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NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
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| 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 ANSWER IN OPPOSITION 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 (GA's or GA Motion).¹ For the reasons stated below, the NRC Staff (Staff) opposes GA's Motion.

BACKGROUND

On October 15, 1993, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support issued a non-immediately effective order (Order) to General Atomics (GA) and Sequoyah Fuels Corporation (SFC). The Order

¹ In response to the NRC Staff's Motion for Extension of Time to Respond to General Atomics' Motion For Summary Disposition or For An Order of Dismissal, the Licensing Board granted the Staff an extension to April 13, 1994, by which to file its answer. See Memorandum and Order (Extension of Time) (Mar. 8, 1994).

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declared GA and SFC jointly and severally liable for providing: (1) funding to continue remediation of existing contamination at the SFC site, (2) financial assurance in accordance with 10 C.F.R. § 40.36, and (3) an updated detailed cost estimate for decommissioning and a plan for assuring the availability of adequate funds for the completion of decommissioning in accordance with 10 C.F.R. § 40.42. Order at 23-24. The Order also directed GA to provide financial assurance for decommissioning and decontamination of the SFC site in the amount of \$86 million, through prepayment, a surety method, insurance, or other guarantee method, or an external sinking fund coupled with a surety method or insurance, in accordance with 10 C.F.R. § 40.36 and Regulatory Guide 3.66. *Id.* at 25. In addition, if revenues to carry out decommissioning activities in any year fall short of projections contained the Preliminary Plan for the Completion of Decommissioning (PPCD), or if the decommissioning alternative approved by the NRC proves more costly than those upon which the PPCD is based, then GA is to make up any shortfalls. *Id.* at 24-25.

A prehearing conference was held on January 19, 1994. The focus of this conference was the pending intervention petition that had been filed by Native Americans for a Clean Environment.² At the conclusion of the conference, the Atomic Safety and Licensing Board (Licensing Board or Board) offered the Staff the opportunity to comment as to possible legal theories supporting the Order, and in particular those theories

² See Motion for Leave to Intervene in Proceeding Regarding Sequoyah Fuels Corporation's and General Atomics' Appeal of Nuclear Regulatory Commission's October 15, 1993, Order (Nov. 18, 1993).

contemplated by the Board as outlined in its Memorandum (Posing Matters for Consideration at Prehearing Conference) (Jan. 13, 1994) (Prehearing Memorandum).

DISCUSSION

I. General Atomics' Motion

GA's Motion is characterized as a motion for summary disposition or, in the alternative, for an order of dismissal. See GA Motion at 4.³ The Motion, and its accompanying brief, assert several grounds upon which GA relies to support its position. GA first asserts that the NRC lacks jurisdiction over GA to impose the Order. In this regard, GA argues that the statutes upon which the NRC relied in the Order do not authorize it to either assert jurisdiction over GA or to impose upon GA "the non-civil penalty financial liability which is claimed." GA Motion at 1. GA further argues that Congress never intended to grant to the NRC such authority, and that even if that is not obvious, the NRC is acting in an arbitrary and unreasonable manner in its attempt to reach GA here. *Id.* at 2. In addition, GA argues that the NRC's regulations, by their own terms, do not apply to GA, and to the extent such regulations appear to apply to

³ Although GA presents ostensibly separate motions for summary disposition and for an order of dismissal, GA's pleading is essentially one motion that seeks primary relief in the form of a decision from the Board that the Order should not be sustained as to GA, and secondary relief in the form of dismissal of claims against GA "expressly or implicitly based" on two specific legal theories proffered by the Board in its Prehearing Memorandum, and commented on by the Staff at the January 19, 1994 prehearing conference, so that the scope of discovery is narrowed. See GA Motion at 6. Accordingly, the Staff will address GA's Motion as one, particularly since GA cites common grounds for both motions.

GA, they are void "since they cannot confer any greater authority than that granted by Congress." *Id.* at 2, 4-5.

GA argues that even if the NRC did not obviously act beyond its statutory authority in issuing the Order to GA, essentially GA was not provided notice, in advance, of "clear standards by which General Atomics . . . could gauge and control [its] conduct." GA's Brief at 30. Therefore, issuing the Order as to GA was arbitrary and unreasonable in violation of GA's due process rights. *Id.* Finally, GA argues that the Appeal Board's decision in *Safety Light Corp.* (Bloomsburg Site Decontamination), ALAB-931, 31 NRC 350 (1990), does not and could not confer jurisdiction over GA. GA's Brief at 30-32.

GA's second major assertion is that the NRC has failed to plead or assert in the Order a legally cognizable claim against GA. GA's Motion at 2, 4-5, GA's Brief at 30-32. In this respect, GA complains that "the NRC is now improperly attempting to use the October 15 Order as a fishing expedition for any facts upon which it might somehow base some claim," and that GA should not be required to defend itself against allegations of facts "which have not even been discovered." GA's Motion at 5.

Third, GA asserts that the "NRC has admitted that General Atomics is not legally obligated to provide assurance of the decommissioning and remediation costs" of the SFC site. Therefore, according to GA, the "NRC is thus estopped from seeking to compel such assurance and General Atomics should not now be forced to defend against the allegations" contained in the Order. GA's Brief at 37.

Fourth, GA asserts that, for several reasons, it will be deprived of due process if it is required to contest the Order before the Commission or the Licensing Board. In this regard, GA claims that the Commissioners are "material witnesses in the matter in controversy," and as such must be disqualified; otherwise, GA will be deprived of its procedural due process rights because the case will ultimately be decided by the Commissioners. GA further claims there would be a violation of due process because GA would not be able to obtain "essential" testimony from the Commissioners, citing 10 C.F.R. § 2.720(h)(1). *Id.* at 2-3. Finally, GA states that the "actions of the NRC strongly suggest that it has prejudged the contested matters raised" by the Order. According to GA, prejudgment by the Commission would deprive GA of "the fairness traditionally associated with any form of judicial process" and violate the due process rights of GA. *Id.* at 3.

II. Supporting Documentation

In support of its Motion, GA has filed the following materials:⁴

1. Brief in Support of General Atomics' Motion for Summary Disposition or For An Order of Dismissal;
2. Statement of "Material Facts As To Which There Is No Genuine Issue" (Annex "A");
3. NRC Staff memorandum from W. Pennington (Oct. 27, 1988) (Subject: NRC Staff Assessment of Acquisition of Sequoyah Fuels Corporation by Sequoyah Holding Corporation);

⁴ For ease of reference, these documents may sometimes be referred to as "GA Att. 1," "GA Att. 2," etc.)

