

14750

MAR 04 1994

DOCKETED
USNRC

'94 MAR -7 10:11

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
JOHN G. COOPER
PLANNING

In the Matter of)	
)	
SEQUOYAH FUELS CORPORATION)	Docket No. 40-8027-EA
GENERAL ATOMICS)	
)	Source Material License
(Gore, Oklahoma Site)	No. SUB-1010
Decontamination and)	
Decommissioning Funding))	
)	

NRC STAFF'S MOTION FOR EXTENSION OF TIME
TO RESPOND TO GENERAL ATOMICS' MOTION
FOR SUMMARY DISPOSITION OR FOR AN ORDER OF DISMISSAL

On February 17, 1994, General Atomics filed its Motion For Summary Disposition Or For An Order of Dismissal (Motion), accompanied by numerous attachments and a 59 page brief. For the reasons discussed below, the NRC Staff requests an additional 30 days within which to respond to the Motion. Counsel for Native Americans for a Clean Environment, General Atomics, and Sequoyah Fuels Corporation have informed the Staff that they do not object to the proposed extension.

DISCUSSION

The focus of this proceeding is the October 15, 1993 Order issued to General Atomics and Sequoyah Fuels Corporation (Order). With respect to General Atomics, the Order imposes, *inter alia*, requirements concerning the provision of funding to remediate

9403110195 940304
PDR ADOCK 04008027
C PDR

DS07

the Sequoyah Fuels site, providing financial assurance for decommissioning of the site in accordance with 10 C.F.R. § 40.36, and providing an updated detailed cost estimate for decommissioning and a plan for assuring the availability of adequate funds for completion of decommissioning of the Sequoyah Fuels site in accordance with 10 C.F.R. § 40.42.

General Atomics' Motion sets forth its grounds in fourteen enumerated paragraphs. In summary, GA alleges that the NRC does not have statutory authority to assert jurisdiction over General Atomics to issue the Order; the NRC has failed to plead a legally cognizable claim against General Atomics; and General Atomics' due process rights, for a number of reasons, will be violated without a decision in favor of General Atomics. Motion at 1-3. Further, General Atomics alleges that the NRC is "improperly attempting to use the October 15 Order as a fishing expedition for any facts upon which it might somehow base some claim." *Id.* at 5. Also, General Atomics asserts that all claims based on theories of deliberate misconduct or contract should be dismissed, in light of the Staff's statements at the January 19, 1994 prehearing conference. *Id.* at 5-6.

In support of its Motion, General Atomics has filed a voluminous brief, which extensively analyzes statutory provisions, legislative history, NRC regulations, and related case law. In addition, General Atomics discusses events dating back to 1988 concerning the acquisition of Sequoyah Fuels Corporation from Kerr-McGee Corporation, and presents what amount to affirmative defenses based on estoppel and due process theories, among perhaps others. General Atomics has also attached letters, memoranda, and

transcript excerpts that will require the assembly and review of numerous other materials in order to place such attachments in the proper context, before a response can be adequately formulated.

There is little doubt that this litigation is not a routine dispute. Furthermore, the outcome of this proceeding may very well have an impact on decommissioning issues involving other licensees and their parent organizations. Because of the complex and far-reaching nature of this case, and in light of the lengthy submission by General Atomics, the Staff requests that it be granted an additional 30 days to respond to General Atomics' Motion, *i.e.*, until April 13, 1994.

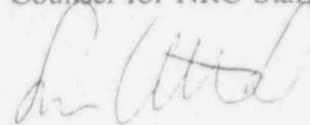
CONCLUSION

For the foregoing reasons, the Staff requests that its motion for an extension of time to respond to General Atomics' Motion be granted.

Respectfully submitted,



Steven R. Hom
Counsel for NRC Staff



Susan Uttal
Counsel for NRC Staff

Dated at Rockville, Maryland
this 4th day of March, 1994

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

UNRECORDED
NRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD 94 MAR -7 AIO:11

In the Matter of)
)
)
SEQUOYAH FUELS CORPORATION) Docket No. 40-08027-EA
GENERAL ATOMICS)
) Source Material License
(Gore, Oklahoma Site Decontamination) No. SUB-1010
and Decommissioning Funding))
)

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S MOTION FOR EXTENSION OF TIME TO RESPOND TO GENERAL ATOMICS' MOTION FOR SUMMARY DISPOSITION OR FOR AN ORDER OF DISMISSAL" in the above-captioned matter have been served on the following by deposit in the United States mail, first class, or as indicated by asterisk through deposit in the Nuclear Regulatory Commission's internal mail system this 4th day of March, 1994:

James P. Gleason, Chairman*
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: EW-439
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Jerry R. Kline*
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: EW-439
U.S. Nuclear Regulatory Commission
Washington, DC 20555

G. Paul Bollwerk, III*
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: EW-439
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Thomas D. Murphy*
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: EW-439
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Stephen M. Duncan, Esq.
Bradfute W. Davenport, Jr., Esq.
Mays & Valentine
110 South Union Street
Alexandria, Virginia 22314

John H. Ellis, President
Sequoyah Fuels Corporation
P.O. Box 610
Gore, Oklahoma 74435

Diane Curran, Esq.
c/o IEER
6935 Laurel Avenue, Suite 204
Takoma Park, MD 20912

Office of the Commission Appellate
Adjudication*
Mail Stop: 16-G-15 OWFN
U.S. Nuclear Regulatory Commission
Washington, DC 20555

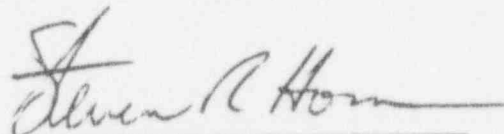
Office of the Secretary* (2)
ATTN: Docketing and Service
Mail Stop: 16-G-15 OWFN
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Maurice Axelrad, Esq.
John E. Matthews, Esq.
Newman & Holtzinger, P.C.
1615 L Street, N.W.
Suite 1000
Washington, DC 20036

Mr. John R. Driscoll
General Atomics Corporation
3550 General Atomics Court
San Diego, California 92121-1194

Adjudicatory File (2)*
Atomic Safety and Licensing Board
Mail Stop: EW-439
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety and Licensing Board
Panel*
Mail Stop: EW-439
U.S. Nuclear Regulatory Commission
Washington, DC 20555



Steven R. Horn
Counsel for NRC Staff