

UNITED STATES NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSION

In the matter of  
Sequoyah Fuels Corporation,  
License SUB-1010

)  
)  
) Docket 40-8027  
) License Renewal  
)

**NATIVE AMERICANS FOR A CLEAN ENVIRONMENT'S  
AND CHEROKEE NATION'S REPLY TO NRC STAFF'S  
AND SEQUOYAH FUELS CORPORATION'S RESPONSES  
TO NACE'S PETITION FOR REVIEW OF LBP-93-25**

Pursuant to 10 C.F.R. § 2.786(b)(3), Petitioners, Native Americans for a Clean Environment and the Cherokee Nation, hereby reply to certain misleading statements made by the Nuclear Regulatory Commission ("NRC") Staff and Sequoyah Fuels Corporation ("SFC") in opposition to petitioners' Petition for Review of LBP-93-25.<sup>1</sup>

1. As discussed in the Petition for Review, by allowing SFC to withdraw its license application, the Licensing Board completely deprived Petitioners of any opportunity to be heard on a number of issues relevant to the non-production-related activities which SFC intends to conduct under the authority of its 1985 license: i.e., the adequacy of SFC's groundwater monitoring plan, the sufficiency of decommissioning funding, the adequacy of emergency planning, the safety of raffinate spreading, and the adequacy of SFC's management and operational pro-

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<sup>1</sup> See NRC Staff Response in Opposition to Native Americans for a Clean Environment and Cherokee Nation's Petition for Review of LBP-93-25 (January 19, 1994) (hereinafter "NRC Response") and Sequoyah Fuels Corporation Answer Opposing Native Americans for a Clean Environment and Cherokee Nation's Petition for Review of LBP-93-25 (January 19, 1994) (hereinafter "SFC Response").

grams. Petition for Review at 8. In response, the NRC misleadingly offers the hope of some opportunity for public participation on these issues, by making a vague reference to "enforcement or license amendment matters which may arise." NRC Staff Response at 10. At the outset, it should be understood clearly that a license amendment proceeding would be limited to the issues raised by the amendment application, and thus would not cover all of the relevant terms of the existing 1985 license, which continues to govern SFC's decommissioning-related activities.<sup>2</sup> As discussed in their brief, Petitioners seek, and are entitled to, a hearing on whether the relevant terms of the 1985 license should be renewed.

In any event, with respect to the prospect for future license amendments, SFC has now made it clear that it has no intention of seeking licensing approval for changes it has made to the groundwater monitoring plan contained in its 1985 license; nor will it apply for any other license amendments until it submits the final Plan for Completion of Decommissioning ("PCD"), which is now scheduled for late 1996. Letter from John H. Ellis, SFC to Robert M. Bernero, NRC (December 30, 1993) (attached).

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<sup>2</sup> It should be noted, however, that SFC has changed the terms of its groundwater monitoring plan, as described in its 1985 license, without making formal changes to the license. Thus, this aspect of SFC's decommissioning activities is being conducted outside the scope of its 1985 license, without licensing approval from the NRC or the provision of an opportunity for a public hearing.

Instead, SFC states its willingness to "cooperate" in the issuance of confirmatory action letters or confirmatory orders to "further formalize the decommissioning activities that will be conducted prior to issuance of the PCD." Id. at 4. However, only if SFC requests a license amendment do Petitioners have the right to request a hearing on whether the amendment is adequate to protect the public health and safety. See Bellotti v. NRC, 725 F.2d 1380 (D.C. Cir. 1983). If changes to the license are made through confirmatory orders or other enforcement actions Petitioners have no right to challenge their adequacy.<sup>3</sup> Id. Thus, SFC's letter confirms that, contrary to the implication conveyed by the NRC's brief, Petitioners will have no opportunity to participate in license amendment proceedings prior to the submission of the Final PCD, because SFC will avoid taking any action that would trigger Petitioners' hearing rights.