4. NRC Staff memorandum from R. Wood to L. Rouse (Sept. 19, 1988) (Subject: Proposed Transfer of Ownership of Kerr-McGee's Gore Facility to Sequoyah Holding Corporation);
5. Letter from R. Graves, Jr. to L. Rouse (Oct. 18, 1988);
6. Letter from L. Rouse to Sequoyah Holding Corporation (Oct. 27, 1988);
7. NRC Staff Requirements Memorandum from S. Chilk to J. Taylor (Mar. 27, 1992);
8. Excerpts from the transcript of the January 19, 1994 prehearing conference before this Licensing Board (pp. 15-17, 106-107);
9. Transcript of the December 21, 1992 NRC public meeting;
10. Transcript of the December 21, 1992 NRC press conference and public meeting;
11. Affidavit of Reau Graves, Jr. (with attachments) (Feb. 14, 1994);
12. Affidavit of J. Neal Blue (Feb. 14, 1994).

III. NRC Staff's Statement of Material Facts Pursuant To 10 C.F.R. § 2.749 As To Which There Exists A Genuine Issue To Be Heard

Pursuant to 10 C.F.R. § 2.749(a), GA submitted with its Motion a listing of "Material Facts As To Which There Is No Genuine Issue." Of the "facts" that GA has listed, the Staff lists below material facts concerning which the Staff contends there exists a genuine issue to be heard:

- "4. General Atomics is not now and has never been a licensee of the NRC in connection with the Sequoyah Facility.

5. General Atomics is not engaged in licensed activities and it does not possess licensed or other NRC regulated materials in connection with the Sequoyah Facility."

See Annex "A" -- Material Facts As To Which There Is No Genuine Issue, GA Att. 1 at 1.⁵ In support of the Staff's statement that there exist genuine fact issues, the Staff has attached excerpts from the SFC license (Staff Exhibit 1), excerpts from GA's Answer and Request for Hearing (Staff Exhibit 2), and an affidavit of James C. Shepherd (Staff Exhibit 3).

It is readily apparent that GA's "material facts" nos. 4 and 5 are key to GA's central argument that the NRC does not have jurisdiction over GA such that the Order should be sustained. The Staff, in addition to contesting the facts that GA has framed, believes that there is a genuine issue to be heard concerning the following facts, which

⁵ GA lists a total of 19 "facts" which it alleges are material and not in issue. *Id.* Of the 17 "facts" not addressed above, the Staff submits that, for the purposes of this Answer, numbers 6, and 12-17 are not in issue. Numbers 1 and 3 are in issue only as to GA's definition of the term "licensee." As stated in the text, *infra*, the Staff believes there is a genuine fact issue as to whether GA is a *de facto* licensee. See *infra* p. 8. As to number 2, the Staff does not dispute that SFC is the entity named as the "Licensee" on page 1 of the license. Numbers 7-11 and 14, which apparently go to the issue of estoppel against the NRC, are immaterial to whether the Order should be sustained. See *infra* pp. 28-30. Number 18 cannot be addressed because the exhibit cited in support was not attached to GA's Motion. Finally, number 19 goes to certain facts the evidence concerning which is solely within the control of GA and SFC. Accordingly, the Staff cannot affirmatively contend that number 19 is subject to dispute; the Staff should be entitled to discovery on this issue. See *infra* pp.11-12.

the Staff submits are material to whether the NRC has jurisdiction over GA for the purposes of the Order:⁶

1. GA has engaged in conduct affecting activities over which the NRC has subject matter jurisdiction.
2. GA has engaged in activities over which the NRC has subject matter jurisdiction.
3. GA has exercised day-to-day control, intimate control, or control beyond the exercise of voting rights, over SFC's operations and activities over which the NRC has subject matter jurisdiction.
4. GA is a *de facto* NRC licensee in connection with the SFC facility.
5. GA possesses source material and/or byproduct material in connection with the SFC facility.

IV. Legal Analysis

A. Standards for the Granting or Denial of Summary Disposition

The Commission's Rules of Practice in 10 C.F.R. § 2.749 authorize a presiding officer to consider a party's motion for a decision in that party's favor on any part of the matters involved in a proceeding. Section 2.749(d) provides that:

⁶ Under 10 C.F.R. § 2.749(a), the party moving for summary disposition is required to submit a "statement of the material facts as to which the moving party contends that there is no genuine issue to be heard." The Staff reads this regulation as further requiring the answering party to submit a statement identifying those facts listed in the moving party's statement which the answering party believes are in dispute. In other words, the answering party need not provide a compendium of all facts it deems disputed and that are material to every conceivable issue in the case, including issues not addressed by the moving party.

The presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.

The Commission's summary disposition procedures have been analogized to Rule 56 of the Federal Rules of Civil Procedure. See *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753-54 (1977); *Alabama Power Co.* (Joseph M. Farley Nuclear Plant Units 1 and 2), ALAB-182, 7 AEC 210, 217 (1974). Decisions arising under the Federal Rules may thus serve as guidelines to licensing boards in applying 10 C.F.R. § 2.749. *Dairyland Power Cooperative* (La Crosse Boiling Water Reactor), LBP-82-58, 16 NRC 512, 519 (1982), citing *Perry*, ALAB-443, 6 NRC at 754.

Summary disposition "should be entered only when the pleadings, depositions, affidavits, and admissions" show no genuine issue as to any material fact. 10 C.F.R. § 2.749(d). See also *Celotex v. Catrett*, 477 U.S. 317, 322 (1986); *Poller v. Columbia Broadcasting System, Inc.*, 368 U.S. 464, 467 (1961). The moving party must demonstrate that it is entitled to judgment as a matter of law. *Poller*, 386 U.S. at 467; *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-660, 14 NRC 987, 1003 (1981).

The movant seeking summary disposition has the burden of demonstrating the absence of any genuine issue of material fact. *Perry*, ALAB-443, 6 NRC at 753. All

material facts set forth in the motion and not adequately controverted by the response to a summary disposition motion are deemed to be admitted. 10 C.F.R. § 2.749(a). A party opposing the motion may not rely on a simple denial of material facts stated by the movant but must set forth specific facts showing that there is a genuine issue. 10 C.F.R. § 2.749(b); *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-841, 24 NRC 64, 93 (1986). However, if the evidence used to support a motion does not demonstrate that a genuine issue of fact does not exist, the motion must be denied even if there is no opposing evidence presented. *Adickes v. Kress*, 398 U.S. 144, 160 (1969); *Perry*, ALAB-443, 6 NRC at 754.

