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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'99 NOV -1 P3:45

BEFORE THE PRESIDING OFFICER

OFFICE OF THE
PRESIDENTIAL
ADJUDICATOR

In the Matter of) Docket No. 40-8027-MLA-4
)
SEQUOYAH FUELS CORPORATION) Request to Amend Source Material
(Gore, Oklahoma)) License No. SUB-1010

NRC STAFF'S ANSWER TO SEQUOYAH FUELS CORPORATION'S
MOTION FOR LEAVE TO REPLY TO THE NRC STAFF'S ANSWER

I. INTRODUCTION

On October 15, 1999, Sequoyah Fuels Corporation (SFC) filed the "Sequoyah Fuels Corporation's Motion for Leave to Reply to the NRC Staff's Answer" (Motion). SFC requests permission to reply to the "NRC Staff's Answer to the State of Oklahoma's Supplemental Request for Hearing" (Staff Answer) of October 1, 1999. Attached to the Motion is "Sequoyah Fuels Corporation's Reply to the NRC Staff's Answer" (Reply), dated October 15, 1999.

In support of its Motion, SFC states that it did not and could not have reasonably anticipated the Staff's position regarding the applicability or interpretation of certain laws and regulations. Specifically, SFC disputes the Staff's position regarding: (1) the applicability of 10 C.F.R. Part 40, Appendix A, to the SFC Site Decommissioning Plan (SDP); (2) whether the proceeding may consider radiological doses beyond 1000 years; (3) whether the proceeding may consider nitrate contamination; and (4) whether SFC is required to identify a custodian and to provide a contract with a custodian.

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The Motion should be denied because SFC could have reasonably anticipated the Staff Answer, for the reasons explained below. If the Presiding officer grants the Motion, the Staff requests permission to file an answer to the Reply. The Reply misapplies legal precedent or staff guidance with regard to each of the four major issues raised by SFC, ignores controlling precedent and staff guidance, raises non-existent "practical problems", and implies that a proposed area of concern is already being addressed by another regulatory agency when that is not the case. Additionally, with respect to many matters raised by the Reply, it is not a reply to the Staff Answer, but is an impermissible late-filed answer to the September 3, 1999, "State of Oklahoma's Supplemental Request for Hearing" (Supplemental Request).

II. DISCUSSION

A. Applicability of 10 C.F.R. Part 40, Appendix A to the SDP

SFC's Motion should be denied with respect to the issue whether 10 C.F.R. Part 40, Appendix A, contains "requirements" applicable to or "relevant guidance" concerning the proposed SFC license amendment application to decommission the SFC site for restricted release with, *inter alia*, an on-site disposal cell. Contrary to the Motion, the Staff Answer on this point could have reasonably been anticipated by SFC. Although SFC says that to its knowledge it had never stated that Appendix A contains any requirements that are legally applicable to SFC, Reply at 3, the SFC "Final Decommissioning Alternatives Study Report" (June 8, 1998) repeatedly states that SFC designed the disposal cell pursuant to the "requirements", "governing" regulations, and "applicable provisions" of Appendix A. *See*

Id., Appendix B at 1, 2, 3, 4-5, 7, and Table 1. The Staff's notice of license amendment request and opportunity for hearing states that "the SDP proposes placing radiologically contaminated materials in a single, on-site, above-grade disposal cell constructed to the technical criteria of 10 C.F.R. part 40, appendix A".¹ The Supplemental Request alleged injuries and areas of concern based on Appendix A technical criteria. *See* Supplemental Request at 19-22, 39-40 and Staff Answer at 7 nn. 3 & 5, and at 31. SFC had an opportunity to raise the matter of the applicability of Appendix A as a legal requirement in the "Sequoyah Fuels Corporation's Response to State of Oklahoma's Supplemental Request for Hearing" (SFC Answer), but failed to do so.

B. Relationship of the 1000 Year Dose Limits under the License Termination Rule for Restricted Release and NEPA Review

SFC's Motion should be denied with respect to whether the Staff NEPA review may justify consideration in this proceeding of environmental impacts of the proposed SDP (from potential migration of nearby rivers into the SFC site or from possible migration of contamination from the disposal cell to groundwater through plugged monitoring wells) for more than 1000 years after license termination in view of the requirement of 10 C.F.R. § 20.1401(d). SFC is aware that the Staff would conduct a NEPA review of the proposed SDP, and Oklahoma's Supplemental Request made it clear that Oklahoma's alleged injuries and proposed areas of concern addressed environmental effects commensurate with the

¹ "Notice of Consideration of an Amendment Request for Sequoyah Fuels Corp., Gore, Oklahoma and Opportunity for Hearing", 64 Fed. Reg. 31023 (June 9, 1999)

extremely long half-lives of the uranium and thorium nuclides involved. *See* Supplemental Request at 5-6 n. 4, 14-15, 19-20. SFC had an opportunity in the SFC Answer to raise the matter of whether the Staff NEPA review could justify consideration in this proceeding of environmental impacts of the proposed SDP for more than 1000 years after license termination, but failed to do so.

