

ICF INCORPORATED

October 15, 1990

To: Dr. Lou Bykoski, NMSS/NRC

From: Dave Mitamura, John Collier, Michael Berg, and Craig Dean,
ICF Incorporated

Subject: Review of Letter of Credit Submitted by Sequoyah Fuels Corporation

Sequoyah Fuels Corporation submitted a certification of financial assurance in the form of a \$750,000 letter of credit. The submission assures decommissioning costs under license number SUB-1010, docket number 40-8027 issued under 10 CFR Part 40. The letter of credit is payable to a Standby Trust established by Sequoyah for decommissioning costs. The \$750,000 amount of coverage is acceptable under 10 CFR 40.36(c)(2).¹

Upon review of the entire submission, however, ICF recommends that NRC Region IV require Sequoyah to modify the submission in the following four ways:

- (1) Identify the financial institution issuing the letter of credit;
- (2) Re-execute the letter of credit to include an execution date;
- (3) Submit a letter of acknowledgement with the Standby Trust Agreement; and
- (4) Modify Section 5, Paragraph 2 of the Standby Trust Agreement so that Sequoyah cannot withdraw more than 10 percent of the outstanding balance of the trust without NRC approval.

A detailed discussion of these recommendations is presented below.

¹ This determination is based on the information, provided in Sequoyah's certification statement, that it is licensed to possess source material in amounts of 20 million MTU. (ICF assumed that the abbreviation "MTU" in Sequoyah's certification statement refers to metric tons of uranium.)

(1) Identify the Financial Institution Issuing the Letter of Credit

The letter of credit submitted does not identify the issuing financial institution. Without a definitive identification of the issuing financial institution, the validity of the letter of credit cannot be verified. Furthermore, page 3-27 of NRC's draft *Regulatory Guide "Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR Parts 30, 40, 70, and 72"* (January 1990) requires that the issuing financial institution be regulated by a Federal or State Agency. Compliance with this requirement cannot be confirmed without identification of the financial institution issuing the letter of credit.

(2) Re-Execute the Letter of Credit to Include an Execution Date

The letter of credit was submitted without an execution date. ICF recommends that Sequoyah re-execute the letter of credit to include an execution date, as suggested on page 4-34 of the *Regulatory Guide*. If this is not done, the letter of credit may be considered not valid. For example, if the letter of credit was issued after the effective date stated in the letter, it may not be a valid document.

(3) Submit a Letter of Acknowledgement with the Standby Trust Agreement

The submission does not include a letter of acknowledgement with the Standby Trust Agreement, as called for in the *Regulatory Guide* (see page C-1). The acknowledgement is needed to verify the execution of the Standby Trust Agreement, and to certify the trustee's signature and authority to enter into the agreement.

(4) Modify Section 5, Paragraph 2 of the Standby Trust Agreement so that Sequoyah Cannot Withdraw More than 10 percent of the Outstanding Balance Without NRC Approval

As submitted, the Standby Trust Agreement allows withdrawal from the trust fund up to 50 percent of the outstanding balance or \$375,000, whichever is greater. However, this withdrawal limit exceeds the 10 percent level specified in NRC guidance.² Therefore, ICF recommends that Section 5, paragraph 2 of the submitted Standby Trust Agreement be modified to comply with the lower level recommended by NRC.

Other Issues

The wording of the letter of credit differs slightly from that recommended by the NRC guidance document. Apart from editorial and non-substantive changes, two differences are noteworthy:

² "Response to Questions Related to the Trust Fund Mechanism," from Timothy Johnson, NMSS/NRC, to Karen Davis, St. Louis University, August 7, 1990. Although this guidance applies to a stand-alone trust fund, we assume NRC would give the same response to the same question regarding a standby trust fund.

- (1) The submitted letter of credit is worded differently from the wording suggested in the *Regulatory Guide* (on page 4-33) with respect to drawing on the letter of credit when the issuer has failed to extend it. The *Regulatory Guide* states that "NRC may draw upon the full value of this letter of credit prior to cancellation," whereas the submission states that "NRC may draw by your one sight draft drawn on us for the unutilized balance of this letter of credit prior to cancellation." The difference in wording does not substantially change the effectiveness of the mechanism, but it does limit NRC to a single withdrawal of funds.

Recommend that
L.C. conform to RG

> This limitation
should be excised.