Here, GA has proffered its "Annex A" in an attempt to catalog the material facts concerning which it asserts there is no genuine issue. See GA Att. 2. The Staff counters "facts" 4 and 5 of GA's listing, *i.e.*, that GA is not a licensee in connection with the SFC facility, and that GA is not engaged in licensed activities, not by simple denial, but by presenting the SFC license, which contains references to numerous licensed activities for which GA is directly responsible, combined with GA's admissions contained in its answer to the Order, and an affidavit of Mr. Shepherd. The Staff and GA obviously disagree as to the inferences -- *e.g.*, whether GA has affected licensed activities, or engaged in such activities, or is a *de facto* licensee -- that may be properly drawn from the facts evidenced by the SFC license, or which are stated in the Order and GA has admitted in its Answer and Request for Hearing; in such case, summary disposition should be denied. *Bradbury v. Wainwright*, 718 F.2d 1538, 1543-44 (11th Cir. 1983) (and cases cited

therein). See also *Phoenix Savings & Loan, Inc. v. Aetna Casualty & Surety Co.*, 381 F.2d 245, 249 (4th Cir. 1967). "When the evidence is equally consistent with two alternative inferences, the court must draw the one that is more favorable to the non-moving party." *Pacific Service Stations Co. v. Mobil Oil Corp.*, 689 F.2d 1055, 1064 (TECA 1982). See also *Adickes*, 398 U.S. at 157-59; *Richoux v. Armstrong Cork Corp.*, 777 F.2d 296, 297 (5th Cir. 1985); *Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2) LBP-91-24*, 33 NRC 446, 450 (1991), *aff'd*, CLI-92-8, 35 NRC 145 (1992).

Discovery may shed even more light on GA's involvement with SFC activities and its control over the operations of SFC. Discovered facts could very well demonstrate further that GA's control and involvement is such that GA affects licensed activities, and engages in them to such a degree that it is a *de facto* licensee, subject to any requirement of the NRC in the same way any named licensee would be. Accordingly, summary disposition is not appropriate at this time because facts and circumstances may not have been developed sufficiently for the Board to be assured that it would be making a correct determination of the law if the motion is granted. *NLRB v. Smith Industries, Inc.*, 403 F.2d 889, 893 (5th Cir. 1968). Thus, GA's summary disposition motion should not even be entertained until discovery has been completed by the Staff.⁷ See *Celotex*,

⁷ It should be noted that GA filed a Motion to Stay Discovery (Feb. 17, 1994), in response to which the Staff agreed to a limited stay until June 1, 1994 or the date the Board decides the instant motion, whichever occurs first. See NRC Staff's Answer to
(continued...)

477 U.S. at 322 (summary judgment may be entertained after adequate time for discovery). See also *Anderson v. Liberty Lobby*, 477 U.S. 242, 250 n.5, 257 (1986); *Costello, Porter, et al. v. Providers Fidelity Ins.*, 958 F.2d 836, 838-39 (8th Cir. 1992); *Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 & 2) LBP-81-55*, 14 NRC 1017, 1021 (1981). This is especially true where, as in this case, the facts are largely in the hands of the moving party and the credibility of witnesses will be an important issue. See *Poller*, 368 U.S. at 473; *Alabama Farm Bureau Mutual Casualty Co. v. American Fidelity Life Insurance Co.*, 606 F.2d 602, 609 (5th Cir. 1979).

B. The NRC's Jurisdiction Over General Atomics

It is well-settled that "an administrative agency is a creature of statute, having only those powers expressly granted to it by Congress or included by necessary implication from the Congressional grant." *Soriano v. United States*, 494 F.2d 681, 683 (9th Cir. 1974). Under section 161 of the Atomic Energy Act of 1954, as amended (AEA), 42 U.S.C. § 2201, the Commission has been granted broad authority to prescribe regulations or issue orders "as it may deem necessary . . . to govern any activity authorized pursuant to this Act . . . in order to protect the public health and minimize danger to life or property."

⁷(...continued)

General Atomics' Motion to Stay Discovery (Mar. 9, 1994). In light of the textual discussion above, any ruling granting GA's Motion at this time would be particularly premature given the current status of discovery.

The Supreme Court has long held that great deference is due the interpretation of a statute by the officers or agency charged with its administration. *Chevron U.S.A. v. Natural Res. Def. Council*, 467 U.S. 837, 842-45 (1984); *Ford Motor Credit v. Milhollin*, 444 U.S. 555, 566 (1979); *Udall v. Tallman*, 380 U.S. 1, 16 (1965). The Commission, of course, is responsible for all of the licensing and related regulatory functions set forth in the AEA. *See generally* section 201, Energy Reorganization Act of 1974, 42 U.S.C. § 5841. Its interpretation of the AEA, therefore, is entitled to considerable weight.

The Commission has recently articulated the scope of its jurisdiction in connection with the issuance of final regulations to address deliberate misconduct by unlicensed persons. *See* Revisions to Procedures to Issue Orders; Deliberate Misconduct by Unlicensed Persons, 56 Fed. Reg. 40,664 (1991). While the Order is not based on a theory of deliberate misconduct, as that concept is envisioned by regulations referred to above,⁸ the Commission's discussion of its jurisdiction contained in the respective Statement of Considerations is one of general applicability and is particularly instructive here.

The Commission stated that its statutory authority to issue orders, found in section 161 of the AEA, "is not limited solely to licensees." *Id.* Rather, its authority "is extremely broad, extending to any person (defined in section 11s to include, e.g., any individual, corporation, federal, state and local agency) who engages in conduct within

⁸ *See, e.g.*, 10 C.F.R. § 40.10.

the Commission's subject matter jurisdiction." *Id.* This did not mark the boundary of the Commission's *in personam* jurisdiction,⁹ however, for the Commission stated further that "persons" to which it had authority to issue orders include those "who engage[] in conduct *affecting* activities within the Commission's subject-matter jurisdiction." *Id.* at 40,666 (emphasis added).