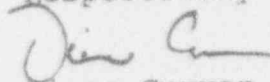
2. SFC argues in its brief that Petitioners could have requested the Presiding Officer to impose conditions on the withdrawal of SFC's license renewal application, "but did not." Id. at 10. This is not correct. Petitioners did request the imposition of such conditions, as an alternative to holding a hearing

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<sup>3</sup> For example, Petitioner Native Americans for a Clean Environment has now been admitted to the decommissioning funding enforcement proceeding referenced in the NRC's response at 10, but NACE's participation will be limited to supporting the NRC Staff, and it will be precluded from litigating the adequacy of the decommissioning funding ordered by the Staff.

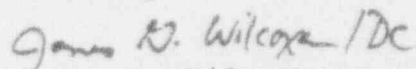
on license renewal, and requested a prehearing conference to determine what issues must be litigated for the purpose of imposing such conditions. Native Americans for a Clean Environment's and Cherokee Nation's Opposition to Sequoyah Fuels Corporation's Motion for Withdrawal of Application and Termination of Hearing, and Request for Prehearing Conference at 24 (July 26, 1993). The Licensing Board incorrectly relied on Petitioners' expression of their reservations about the appropriateness of allowing conditional withdrawal as grounds for refusing to address Petitioners' request to litigate the nature of the conditions that should be imposed. LBP-93-25, slip op. at 27, note 60. Petitioners properly made a request for the imposition of conditions on license withdrawal, and it should have been considered.

Respectfully submitted,



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Attorney for Cherokee Nation

January 28, 1994

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December 30, 1993

RE: 93163-N

Mr. Robert M. Bernero, Director  
Office of Nuclear Material Safety & Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Subject: Submittal of Site Characterization Plan

Dear Mr. Bernero:

Your letter dated November 29, 1993 stated that the NRC staff has no objection to SFC submitting its site characterization plan (SCP) on a schedule consistent with its submittal of a similar characterization plan (the RFI Work Plan) to the EPA under an EPA Consent Order (i.e., by January 31, 1994).

Our efforts in preparing the SCP and the RFI Work Plan are proceeding in a timely fashion, and we will provide such documents to the NRC and EPA, respectively, by January 31, 1994. The EPA Consent Order then contemplates that SFC will be able to issue the final RFI Work Plan within 30 days after receipt of EPA's comments. Since SFC plans to issue the final SCP within the same timeframe we hope that the NRC will be able to provide us with its comments on the SCP within the same timeframe as the EPA.

It is our basic intent to coordinate our efforts to satisfy NRC requirements, EPA requirements and State requirements in order to avoid duplication of work and any potential imposition of inconsistent or redundant requirements. We are therefore pleased that, as reflected in your letter and previous statements, the NRC is cooperating with EPA "[i]n order to facilitate efficiencies in the remediation of the SFC site," and that a Memorandum of Understanding between the two agencies is being prepared.

Your letter also asks SFC to "submit a license amendment request to reflect decommissioning activities, including milestones for submittals consistent with the schedule specified in the RCRA Consent Order." As discussed below, SFC is willing to cooperate in additional formalization through an appropriate NRC regulatory mechanism, if necessary. However, we believe that a license amendment at this time is neither necessary nor appropriate for the following reasons:

(1) As we informed you in our letter of July 7, 1993, in accordance with 10 CFR 40.42(b), production activities have been terminated under License No. SUB-1010, and as of July 6, 1993, "SFC's continuing activities are limited to those relating to decommissioning and maintaining control of entry into restricted areas pursuant to 10

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CFR 40.42(e), including shipment of preproduced inventory and the activities described in Section 3 of the Preliminary Plan for Completion of Decommissioning submitted with SFC's February 16, 1993 letter." Your letter of September 1, 1993 acknowledged receipt of our July 7 notification pursuant to 10 CFR 40.42(b) and confirmed that SFC's continuing activities were limited as specified above. Since these continuing activities are authorized under SFC's existing license and are limited by operation of 10 CFR 40.42(e) of the NRC's regulations, no license amendment is necessary at this time.