- (2) The *Regulatory Guide* (on page 3-27) suggests that the licensee have an unqualified obligation to reimburse the issuer for payments made under the letter of credit. The Sequoyah submittal does not include this requirement, although the letter of credit does imply an obligation for reimbursement by stating that Sequoyah has established an account with the issuing financial institution. The absence of a more explicit provision does not affect the effectiveness or enforceability of the agreement (despite its suggested inclusion by the *Regulatory Guide*).

Not the Agencies
concern

Finally, the Region should ensure that the documents submitted by the licensee are originally signed duplicates. The standby trust agreement should have a corporate seal. Unless the documents have been signed and sealed as appropriate, NRC cannot be certain that they will be enforceable. Because ICF does not possess the original submissions, we cannot verify compliance with these requirements.

Agree

attachments

APPENDIX C

CHECKLIST FOR SUBMISSION OF SURETY/INSURANCE/PARENT COMPANY GUARANTEE

A. Check Appropriate Form of Surety/Insurance/Guarantee

- Surety Bond
- Letter of Credit
- Line of Credit
- Parent Company Guarantee/Financial Test*
- Insurance

B. Check Documents Submitted for Surety/Insurance/Guarantee

1. Surety Bond
 - Surety Bond
 - Standby Trust Agreement
 - Acknowledgement
2. Letter of Credit
 - Letter of Credit
 - Standby Trust Agreement *Identical*
 - Acknowledgement *none*
3. Line of Credit
 - Verification
 - Standby Trust Agreement
 - Acknowledgement
4. Parent Company Guarantee
 - Letter from Chief Executive Officer of Applicant or Licensee
 - Letter from Chief Financial Officer of Parent Company
 - Financial Test: Alternative [I or II]
 - Auditor's Special Report and Attached Schedule
 - Corporate Guarantee
 - Standby Trust Agreement
 - Acknowledgement
5. Insurance
 - Certificate of Insurance
 - Standby Trust Agreement
 - Acknowledgement

May not be used in combination with any other instrument.

Missing →

See cycle fuel:

EXHIBIT 3-5

CHECKLIST OF CRITERIA FOR REVIEW OF TRUST AGREEMENTS^a

- Copy of corporate by-laws or other evidence indicating that parties signing the financial instrument (for the applicant) are authorized to represent the organization in the transaction.
- Evidence that the financial instrument is an originally signed duplicate (e.g., an executed copy of the instrument).
- Evidence that the financial institution has authority to act as a trustee.
- Purpose of trust ("whereas" clauses).
 1. Description
- Grantor or grantors (introductory paragraph).
 1. Names
 2. Addresses
- Trustee or trustees.
 1. Names and addresses
 2. Bank or corporate trustee (introductory paragraph)
- Identification of facilities and cost estimates (Section 2).^b

^aAdapted from 17A Am Jur Legal Forms 2d (Rev) §251.94.

^bReferences are to recommended wording for trust agreements provided in Section 4.

2/20/2008

EXHIBIT 3-5 (continued)

✓ • Words of transfer, conveyance, and delivery in trust (Section 3).

✓ • Payments constituting the trust fund (Section 4).

✓ • Duration of trust. *unknown until terminated*

✓ • Description of trust property.

1. Property described in attached schedule (Schedule B)

2. Cash

3. Stock and other securities

> • Additions to trust.

✓ • Distribution of trust principal (Section 9).

1. Disbursement to licensee upon proper certification

✓ 2. Payment for activities at NRC's direction in writing

✓ 3. Refund to grantor at NRC's specification in writing after completion of decommissioning activities

✓ • Trust management (Sections 6-8).

✓ 1. Discretionary powers

✓ 2. Fiduciary duty

✓ 3. Commingling and investment

✓ 4. Sale or exchange of trust property

✓ 5. Scope of investments

✓ 6. Express powers of trustee

> 7. Borrowing money and encumbering trust assets *not addressed*

• (Optional provisions)

Misc 27

EXHIBIT 3-7

CHECKLIST OF CRITERIA FOR REVIEW OF LETTERS OF CREDIT

- 7 line

• Copy of corporate by-laws or other evidence indicating that parties signing the financial instrument (for the applicant) are authorized to represent the organization in the transaction.
- 7

• Evidence that the financial instrument is an originally signed duplicate (e.g., an executed copy of the instrument).
- 7 line

• Evidence that the financial institution is regulated by Federal or State agency (e.g., member of FDIC, Federal Reserve System, etc.).
- ✓

• The instrument must be entitled a letter of credit.
- ✓

• The letter should be limited in amount.
- ✓

• The letter of credit must contain a specified expiration date or be written for a definite term.
- ✓

• The issuer's obligation to pay the beneficiary should arise only upon presentation of a draft or other documents specified in the letter of credit.
- ✓

• The bank must not be called upon to determine a question of fact or law at issue between the licensee and the Commission or State regulatory agency.
- but unqualified

Does not effect our concerns for financial assurance

• The licensee should have an unqualified obligation to reimburse the issuer for payments made under the letter of credit.