C. Nitrate Contamination and NEPA Review

SFC could have reasonably anticipated the Staff Answer with respect to the inclusion of nitration contamination within the scope of this proceeding for two reasons. First, the NRC has already regulated nitrate contamination at the SFC site. SFC License Amendment No. 17 was imposed with regard to treated raffinate, an ammonium nitrate solution which is a byproduct of the treatment of radiologically contaminated waste produced by the licensed uranium hexafluoride conversion process. License Condition 17 required, *inter alia*, monitoring of nitrate concentration in surface and groundwater, and designated nitrate levels which would trigger a requirement to do further analysis for heavy metals in order to minimize adverse environmental impacts associated with the treatment and use of raffinate. *See Sequoyah Fuels Corporation* (DD-93-7), 37 NRC 303, 306-308, 310 (1993). The nitrate contamination in groundwater which is the subject of Oklahoma's alleged injury and proposed area of concern is that same nitrate contamination produced by licensed activity at the SFC Site. Second, Oklahoma's Supplemental Request identified nitrate contamination as an alleged injury and proposed area of concern. *See* Supplemental Request at 21 n.21, 39. The SDP proposes to address nitrate contamination of alluvial groundwater by restrictions

on installation of drinking water wells. *See* SDP at 2-7. SFC requests that the NRC approve the SDP, including the provision regarding nitrate contamination of alluvial groundwater, as a license amendment, thus making it an NRC requirement. SFC had an opportunity in the SFC Answer to address the matter of whether nitrate contamination could be considered in this proceeding, but failed to do so.

D. Custodian and Contract with Custodian

The SFC Motion should be denied with respect to whether SFC is required to have a custodian and whether SFC is required provide a contract with the custodian because the Staff Answer could have reasonably been anticipated on this point. The Staff Answer merely agreed with Oklahoma's proposed area of concern that SFC had not identified a custodian or described the details of the custodial arrangement. *See* Supplemental Request at 36. Moreover, in view of the proposed SDP itself and applicable Staff Guidance, the Staff's position that SFC must identify the custodian and provide the custodial contract was reasonably foreseeable. The SDP, which would become a license requirement if approved, proposes institutional controls based on property rights, *e.g.*, deed restrictions, and institutional controls consisting of physical controls (fences, radiological monitoring, and site inspection). *See* SDP at §§ 3.6-3.6.1, pp. 3-3, 3-4, 3-6, and Appendix I at 3. Physical controls and their maintenance can be used to meet the requirement of 10 C.F.R. § 20.1403(b) to demonstrate legally enforceable institutional controls only when the physical controls are used in combination with an instrument that permits legal enforcement of the physical controls. *See* Draft Regulatory Guide DRG-4006, "Demonstrating Compliance with

the Radiological Criteria for License Termination" (August 1998)² at § 4.1, p.33. The SDP, however, proposes only an unidentified "custodian" to carry out the proposed physical controls after license termination³. *See* SDP, Appendix I at 4-6. SFC does not dispute that it is required to provide for maintenance and control of the SFC site after license termination. SFC had an opportunity in the SFC Answer to address whether SFC is required to identify the custodian and provide the custodial contract, but failed to do so.

III. CONCLUSION

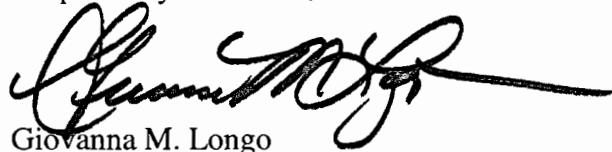
Wherefore, for the reasons set forth above, the Staff requests denial of the October 15, 1999, "Sequoyah Fuels Corporation's Motion for Leave to Reply to the NRC Staff's Answer to the State of Oklahoma's Supplemental Request for Hearing". The Staff also requests that, should the Presiding Officer grant the Motion, the Staff be permitted to file an

² DRG-4006 represents the best currently available NRC guidance on compliance with the license termination rules until a final regulatory guide is issued. *See Id.* at 46.

³ While it is permissible for the licensee to perform the maintenance and control function, *see* DRG-4006 at § 4.2.1, p. 38, SFC does not propose to perform that function itself.

answer to the "Sequoyah Fuels Corporation Reply to the NRC Staff's Answer", for the reasons set forth above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Giovanna M. Longo", with a long horizontal flourish extending to the right.

Giovanna M. Longo
Counsel for NRC Staff

Dated at Rockville, Maryland
this 1st day of November 1999

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OFFICE OF THE PRESIDING OFFICER
RULEMAKING AND ADJUDICATIONS

Docket No. 40-8027-MLA-4

Re: Request to Amend Source
Material License No. SUB-1010

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO SEQUOYAH FUELS CORPORATION'S MOTION FOR LEAVE TO REPLY TO THE NRC'S STAFF'S ANSWER" in the above-captioned proceeding have been served on the following by deposit into the United States mail, or through deposit in the Nuclear Regulatory Commission's internal mail system as indicated with an asterisk, or with a double asterisk by hand delivery on this 1st day of November 1999.

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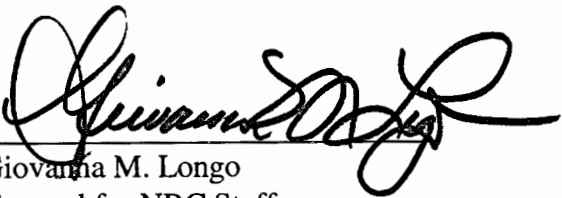
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