(2) Regarding your request that we provide a schedule that includes "milestones for submittals consistent with the schedule specified in the RCRA Consent Order," enclosed is a schedule showing side-by-side the milestones in the schedules for the NRC and for the EPA. Except for the slight extension in the submittal date for the SCP, and the corresponding extension in submittal of the Results Report and the initial Plan for Completion of Decommissioning (PCD), the enclosed schedule for the NRC is essentially the same as reflected in Figure 9-1 of the Preliminary Plan for Completion of Decommissioning (PPCD). This schedule reflects our best estimate of the time required to reach each milestone. But a number of factors are beyond SFC's control, including the amount of time that may be required for various regulatory agency reviews and for any hearing that may be held on the NRC license amendment that will be needed to authorize any new activities under the PCD. Since the site investigations and analyses leading to the submittal of the PCD, including the PCD schedule, do not require NRC authorization, we see no need for a license amendment for this purpose.

(3) Regarding your request concerning groundwater monitoring, SFC is complying with the requirements of License No. SUB-1010 and is voluntarily performing additional monitoring. We will communicate with you separately on the most effective method to implement EPA requirements relating to the groundwater monitoring program.

(4) Finally, your letter suggests that SFC include "any additional actions in which SFC expects to engage prior to submission of the decommissioning plan." At this time, SFC does not anticipate conducting any activities prior to approval of the PCD that are not currently authorized by our license. If any such activities are considered in the future, we will solicit the necessary NRC approval at that time.

Your letter indicates that amending SFC's License would be "consistent with the Site Decommissioning Management Plan process." Section 4.2 of the Site Decommissioning Management Plan (NUREG-1444) states:

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The majority of the submittals to date have been made on a voluntary basis. Only one order (i.e., requiring Chemetron to submit a characterization report) has been issued. The staff continues to closely monitor the timeliness of license actions to determine if orders, or inclusion of decommissioning schedules into licenses as conditions, are required to ensure continued steady progress toward decommissioning of the sites.

This statement is consistent with the approach described in Section II.E of the 1992 "Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites":

The NRC staff will seek voluntary cooperation by licensees or other responsible parties in establishing and implementing decommissioning plans in accordance with the objectives of this Action Plan. For sites with active NRC licenses, an approved decommissioning plan that includes appropriate schedules and cleanup levels will be incorporated into the license by amendment through normal licensing procedures. (emphasis added)

\* \* \* \* \*

In cases where voluntary cooperation is ineffective in establishing acceptable schedules for completing decommissioning actions, the NRC will establish legally binding requirements and take enforcement action, as necessary, to compel timely and effective cleanup of SDMP sites. (emphasis added)

From the description in NUREG-1444, Appendix A of NRC actions regarding the 48 other sites on the SDMP list, it is apparent that the NRC continues to rely primarily on voluntary actions by licensees or site-owners, up to the time of approval of a decommissioning plan. For example, while section II.C of the 1992 Action Plan states that the NRC "will establish specific and enforceable milestones for each phase of decommissioning through license amendments or orders," only a few licenses have incorporated schedules for actions leading to submittal of a decommissioning plan, and confirmatory action letters or orders have been issued in only a few instances. Since SFC has been cooperating fully with the NRC in the steps leading to the submittal of a

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December 30, 1993

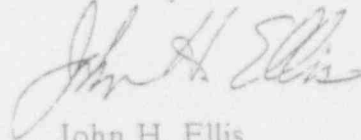
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PCD on a timely basis, and intends to apply for a future license amendment approving a PCD which would authorize activities not covered by its current license. SFC's plan to request a license amendment only at the time of submittal of its PCD is consistent with NRC's past practice, the SDMP, and section 40.42 of NRC regulations.

As previously stated, SFC is willing to cooperate in the issuance of an appropriate confirmatory action letter or confirmatory order to further formalize the decommissioning activities that will be conducted prior to issuance of the PCD. We believe either of these established NRC regulatory mechanisms, which have been used for a variety of purposes at other SDMP sites, would achieve the desired objective. In addition, they would do so without any implication -- as might be the case in a license amendment request -- that SFC is seeking NRC authorization for an action that is not currently authorized by its present license.