BRIEFING FOR THE CHAIRMAN

ON

GA-SEQUOYAH FUELS CORPORATION



PRESENTED BY NMSS STAFF

DECEMBER 9, 1992

Information in this record was deleted
in accordance with the Freedom of Information
Act, Exemptions 4 + 5
FOIA 93-197

SEQUOYAH FUTURE PLANS

(Following 11/17/92 Incident)

- Clean out UF6 facility and place it in long-term standby
- Transfer existing UF6 contracts to ConverDyn/Allied
- Complete incident followup as required by NRC
- Restart UF4 facility and fulfill existing contracts
- Continue to remediate site
- Submit renewal revision by 2/28/93
- Canceled proposed financial assurance agreement from GA
- Restart of UF6 facility would require license amendment

ORDER TO GA REGARDING GA TO PROVIDE FA
PROVIDE SITE CHAR, DETAIL PLAN, REMED
SDAMP MODEL

STATUS OF DECOMMISSIONING FINANCIAL ASSURANCE

ENH [REDACTED]

- \$750,000 assurance submitted in 1990 as required by NRC rule
- Initial funding plan proposed in 1990 with renewal - \$2.5 million
- Revised funding plan due now

ENH [REDACTED]

OTHER SEQUOYAH MATTERS PENDING

- Incident followup
 - Facility shut down under confirmatory action letter
 - Enforcement still pending
 - Public meeting on restart readiness - 12/9/92
- Renewal and associated hearing
- Court case on environmental requirement for April 1992 restart
- NACE petition on raffinate fertilizer

12-21 MTG -- SEQUOYAH TO TALK
CUMM INTERESTSON DECUM

SEQUOYAH INCIDENT - 11/17/92

- Significant release of nitrogen oxides
- Caused by inadvertent mixing of nitric acid and uranium
- Site area emergency declared, non-essential workers evacuated upwind
- No offsite release of radioactive material
- 8 workers, 27 offsite persons exposed to plume. Some short term health effects, no serious injuries known at this time
- AIT dispatched immediately
- Confirmatory Action Letter issued November 18, 1992

HARMON, CURRAN, GALLAGHER & SPIELBERG

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GAIL MCGREEVY HARMON
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April 5, 1993

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BY HAND
Donnie H. Grimsley, Director
Division of Freedom of Information
and Publication Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-93-197
Rec'd 4-5-93

SUBJECT: Freedom of Information Act Request

Dear Mr. Grimsley:

On behalf of Native Americans for a Clean Environment, and pursuant to the Freedom of Information Act, 5 U.S.C. § 552(b), et seq., I hereby request that you make available copies of the following documents related to Sequoyah Fuels Corporation's ("SFC's") uranium processing plant in Gore, Oklahoma. NACE requests that you provide copies of any and all documents in the NRC's possession that discuss:

- 1) the nature, location, and extent of radioactive or chemical contamination at the site;
- 2) how much time it is expected to take to complete each phase of the decommissioning process, beginning with site characterization and ending with completion of decommissioning;
- 3) any evaluations or discussions by the NRC, its contractors, or any other parties, of the Preliminary Plan for Completion of Decommissioning which was submitted by SFC to the NRC on February 16, 1993;
- 4) any evaluations or discussions by the NRC, its contractors, or any other parties, of what matters should be included in the Site Characterization Plan for the SFC site;
- 5) any evaluations or discussions by the NRC, its contractors, or any other parties, of possible methods for decontaminating and decommissioning the SFC site;
- 6) any evaluations or discussions by the NRC, its contractors, or any other parties, of the feasibility of

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HARMON, CURRAN, GALLAGHER & SPIELBERG

Donnie H. Grimsley, Director

April 5, 1993

Page 2

decontaminating soil, surface water, and groundwater at the SFC site;

7) any evaluations or discussions by the NRC, its contractors, or any other parties, of the costs of decommissioning the SFC facility;

8) any evaluations or discussions by the NRC, its contractors, or any other parties, of SFC statements or correspondence with respect to the manner in which it proposes to decommission the SFC site; or

9) any evaluations or discussions by the NRC, its contractors, or any other parties, of SFC statements or correspondence with respect to the manner in which it intends to fund the decommissioning of the SFC site.