It cannot be denied that GA has and continues to engage in conduct affecting activities within the Commission's subject matter jurisdiction. The SFC facility, of course, has long undertaken activities pursuant to an NRC license, both prior to and during GA's ownership of the facility; there is no question that these activities come within the scope of the Commission's subject matter jurisdiction. During GA's ownership of SFC, GA has clearly affected such activities, and in fact has directly engaged in such activities, through GA's involvement in SFC's operations. The effect of GA's involvement goes far beyond the much more indirect influence that an otherwise passive shareholder might exert, for example, by exercising its voting rights. Indicia of GA's involvement affecting and engaging in SFC's operations are cited as examples in the Order:

For example, Richard Dean, former Chairman of the SFC Board was also a GA Engineering Director, and Max

⁹ There are no specific personal jurisdiction provisions or limitations contained in the AEA. The Commission has explained that in light of the foregoing, "the NRC is authorized to assert its personal jurisdiction over persons based on the maximum limits of its subject matter jurisdiction." 56 Fed. Reg. at 40,667. Personal jurisdiction "is established" (but not necessarily limited to) when one "acts within the agency's subject matter jurisdiction." *Id.*

Kemp, Chief Executive Officer of SFC and a member of its Board of Directors, also was the GA Finance Manager. GA exercises management oversight of SFC activities through periodic oversight and program audits of SFC's QA program by the QA Director of GA, and through the Nuclear Committee of the SFC Board of Directors, which was chaired by a GA Engineering Director and which not only advises SFC but directs SFC activities such as clean-up and repair of piping structures in the SFC Solvent Extraction Building, and by the appointment of a GA engineering Director to serve as Manager, Engineering for SFC. GA supplies technical expertise and personnel to SFC; for example, the GA Quality Systems Manager acted as the SFC QA manager and a GA Engineering Director served as Manager, Engineering for SFC, while both remained on GA's payroll. In addition, the SFC Source Material License specifies that the Corporate Manager, Health Physics, the Corporate Manager, Licensing, Safety and Nuclear Compliance, and the Vice President, Human Resources, all of whom are GA employees, shall be responsible for auditing SFC licensed activities and ensuring the qualifications of certain SFC employees. Also, GA has directed SFC regarding satisfying requirements for site remediation and decommissioning . . . [and] GA has now structured the business activities of SFC by entering into a joint venture with Allied Signal Corporation, creating a partnership, ConverDyn, in order to satisfy outstanding business commitments of SFC.

Order at 14-15. GA largely admits the involvement of the above GA personnel in SFC's management and operations. *See* General Atomics' Answer and Request for Hearing (Nov. 3, 1993) at 12-13. Because GA has engaged in conduct affecting SFC activities, and even further has directly engaged in SFC activities, which are within the

Commission's subject matter jurisdiction, the Commission has *in personam* jurisdiction over GA and thus has the authority to issue the Order against it.¹⁰

GA does not address in its Brief whether it has engaged in conduct affecting SFC's activities. GA does assert that it is not engaged in activities within the subject matter jurisdiction of the NRC, that no activity of GA is licensed by the NRC, and that none of the conduct attributed to GA in the Order involved a licensed activity. GA Brief at 7, 9, 13. With respect to these statements, GA argues that "Section 161i is limited to 'any activity authorized pursuant to this chapter,' i.e., to licensed activities," and that "[t]he inevitable implication is that Section 161i is also limited to the licensees who engage in the licensed activities." *Id.* at 12-13 (emphasis in original). "It is the conduct of licensees that is regulated by the [AEA]," according to GA. *Id.* at 14 (emphasis in original).¹¹ As the Commission's statements in connection with the issuance of the rules

¹⁰ GA has not argued that the substance of the Order is beyond the scope of the Commission's subject matter jurisdiction.

¹¹ GA cites *Reynolds v. United States*, 286 F.2d 433 (9th Cir. 1960), for the proposition that section 161i of the AEA "deals only with those who are subject to the authority of the Atomic Energy Commission (and its successor, the NRC), i.e., to licensees." GA Brief at 13 (emphasis in original). At issue in *Reynolds* was whether a regulation, issued by the Atomic Energy Commission under section 161i, that barred persons from entering a nuclear test danger area where the AEC was conducting tests, was valid. The Court of Appeals held that section 161i was not meant to apply to the Commission's own activities, as distinguished from the activities of licensees or private parties. 286 F.2d at 437-439. Thus, the regulation was deemed invalid. The court was not confronted with the situation here, namely whether section 161i orders issued in the context of non-Commission activities, may reach persons who are not necessarily "licensees." Accordingly, *Reynolds* is inapposite. *See also* Revisions to Procedures to Issue Orders; Deliberate Misconduct by Unlicensed Persons, 56 Fed. Reg. 40667 (1991).

concerning deliberate misconduct by *unlicensed* persons amply demonstrate, the foregoing view is overly restrictive.¹² The fact that the source material license issued to SFC does not specifically name GA as the "Licensee" is far from dispositive of the NRC's jurisdiction over GA. As demonstrated by the examples set forth in the Order regarding GA's involvement in SFC's management and operations, it is readily apparent that GA has engaged in conduct affecting activities within the Commission's subject matter jurisdiction, and further has directly engaged in such activities, and for that reason, GA is subject to the Commission's jurisdiction. The Staff submits that for the purpose of ruling on GA's Motion, there is at least a material issue of fact as to whether GA has engaged and is engaging in licensed activity and is thus a constructive or *de facto* licensee, or whether GA has affected licensed activities, and that, therefore, summary disposition is neither appropriate nor warranted.

Given the Commission's clear articulation of its jurisdiction over persons who affect, or engage in, activities within the Commission's subject matter jurisdiction, such

¹² GA, in support of its analysis of section 161b of the AEA, excerpts the following language from the case law: [W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983), quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972). This principle actually refutes any claim that section 161 of the AEA is strictly limited to licensed activities, and in turn, named licensees, such as SFC. The reason is that Congress included the term "licensed activity" in section 11 of the AEA ("an activity licensed pursuant to this Act"), but did not use such term in section 161, which addresses "any activity authorized pursuant to this Act." Thus, one should presume that Congress did not intend section 161 to be limited in scope to "licensed activities" or actual licensees.

as GA, and the deeply rooted principle of deference to be accorded to an agency's interpretation of the statute it administers, it is unnecessary to look any further to the legislative history of the AEA, particularly in connection with sections of the statute that have no direct bearing on the Commission's authority to issue orders under section 161. However, GA attempts to support its position by doing just that.

