatory criteria. That nitrates may not constitute radioactive material does not mean that they may not produce an impact on human health, emanating from a site over which NRC has had jurisdiction. In fact, the NRC has explicitly exercised regulatory authority over nonradioactive materials emanating from NRC sites that may have a "potential for health risks caused by human exposure to waste constituents." See 10 C.F.R. Part 40, Appendix A, Criteria 5B, 5C and 7. The Staff's proposed review under NEPA thus appears to be entirely appropriate.

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<sup>50</sup>Staff Answer at 20-21.

Oklahoma's concerns in this regard are germane to this proceeding.

9. Design and Sufficiency of Proposed Disposal Cell.

As its final area of concern, Oklahoma challenges both the design and the sufficiency of the disposal cell. Oklahoma asserts that the SRSDP fails to include sufficient design information to judge the cell's adequacy, commenting that the SRSDP only reveals that the cell will be built directly on native soil, without any liner or leachate collection system.

Oklahoma goes on to assert that (1) all disposal cells leak; (2) as described in the SRSDP, the disposal cell cap will limit but not obviate the intrusion of water into the cell; (3) solidification of radioactive waste material in the cell will not stop, but at best will retard water intrusion and the creation of leachate; and (4), as described by SFC's own contractor, release of contaminants from the disposal cell is inevitable. It adds that the inadequate maintenance budget in the SRSDP (see area of concern 7) will amplify and accelerate this contamination process, and by not providing adequate funding for maintenance and repair of the cap, SFC virtually assures that the cap will not be adequately maintained and will quickly degrade.

Next, Oklahoma asserts that the cell will be placed directly over existing monitoring wells, permitting

contaminants to reach and contaminate groundwater, and that plugging these wells will not prevent contamination given the extended time periods involved; and, further, that due to the location of the site, groundwater beneath the site is vulnerable to contamination. Oklahoma also asserts that the SRSDP fails to address the probability of migration of the Illinois and/or Arkansas Rivers into the site, and that catastrophic failure of the cell would immediately affect the air, land, waters, wildlife, and natural resources of Oklahoma, as well as the health, safety, and welfare of its citizens, and would produce economic hardship.<sup>51</sup>

SFC claims that this area of concern essentially duplicates other areas, all of which it considers not to be germane. With respect to groundwater contamination, it faults Oklahoma's Supplemental Statement for failing to provide any showing that doses will exceed regulatory limits or could be reduced by a reasonably achievable alternative. To the extent Oklahoma claims effects for more than 1000 years, and any effects at all from radon, SFC deems the area to be a challenge to the regulations. For these reasons, SFC claims this area as well to be not germane.<sup>52</sup>

The Staff acknowledges that the issues included within this area of concern will be the subject of its own technical and environmental review. It agrees with SFC that

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<sup>51</sup>Oklahoma Supplement at 39-42.

<sup>52</sup>SFC Response at 34-36.

the regulatory time frame for review of safety issues is 1000 years but states that there are no automatic time limits applicable to its environmental review. With respect to the potential migration of the Illinois and Arkansas Rivers into the SFC site, and SFC's claim (SFC Response at 36) that such migration would tend to make them flow uphill and thus not constitute a germane claim, the Staff observes that migration can arise from either migration of the river beds or from erosion of the rivers into ground underneath the site and that at this time it cannot state that such erosion is not a "possible eventuality."<sup>53</sup>

As for lack of a cell liner or leachate collection system, the Staff states that such a liner or collection system is required unless SFC can demonstrate that its plan will prevent migration of hazardous constituents into groundwater "at any further time" (citing 10 C.F.R. Part 40, Appendix A, Criterion 5A(3)). With respect to the alleged placement of the cell over existing groundwater monitoring wells, and the claim that plugging of such wells will not prevent a direct pathway to groundwater contamination, the Staff asserts that it is not possible to conclude that a properly plugged well cannot provide a conduit for contamination in the cell to reach groundwater in the time frames involved because of possible degradation of the plugs and the presence of radioactive contaminants such as

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<sup>53</sup>Staff Answer at 29-30.

uranium, thorium and radium in the cell. As a result, the Staff finds all of the elements of this area of concern to be relevant to the proposed action and hence germane to the proceeding.<sup>54</sup>

Based on the Staff's analysis, Oklahoma's ninth area of concern is admitted as germane. Specific issues (some of which overlap other admissible areas of concern) will be developed and consolidated (as appropriate) at a prehearing conference. It should be noted, however, that only if I should determine that it is appropriate for the Staff to rely on (or at least use as guidance for its review) the requirements set forth in 10 C.F.R. Part 40, Appendix A would all aspects of this area of concern necessarily be considered germane and hence a source of litigable issues. I will leave this matter for resolution at a prehearing conference, to be held following my receipt of the hearing file and further briefing by Oklahoma and the Staff concerning the propriety of referencing 10 C.F.R. Part 40, Appendix A as a standard of review.