This request does not include documents that are in the NRC's Public Document Room.

Pursuant to NRC regulations at 10 C.F.R. § 9.85, we request that any searching and copying fees incurred as a result of this search be waived. Native Americans for a Clean Environment is a non-profit, tax-exempt organization that was formed for the purpose of educating the public about environmental issues, with emphasis on the nuclear industry. NACE has intervened in the license renewal proceeding for the SFC plant, and has been very active in seeking enforcement action against SFC for unsafe operation and environmental contamination. NACE also expects to intervene in the NRC's decommissioning proceeding for the facility. The information obtained through this FOIA request will be used to aid NACE in its participation in the public decisionmaking process regarding decommissioning of the SFC plant. NACE also widely shares the information it receives, through contacts with the press, government agencies, and through publication of its monthly newsletter, which reports to about 1,000 readers on environmental issues affecting Native Americans.

NACE also merits a waiver of fees because it is a non-profit charitable organization with limited resources, and is unable to pay the large searching and copying fees that may be incurred as a result of this request.

We also request that you expedite your answer to this request. Documents that are available in the Public Document Room indicate that groundwater at the SFC site may be more serious and ex-

HARMON, CURRAN, GALLAGHER & SPIELBERG

Donnie H. Grimsley, Director
April 5, 1993
Page 3

tensive than reported to date by SFC. See, for instance, memorandum from Tim C. Johnson, NRC to John W. N. Hickey, NRC, re: Review Comments on the Draft Environmental Assessment - Sequoyah Fuels Corporation at 3 (February 22, 1993) (attached), which asks SFC to explain the "inconsistency" between SFC's assumption that there is "no hydraulic connection between the shallow and deep ground water systems," and "the detection of elevated levels of uranium in deep ground water." We are concerned that SFC has not adequately characterized the nature and extent of contamination at the SFC site, and that there is a risk that contaminated groundwater may migrate offsite more rapidly than anticipated by SFC; therefore, we seek the requested information, especially the information on groundwater contamination, as quickly as possible.

We look forward to your prompt response.

Sincerely,



Diane Curran

cc: Lance Hughes, Director
Native Americans for a Clean Environment

MEMORANDUM FOR: John W. N. Hickey, Chief
Fuel Cycle Safety Branch
Division of Industrial and
Medical Nuclear Safety, NMSS

FROM: Tim C. Johnson, Section Leader
Materials Decommissioning Section
Decommissioning and Regulatory
Issues Branch
Division of Low-Level Waste Management
and Decommissioning, NMSS

SUBJECT: REVIEW COMMENTS ON THE DRAFT ENVIRONMENTAL ASSESSMENT -
SEQUOYAH FUELS CORPORATION

My staff reviewed the Draft Environmental Assessment on Sequoyah Fuels Corporation facility near Gore, Oklahoma, transmitted on January 14, 1993 by Merri Horn of the Uranium Fuel Section. The enclosed comments and questions pertain mainly to the ground water issues and radiological parameters.

In addition to the enclosed comments and questions, the items in John H. Austin's (Branch Chief) memorandum dated September 9, 1992, should also be taken into consideration. The September 1992 Memorandum was in response to the Ground Water Monitoring Plan dated March 31, 1992.

John H. Austin, Chief, Decommissioning and Regulatory Issues Branch, is recusing himself from the review of this draft environmental assessment.

If you need additional information, please contact Sam Malluswami of my staff on 504-2502.

ORIGINAL SIGNED BY

Tim C. Johnson, Section Leader
Materials Decommissioning Section
Decommissioning and Regulatory
Issues Branch
Division of Low-Level Waste Management
and Decommissioning, NMSS

030100

Enclosure: As stated
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D. B. G. A

ENCLOSURE

Review comments on the Preliminary Draft Environmental Assessment (EA) dated January 1993, for Renewal of Source Material License No. SUB-1010, Docket No. 40-8027.

1. Page 2-25, Section 2.3 Decommissioning

The decommissioning cost estimate of \$ 5,374,790 appears to be low considering the significant soil and ground water contamination.

2. Page 3-18, Figure 3.6

Please include the ground water elevations in both the cross sections for shallow and deep aquifers.

3. Page 3-23, Section 3.6.2.1 Uranium Levels in SFC Site Soils

The EA should explain the basis for the SFC Environmental Action Level (EAL) of 40 $\mu\text{g/g}$ for uranium in soil. What is the proposal for handling the contaminated soil listed in this section?