First, GA argues that interpreting the Commission's ordering authority to reach GA is inconsistent with "the Act's legislative purpose -- i.e., 'widespread participation and investment' by private industry." GA Brief at 17. While a goal of Congress, when drafting the AEA, may have been to facilitate private investment in the development of nuclear facilities, GA cites no legislative history that would indicate that Congress sought to achieve that goal at the expense of a fundamental mission of the Commission -- the protection of the public health and safety. Any notion of limiting the Commission's ordering authority, particularly in the area of decontamination and decommissioning, runs head on into this fundamental mission. Certainly, GA advances no support for the notion that the drafters of the AEA intended to place private investment ahead of public health and safety.

Second, GA discusses the enactment of section 234 of the AEA, 42 U.S.C. § 2282, regarding authority to impose civil money penalties, which is a section of the statute that GA acknowledges does not form a basis for the Order. GA Brief at 18. As GA notes, section 234 is specific as to the circumstances that must exist before one may be subject to a civil money penalty. GA also mentions sections 206 and 210 (now § 211)

of the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. §§ 5846 and 5851, which are also specific as to persons subject to those provisions, as well as the nature of the conduct addressed. These sections are in contrast to section 161, which is much broader in its language, and which does not contain any restriction concerning persons to which that section applies. If anything, the only conclusion that can be drawn by examining the language and legislative history of sections 234 of the AEA, and sections 206 and 210 of the ERA, is that Congress' enactments of those sections reflect only Congress' concern with the specific substantive issues addressed therein, and determination of the need to specify the classes of persons and the conduct to which such provisions would apply. In light of the Commission's clear interpretation of its jurisdiction under section 161, it is neither necessary nor appropriate to resort to speculation as to what Congress may have intended when enacting section 161 based on the limited legislative history pertaining to section 234 of the AEA and sections 206 and 210 of the ERA proffered by GA. As the Supreme Court has noted, "the views of one Congress as to the construction of a statute adopted many years before by another Congress has 'very little, if any, significance.'" *United States v. Southwestern Cable Co.*, 392 U.S. 157, 170 (1967) (citations omitted). Here, GA has not even referenced any views of any Congress specifically concerning the construction of section 161.

GA states that "the NRC relies upon its own regulations in 10 C.F.R. § 2.202 and 10 C.F.R. Part 40 for its assertion of personal jurisdiction over General Atomics." GA Brief at 25. GA argues that the NRC's regulations do not apply to GA, and if construed

otherwise, they are void because they would reach beyond the limits of the Commission's statutory authority. *Id.* at 25-27. GA is mistaken, in that the authority relied upon to issue the Order against GA is section 161 of the AEA. Section 2.202 is a procedural regulation that is not relied upon to establish jurisdiction over GA. Part 40, which establishes procedures and criteria for issuing licenses and establishes their terms and conditions, likewise is not relied upon to reach GA from a jurisdictional standpoint. Thus, GA's argument here is misplaced.

GA next argues that the "attempt by the NRC to hold General Atomics jointly and severally liable for a major financial obligation of the Licensee, without first creating in advance clear standards by which General Atomics and other non-licensees could gauge and control their conduct, is, therefore, arbitrary, and so unreasonable as to violate the due process rights of General Atomics." GA Brief at 29-30. It is ironic that GA mounts this defense when it was GA, through its chairman, that first "volunteered" and intended to be responsible for this "major financial obligation" of SFC, well before the issuance of the Order. *See* letter from J. Blue to Chairman Selin (Mar. 19, 1992) (Staff Exhibit 4). Thus, it is not clear how GA can legitimately complain that its due process rights are violated when the NRC is ordering it to be liable for the very same financial obligation for which it offered to be responsible two years ago.¹³

¹³ Moreover, it should be noted that the Order is not immediately effective. Thus, GA is under no immediate obligation, and has ample opportunity to challenge the standards by which its conduct is judged and which formed the basis for the Order, as well as raise affirmative defenses to the extent permitted by the Board.

In any event, the present regulations governing financial assurance for decommissioning and termination of licenses, 10 C.F.R. §§ 40.36 and 40.42, have been in place since mid-1988, prior to the acquisition of SFC by GA from Kerr-McGee. Thus, when GA acquired SFC, GA was fully aware of the regulatory obligations that existed with respect to decommissioning funding. In addition, section 161 of the AEA has not changed from the date of the acquisition of SFC; GA clearly was on notice of the broad scope of the Commission's authority granted by Congress through section 161, and reasonably should have known that close involvement in activities authorized pursuant to the AEA would render it subject to the personal jurisdiction of the Commission. GA essentially contends that specific guidance is necessary, as to the type of conduct actionable and potential liability, by rule or rulemaking process, or else due process is violated. GA Brief at 29-30. GA provides no details concerning the specificity that GA believes is required to survive a due process challenge.

The Staff, of course, believes that it was unnecessary for the NRC to have provided "in advance clear standards" by rule to satisfy due process. Sections 161(b) and 161(i) of the AEA authorize the Commission to perform its regulatory functions by rule or order. *See id.* Nowhere is there any indication in the AEA that an order may be issued only in conjunction with the prior issuance of a rule.¹⁴ Moreover, other agencies

¹⁴ The Court of Appeals for the District of Columbia circuit has also noted that "Congress [enacted] a regulatory scheme which is virtually unique in the degree to which broad responsibility is reposed in the administering agency, free of close prescription in its charter as to how it shall proceed in achieving the statutory objectives." *Siegel v. AEC*, 400 F.2d 778, 783 (D.C. Cir. 1968).

that have also been granted broad authority have not provided complete laundry lists by rule or rulemaking processes of conduct which, or persons who, would run afoul of the statutes they administer.

For example, section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, provides the basis for the FTC's broad regulatory authority. In relevant part it provides:

Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

15 U.S.C. § 45(a)(1). The Staff is aware of no rule or rulemaking process that specifically defines all of the conduct encompassed by the above prohibition, or all of the remedies available to the Federal Trade Commission for a violation of section 5.¹⁵ In fact, if the FTC was to even attempt to undertake a rulemaking process where all standards of prohibited conduct would be laid out, it would be acting contrary to the wisdom of Congress, which acknowledged that such a task would be impossible. See *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233, 240 (1971).

The Federal Deposit Insurance Corporation is authorized to bring cease and desist actions against, *inter alia*, "any insured bank . . . or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such a bank [who] is engaging or has engaged . . . in an unsafe or unsound practice" 12 U.S.C.

¹⁵ Nominally, the FTC has statutory authority to issue cease and desist orders for violations of section 5. 15 U.S.C. § 45(b). However, remedies far beyond merely the cessation of an activity have been upheld by the courts. See, e.g., *American Cyanamid Co. v. FTC*, 363 F.2d 757, 772 (6th Cir. 1966) (FTC had authority to order compulsory licensing of patents).