Please contact me or John Dietrich (918-489-3207) so that we can discuss these matters further at your convenience.

Sincerely,



John H. Ellis  
President, SFC

cc: Allyn Davis  
Maurice Axelrad, Esq.  
Brita Haugland-Cantrell, Esq.  
James Wilcoxem, Esq.  
Susan Uttal, Esq.  
Dianne Curran, Esq.



## Comparison of EPA and NRC Schedules

<i>EPA Activity</i>	<i>Duration</i> <sup>1</sup>	<i>Possible Finish</i>	<i>NRC Activity</i>
EPA Order signed	0d	8/3/93	
SFC Submit Draft RFI Workplan	180ed	1/31/94	Submit Draft SCP to NRC
EPA Review and Comment on RFI Workplan	30ed <sup>2</sup>	3/2/94	NRC Comment on SCP
SFC submit Final RFI Workplan	30ed	4/1/94	
EPA Approve Final Workplan	30ed <sup>2</sup>	5/1/94	SFC Submit Final SCP
SFC Submit Draft RFI Report	52ew	5/1/95	SFC Submit Preliminary Results Report
EPA Review RFI report	30ed <sup>2</sup>	5/31/95	NRC Review/Comments on Preliminary Results Report
SFC Prep & Submit Final RFI Report	30ed	6/30/95	
EPA Approve Final RFI Report	30ed <sup>2</sup>	7/30/95	
Submit Draft CMS Report	120ed	11/28/95	SFC Submit Initial PCD
EPA Review Draft CMS Report	30ed <sup>2</sup>	12/28/95	
Submit Final CMS Report	60ed	2/26/96	
EPA Approves Final CMS Report	30ed <sup>2</sup>	3/27/96	
		4/1/96 <sup>3</sup>	Submit Final SCP Results Report to NRC
EPA Public Review and Comment	45ed	5/11/96	
EPA Selects CM	30ed <sup>2</sup>	6/12/96	
	90ed <sup>4</sup>	6/30/96	NRC Review/Concurs with Final Results Report
SFC Submit Draft CM Program Plan (Task XI)	60ed	8/11/96	
EPA Review and Comment	30ed <sup>2</sup>	9/11/96	
SFC Submit Final Program Plan	30ed	10/11/96	
EPA Approve Program Plan	30ed <sup>2</sup>	11/10/96	
	180ed <sup>5</sup>	12/28/96	SFC Submit Final PCD for Approval
	100ew <sup>6</sup>	11/30/98	NRC Review/Approval of PCD

### NOTES:

<sup>1</sup> The duration column lists "elapsed days" or "elapsed weeks" committed for a particular task. The values in this column are taken from the Administrative Order on Consent unless otherwise noted.

<sup>2</sup> Each review and comment period is SFC's estimate of time required for the regulatory review. The schedule will shorten or lengthen based upon actual times.

<sup>3</sup> Approximately 60 days after emptying ponds (other than CaF impoundments)

<sup>4</sup> Estimated 90 days after NRC receipt of Final Results Report

<sup>5</sup> 180 days after NRC concurrence with Final Results Report

<sup>6</sup> Estimated about 2 years for completing regulatory review and hearings if requested.

CERTIFICATE OF SERVICE

I certify that on January 28, 1994, copies of NATIVE AMERICANS FOR A CLEAN ENVIRONMENT'S AND CHEROKEE NATION'S REPLY TO NRC STAFF'S AND SEQUOYAH FUELS CORPORATION'S RESPONSES TO NACE'S PETITION FOR REVIEW OF LBP-93-25 and MOTION FOR LEAVE TO REPLY were served on the following by first class mail:

Admin. Judge James P. Gleason  
Presiding Officer  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Admin. Judge Jerry R. Kline  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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