4. Page 3-25, Section 3.6.3 Extent of Contamination in Utility Trench Backfill

Provide the name of the disposal facility used for the contaminated soil. The EA should describe the proposed action regarding the residual contamination, if any.

5. Page 3-41, Section 3.8.1 Hydrogeology of the SFC Site

Paragraph 3: What is the permeability of the uppermost sandstone which appears to act as an impermeable barrier between the shallow and the deep aquifers? Please show in a map the potentiometric surfaces (water table elevations) of the shallow and deep aquifers, and provide references for the data. Also, please explain the significance or effect of the potentiometric surface of the deep aquifer being at a higher level in some areas than the shallow aquifer.

Paragraph 4: Provide references to the ground water flow rates and hydraulic conductivity values. Compare the ground water velocities with those in the ground water monitoring plan which shows velocities of 5.8 feet/year (Page 10) and 27 feet/year (Page 12), respectively for the shallow and deep aquifers.

Paragraph 2, Page 3-43: No analytical data are presented for the well directly north of the site on Route 10, and the two wells directly south of U.S. 40. If data are available, it should be presented in the EA.

6. Page 3-45, Section 3.8.2.2 The SFC Facility Environmental Investigation

Paragraph 3: The EA should provide well numbers for the wells described in this section or a reference. The EA should also explain the basis for the Environmental Action Level of 225 $\mu\text{g}/\text{l}$. Provide a reference for the highest level of uranium detected in the shallow ground water.

Paragraph 4: Which wells in the deep sandstone/shale ground water system show uranium levels above the SFC EAL? It is very important to investigate whether uranium has migrated in ground water beyond the SFC property boundary.
7. Page 3-50, Section 3.8.2.3 Utility Trench Groundwater Samples

The EA should provide a reference for the uranium levels in the water up to 1,200,000 $\mu\text{g}/\text{l}$, which is significantly above the EAL of 225 $\mu\text{g}/\text{l}$.
8. Page 4-2, Section 4.1.1 Hydrology

Paragraph 6: The EA should provide a reference for preliminary modeling analyses. Why is this preliminary? When will the model analyses be finalized? What is the basis for the ground water flow paths shown on Figure 4.1 (Page 4-3)?
9. Page 4-5, Section 4.2.1 Dose Evaluation Methods

Paragraph 1: The EA should provide a reference for the risk assessment model and environmental monitoring data used for dose estimates.

Page 4-6, Paragraph 4: Please explain the applicability and appropriateness of GENII code for this site.
10. Page 4-10, Section 4.2.4 Evaluation of Cumulative Radiological Impact for Routine Operations

Please provide the values of the estimated doses and compare them with the applicable limits.
11. Page 4-15, Section 4.4 Radiological Impacts on Site Hydrology

Paragraphs 1 & 5: Briefly explain the type of ground water model used to determine the mobility of uranium and the extent of its migration. What are the results?

Page 4-16, Paragraph 2: Please verify that 100,000 $\mu\text{g}/\text{l}$ is equal to $7\text{E}-3$ $\mu\text{Ci}/\text{ml}$ for uranium and 1.2E6 $\mu\text{g}/\text{l}$ equals $8.4\text{E}-2$ $\mu\text{Ci}/\text{ml}$. Using a specific activity of $7.06\text{E}-7$ Ci/g, we calculate $7.06\text{E}-5$ $\mu\text{Ci}/\text{ml}$ and $8.47\text{E}-4$ $\mu\text{Ci}/\text{ml}$ respectively.

Page 4-16, Paragraph 3: When will the model analyses be finalized? Explain the inconsistency between the model assumption of no hydraulic connection between the shallow and deep ground water systems, and the detection of elevated levels of uranium in deep ground water.

Page 4-17, Paragraph 1: Please justify the conclusions based on the preliminary modeling analyses. If the final analyses show different or opposite results, what will be the impact on the conclusions? Based on our comments on the ground water monitoring plan, more frequent ground water monitoring may be required. Please refer to our memorandum dated September 3, 1992 to John Hickey.

12. Page 5-21, Section 5.2.1.3 Groundwater Radiological Monitoring

Paragraph 1: The figure number in the second line may be 5.2 instead of 5.1. Please provide a reference to the well design criteria for monitoring well construction.

Page 5-22, Table 5-13: The monitor well numbers do not match Figure 5.2. This also applies to Table 5-14 on Page 5-25.