§ 1818(b). Again, the Staff is aware of no rule or rulemaking process that specifically defines what constitutes "an unsafe or unsound practice." Under such circumstances, by GA's reasoning, the FDIC could not issue orders based on unsafe or unsound practices. To the contrary, the courts have recognized that "one of the purposes of the banking acts is clearly to commit the progressive definition and eradication of such practices to the expertise of the appropriate regulatory agencies." *Groos Nat'l Bank v. Comptroller of the Currency*, 573 F.2d 889, 897 (5th Cir. 1978). Further, "[a]bsent a clear congressional expression to the contrary, [the banking agencies¹⁶ are] entitled to accomplish [their] regulatory responsibilities over 'unsafe and unsound' practices both by cease and desist proceedings [*i.e.*, the issuance of orders] and by rules" *Independent Bankers Ass'n v. Heimann*, 613 F.2d 1164, 1169 (D.C. Cir. 1979). Here, GA has cited no "clear congressional expression" that the NRC is limited, in accomplishing its regulatory responsibilities, to issuing and enforcing rules, or that the NRC may not "progressively define" circumstances that would give rise to the issuance of an order. Accordingly, even though no rule exists that details the exact circumstances here under which GA is subject to the Order, GA's due process rights are not violated.

GA finally argues, in support of its claim that the NRC does not have jurisdiction over it to issue the Order, that the Appeal Board's decision in *Safety Light Corp., et al.* (Bloomsburg Site Decontamination), ALAB-931, 31 NRC 350 (1990), does not and could

¹⁶ Several banking agencies, including the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Federal Reserve Board, and the Comptroller of the Currency, administer 12 U.S.C. § 1818. See 12 U.S.C. § 1813(q).

not independently establish NRC jurisdiction over GA. As the Staff acknowledged earlier, the powers of an administrative agency are limited to those granted to it by Congress or included by necessary implication. *Soriano*, 494 F.2d at 683. Thus, an agency's decision cannot *independently* establish jurisdiction; however, it can appropriately shed light on the agency's interpretation of its enabling statute, which again is entitled to great deference. *Udall*, 380 U.S. at 16.

In *Safety Light*, there was an illegal change in ownership of the licensee in violation of section 184 of the AEA, 42 U.S.C. § 2234. The Appeal Board, at least under those circumstances, certainly left open the door to exploring the degree of involvement of the parent of the licensee with the affairs of the subsidiary licensee in determining "the extent of" liability of the parent for decontamination costs associated with cleanup of the subsidiary's site. ALAB-931, 31 NRC at 368 n.53. Thus, the Appeal Board suggested that there may exist instances where it would be appropriate to hold a parent responsible for the cleanup costs associated with a subsidiary licensee. That view, of course, is entitled to deference because it could not be said to be "inconsistent with the statutory mandate" to protect health and minimize danger to life or property. *See Securities Industry Assn. v. Board of Governors of the Federal Reserve System*, 468 U.S. 137, 143 (1983). Accordingly, while *Safety Light* does not, and cannot, independently establish the NRC's jurisdiction over GA, it does shed light on the NRC's interpretation of its authority under the AEA.

C. The NRC's Claim Upon Which Relief Can Be Granted

GA appears to be seeking an order of dismissal on a theory based on rule 12(b)(6) of the Federal Rules of Civil Procedure. The Commission's rules do not contain a specific parallel provision. In such case, the Board may follow the principles governing rule 12(b)(6), and the Federal cases interpreting that rule. See *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-83-17, 17 NRC 490, 497 (1983), citing *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-374, 5 NRC 417, 421 (1977) (additional views of Mr. Farrar, joined in by the entire board); *Consumer's Power Co.* (Midland Plant, Units 1 and 2), ALAB-379, 5 NRC 565, 568 n.13 (1977).

Dismissal is appropriate *only* where it is clear that there exists no set of facts which would entitle the non-moving party to relief. See *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984), citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). In making this determination, a tribunal should presume that all factual allegations of the non-moving party are true and make all reasonable inferences in favor of that party. See *Hishon*, 467 U.S. at 73. In the case of administrative pleadings, very liberal construction is warranted. See *Southern Colorado Prestress v. Occupational Safety and Health Review Commission*, 586 F.2d 1342, 1347 (10th Cir. 1978), citing *Usery v. Marquette Cement Mfg. Co.*, 568 F.2d 902, 906 (2nd Cir. 1977).

GA asserts in its motion that the NRC has failed to plead or assert a legally cognizable claim against GA. GA's Motion at 2, 4-5, GA's Brief at 32-37. Specifically, in its motion for an order of dismissal, GA alleges that:

[t]he NRC has not, and cannot cite a statute or a controlling opinion of a court of law that establishes a 'de facto control' doctrine for the definition of the NRC's jurisdiction. Even if such a doctrine did exist, it could not be relied upon in this proceeding for the kind of relief that the NRC seeks.

GA's Motion at 4. GA also alleges that:

[t]he NRC has not, and cannot cite a statute or a controlling opinion of a court of law that vests the NRC with jurisdiction to make such claims against non-licensees based upon the common law doctrine of a state that has not even been identified. Nor has the NRC even alleged any of the factors that must be present for the formal differences between affiliated corporations to be disregarded.

GA's Motion at 4-5. GA further alleges that the NRC is improperly utilizing the Order as a fishing expedition for any later discovered facts upon which it might somehow base a claim and GA should not be required to defend against allegations of facts which have not yet been discovered. GA's Motion at 5; GA's Brief at 37.

Contrary to GA's assertion, the Order states one or more claims upon which relief may be granted. These may include, but are not necessarily limited to, the following:

1. By reason of GA's 100% ownership of SFC, and its direct involvement in certain activities of SFC going beyond the mere exercise of voting control over SFC, GA has affected or engaged in matters over which the NRC has subject matter jurisdiction, and has become subject to the NRC's broad authority to issue the Order to it, which under these facts constitutes a reasonable, necessary, rational, and lawful exercise of the NRC's broad authority granted by Congress to enable the NRC to fulfill its statutory mandate to protect health and minimize danger to life or property.