C. Further Proceedings.

Because I have found Oklahoma to have standing to participate in this proceeding and to have set forth several litigable areas of concern, I hereby grant its request for a hearing. Oklahoma thus becomes a formal party to this proceeding. A Notice of Hearing will be issued in the near

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<sup>54</sup>Staff Answer at 30-32.

future. Under the Rules of Practice, the Staff has 30 days from my issuance of this Memorandum and Order to provide the hearing file to the Presiding Officer, his special assistant and the parties. 10 C.F.R. § 2.1231(a). Because of the likelihood of an extensive hearing file, the hearing file should be filed or otherwise made available by Monday, January 31, 2000. Briefs by Oklahoma and the Staff on the applicability of 10 C.F.R. Part 40, Appendix A, to this proceeding should be filed by Friday, February 18, 1999. I expect to decide this matter prior to the prehearing conference considering issues for adjudication, inasmuch as my decision may impact the issues to be litigated. Proposed issues for adjudication by Oklahoma (based on areas of concern that have been found to be valid), should be filed by March 3, 2000. Shortly thereafter, I expect to hold a prehearing conference near Gore, Oklahoma, to consider issues for adjudication. At a later date, I will announce the time and location of this conference.

D. Service/Filing Requirements.

The preferred method for filing and serving documents in this proceeding is by same-day electronic transmission (i.e., by e-mail), with a paper copy sent that same day to each party served. (Because the hearing file likely includes many documents not created electronically, this preference does not extend to the filing of the hearing-file documents.) Electronic copies may be in their native

wordprocessing format (e.g., Wordperfect or Word). Service by e-mail will be considered timely if sent not later than 11:59 p.m. of the date due under NRC's Subpart L rules.

Sometime after January 1, 2000, NRC may have in place an electronic filing system that will eliminate the need for paper copies. Until that system is operational, however, the parties must continue to submit signed hard copies of any filings to the Rulemaking and Adjudications Branch, Office of the Secretary, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Room 0-16-H-15, Rockville, Maryland 20852. The fax number for the Secretary is (301) 415-1101 and the e-mail address is [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov). Courtesy e-mail copies should be provided at the time of filing with the Secretary to the Presiding Officer at [cxb2@nrc.gov](mailto:cxb2@nrc.gov) and his Special Assistant at [tdm@nrc.gov](mailto:tdm@nrc.gov). (As an aid to the Presiding Officer, parties are requested to place the date for each pleading (i.e., the date it is filed and served) on the document's first page.)

E. Order.

In light of the foregoing discussion, and based on the entire record, it is, this 16th day of December, 1999,

ORDERED:

1. The request for a hearing of the State of Oklahoma is granted. Oklahoma hereby becomes a party to this proceeding.

2. The hearing file is to be distributed on January 31, 2000.

3. The following areas of concern are found germane: 2, 3 (groundwater models), 4 (groundwater), 5, 7a, c and d, e (short-term monitoring), f, g, j, n and p, 8 and 9.

4. The following areas of concern are not germane: 1, 3 (EPA guidance), 6, 7b, e (long-term monitoring), k, l, m, and o.

5. Briefs in response to SFC's reply brief, concerning the applicability to this proceeding of 10 C.F.R. Part 40, Appendix A, may be filed by Oklahoma and the Staff by Friday, February 18, 2000.

6. Proposed issues for litigation (based on areas of concern that I have found germane) are to be filed by Oklahoma on Friday, March 3, 2000.

7. This Order is subject to appeal to the Commission in accordance with the terms of 10 C.F.R. § 2.1205(o). Any appeal must be filed within ten (10) days of service of this Order. The appeal may be supported or opposed by any party by filing a counter-statement within fifteen (15) days of the service of the appeal brief.

  
Charles Bechhoefer  
ADMINISTRATIVE JUDGE  
Presiding Officer

Rockville, Maryland  
December 16, 1999

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of  
SEQUOYAH FUELS CORPORATION  
(Gore, Oklahoma Site Decommissioning)

Docket No.(s) 40-8027-MLA-4

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMO & ORDER (LBP-99-46) 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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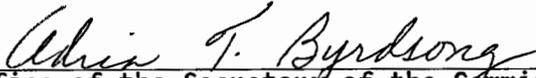
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Dated at Rockville, Md. this  
16 day of December 1999

  
Office of the Secretary of the Commission