2. By reason of GA's 100% ownership of SFC, and its direct involvement in certain activities of SFC going beyond the mere exercise of voting control over SFC, GA has affected or engaged in matters over which the NRC has subject matter jurisdiction and has become a *de facto* licensee, fully subject to the NRC's regulations and broad authority to issue the Order to it, which under these facts constitutes a reasonable, necessary, rational, and lawful exercise of the NRC's broad authority granted by Congress to enable the NRC to fulfill its statutory mandate to protect health and minimize danger to life or property.

3. By reason of GA's 100% ownership of SFC, and its direct involvement in certain activities of SFC going beyond the mere exercise of voting control over SFC, GA has affected or engaged in matters over which the NRC has subject matter jurisdiction, and has become subject to the NRC's broad authority to issue the Order to it, which under these facts, coupled with GA's voluntary commitment to guarantee financially the decommissioning funding for cleanup of the SFC site, constitutes a reasonable, necessary, rational, and lawful exercise of the NRC's broad authority granted by Congress to enable the NRC to fulfill its statutory mandate to protect health and minimize danger to life or property.

The Orders fully sets forth sufficient facts on which to base any of the above claims. *See, e.g.*, Order at 12-15. Further, the Staff should be permitted to conduct discovery in order to discover further facts which may be used to support the theories. Thus, the granting of a motion for failure to state a claim would be, at best, premature.

With respect to GA's assertion (in support of which GA cites no authority) that the NRC cannot develop a legal theory based upon information uncovered during the discovery process, this assertion is incorrect. The Administrative Procedure Act requires that persons entitled to notice of an agency hearing be *timely* informed of, *inter alia*, "the legal authority and jurisdiction under which the hearing is to be held," and "the matters of fact and law asserted." 5 U.S.C. § 554(b)(2) and (3). The requirement of timeliness is met when the litigant is afforded a sufficient opportunity to develop an adequate

defense and present arguments in response to a legal theory underpinning the case. See *Bendix Corporation v. FTC*, 450 F.2d 534, 542 (6th Cir. 1971) (where the FTC, upon review of an administrative law judge's decision, decided the case on a theory not charged, raised or tried before the administrative law judge and the appellant had no notice of the theory *or* opportunity to present evidence in defense, the Court of Appeals found a violation of § 5 of the Administrative Procedure Act, 5 U.S.C. § 554, and vacated and remanded to permit the parties to present evidence on the theory). See also *Hatch v. FERC*, 654 F.2d 825, 835-837 (D.C.Cir. 1981); *Rodale Press, Inc. v. FTC*, 407 F. 2d 1252, 1256-57 (D.C.Cir. 1968); *Kuhn v. CAB*, 183 F.2d 839, 841-42 (D.C.Cir. 1950); *Kerr-McGee Chemical Corp.*, (Kress Creek Decontamination), ALAB-885, 27 NRC 59, 71-72 (1988).

In sum, the Order states one or more claims upon which relief can be granted. Accordingly, GA's motion to dismiss on a theory of failure to state a claim is unsupported by the facts and circumstances here.

D. Estoppel Against the NRC

GA argues that the NRC should be estopped from now seeking to compel the financial obligations of GA contained in the Order based on (1) the failure by the Staff in 1988-1990 to require a financial guarantee from GA, and (2) the admission by the NRC that the comments by GA's chairman were not legally binding. GA Brief at 43. In making its estoppel argument, GA submits an affidavit from its chairman to the effect that if, at the time GA acquired SFC from Kerr-McGee, the NRC had required GA to

"accept responsibility for providing funding, or financial assurance, or any form of guarantee of the decommissioning and remediation costs of the Licensee's Facility, the sale and transfer of control would not have taken place" GA's estoppel argument is without merit as a matter of law. Moreover, given GA's offer of a financial guarantee well after the time of the acquisition of SFC, GA's state of mind at the time of the acquisition becomes even more irrelevant, notwithstanding the clear legal principles set forth below.

The Supreme Court has long held "that equitable estoppel will not lie against the Government as it lies against private litigants." *Office of Personnel Management v. Richmond*, 496 U.S. 414, 419-20 (1990).¹⁷ Although the Court has indicated that "some type of 'affirmative misconduct' might give rise to estoppel against the Government," the Court has reversed every finding of estoppel it has reviewed. *Id.* at 421-22. While the Court has not ruled "that no estoppel will lie against the Government in any case," *id.* at 423, it is clear from the discussion in *Richmond* that there must be some extraordinary circumstances yet undiscovered by the lower courts.¹⁸

¹⁷ An indication of how long the Court has considered the question of estoppel against the government are some of the cases cited by the Court, *e.g.*, *Lee v. Munroe & Thornton*, 7 Cranch 366 (1813); *The Floyd Acceptances*, 7 Wall. 666 (1869); *Utah Power & Light Co. v. United States*, 243 U.S. 389 (1917).

¹⁸ In an earlier case, Justice Rehnquist (concurring opinion) indicated his belief that, based on the history of the Court's treatment of estoppel against the Federal government, there probably exist *no* circumstances where the doctrine would be applied. *Heckler v. Community Health Services*, 467 U.S. 51, 66-68 (1984).

Similarly, the Court of Appeals for the District of Columbia circuit is "aware of no case in which this court has applied the doctrine [of equitable estoppel] against the government." *ATC Petroleum v. Sanders*, 860 F.2d 1104, 1111 (D.C. Cir. 1988).

As the court stated:

[D]espite the doctrine's flexibility in disputes between private parties, its application to the government must be rigid and sparing. The case for estoppel against the government must be compelling, and will certainly include proof of each of the traditional elements of the doctrine-- "false representation, a purpose to invite action by the party to whom the representation was made, ignorance of the true facts by that party, and reliance," as well as . . . 'a showing of an injustice . . . and lack of undue damage to the public interest.'" [citations omitted].

Id.

Clearly, GA has not even attempted to address these elements directly. The alleged omission by the Staff in the past to develop legally binding financial guarantees does not, by itself, come close to fulfilling the extraordinary requirements for invoking equitable estoppel against the Federal government as set forth by the courts. As a result, GA's claim that the NRC should be estopped from imposing the financial obligations contained in the Order against GA should be rejected.¹⁹

¹⁹ Furthermore, while GA claims that it would not have acquired SFC had the NRC imposed a financial guarantee condition on GA at that time, the statements by GA's chairman in February and March of 1992 clearly indicate a GA which was then ready and willing to accept financial responsibility for SFC's decommissioning costs. Thus, whatever may have been GA's intent in 1988 was superseded, and whatever significance GA's earlier intent might have had otherwise, clearly now amounts to nothing.

E. Due Process

GA argues, in support of its Motion, that it will be deprived of procedural due process by virtue of having to contest the Order before the Commission, and that therefore the proceeding as it pertains to GA should be dismissed. GA's due process theory falls into two categories: first, individual Commissioners allegedly have knowledge of material facts, but may not be called as witnesses, and second, the Chairman of the Commission has allegedly prejudged this matter.

In the first category, GA asserts that a judge who has personal knowledge of disputed evidentiary facts in a proceeding, or who is a witness in the proceeding, must be disqualified. GA Brief at 45. GA then claims that testimony of the Commissioners "is pivotal to the resolution of critically important factual issues." *Id.* at 46. Its claim is grounded in the words used in the October 15 Order that address "reliance" by the "Commission" on GA's financial guarantees, and on similar statements made by the Chairman of the Commission. *Id.* According to GA, representations of contested material facts made in the Order and by the Chairman require the personal testimony of each of the Commissioners. *Id.* at 47. GA then notes that "10 C.F.R. § 2.720(h)(2)(i) states unequivocally" that the attendance and testimony of the Commissioners at a hearing or deposition may not be required by the presiding officer, by subpoena, or otherwise. *Id.* at 49. Thus, according to GA, it could not exercise its due process right to cross-examination. *Id.*

In regard to the second category, GA also points to statements made by the Chairman as demonstrating that he, and potentially the other Commissioners, have prejudged the main issue in this proceeding -- GA's financial liability. *Id.* at 54, 56-57. As a result, GA believes it would be deprived of due process should it be compelled to contest the Order before the Commission, or the Licensing Board, which is "inferior to the NRC." *Id.* at 57.

The Staff does not disagree with the proposition that GA is entitled to procedural due process in an administrative hearing before the Licensing Board. However, GA has not made a showing that it will be so deprived of due process that this proceeding should be summarily dismissed.

First, GA's assertion that "the testimony of the members of the Commission is pivotal to the resolution of critically important factual issues," GA Brief at 46, presumes that any reference to the "Commission" in the Order can only mean the individual Commissioners. However, this presumption is not supported. The terms "Nuclear Regulatory Commission," "NRC" and "Commission" are used interchangeably in the Order, as GA notes in its Brief at 46 n.14, and there is no indication anywhere in the Order that these terms specifically refer to the individual Commissioners. Moreover, in court cases involving other "Commissions," the word "Commission" is ordinarily used to denote the entire agency and not just "the more restricted group at the top, which would be more accurately termed the 'Commissioners.'" *Cinderella Career and Finishing Schools, Inc. v. FTC*, 425 F.2d 583, 586 (D.C. Cir. 1970). In sum, GA has

not demonstrated the validity of its presumption that the term "Commission," as used in the Order, refers specifically to the Commissioners rather than the NRC as a whole, therefore necessitating obtaining the testimony of the Commissioners themselves. Moreover, discussion in the Order of one of the conclusions reached by the Staff indicates that it was the Staff, rather than the Commissioners, which considered GA's financial guarantee representations:

After review of the responses to the Demands for Information, *the NRC Staff* finds that there is no basis to change its conclusion that the degree of GA's control over the business of SFC and Mr. Blue's representations of financial assurance, on which the Commission relied, make GA responsible, along with SFC, for satisfying NRC financial assurance requirements.

Order at 21 (emphasis added).²⁰

In any event, "reliance" by the Staff or the Commission in a common law implied or quasi contract sense is not a material fact underpinning the Order because the validity of the Order does not rest upon a common law contract theory.²¹ Rather, it is GA's relationship with SFC -- an NRC licensee -- and the degree of GA's involvement with activities within the Commission's subject matter jurisdiction that provides the basis for the Order. *See supra* pp. 26-27. Accordingly, even if testimony of individual

²⁰ The Staff fully intends to make available Staff witnesses supporting the Staff's position on each matter in controversy.

²¹ In sharp contrast, the financial guarantee statements volunteered by GA's chairman in 1992 are of much greater significance. For example, they may be probative of the degree of GA's control over and involvement with SFC, which goes to the NRC's jurisdiction over GA to issue the Order against it.

Commissioners would not be available regarding "reliance" by the Staff, GA's due process rights would not be violated since the issue is not key to whether the Order should be sustained.

With respect to the issue of prejudice, the remedy for a less than impartial judge is disqualification. See *Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-101, 6 AEC 60, 64-65 (1973), cited in *Houston Lighting & Power Co.* (South Texas Project, Units 1 and 2), ALAB-672, 15 NRC 677, 680-81 (1982). GA itself has pointed this out in its Brief. See GA Brief at 45. Here, however, GA has not moved for the disqualification of any member of the Licensing Board or of any of the Commissioners. Rather, GA simply urges the Licensing Board to dismiss the proceeding essentially because GA anticipates that it will be deprived of due process in contesting the Order.

GA's concerns are at best premature. Assuming, *arguendo*, that the statements by the Chairman of the NRC cited by GA demonstrate a prejudgment of the case on his part, the fact remains that the proceeding instigated by the Order is not now before the Commission.²²

GA has made no allegation that any prejudgment by the Chairman, or the other Commissioners, would prevent the Licensing Board from reaching a decision based on the facts presented. As in another case where prejudgment by the Commissioners was alleged, GA has provided nothing to counter the assumption "that the Board members are

²² One must, however, file a motion to disqualify an adjudicator in a timely manner. *Midland*, ALAB-101, 6 AEC at 63.

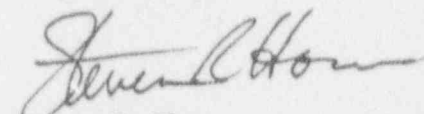
also intellectually disciplined and capable of judging the issues fairly on the basis of the full record they will develop." *Nuclear Engineering Company, Inc.* (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 4-5 (1980).

Moreover, since the remedy for potential prejudgment by an individual is for that individual to be recused or disqualified from hearing the case, at such time when the factual record compiled by the Licensing Board in the instant case comes before the Commissioners for review, GA will be free to move to disqualify members of the Commission on the basis of their alleged prejudgment of the case. If any Commissioners so challenged "are not inclined to disqualify themselves, before making a final decision they will provide the parties to this proceeding with an explanation of their proposed course of action and will afford the parties an opportunity to present any information to them which may bear on their disqualification decision." *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-80-6, 11 NRC 411, 412 (1980); *See Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-84-29, 20 NRC 1061 (1984) (Memorandum by Chairman Palladino explaining denial of motion for his recusal). In sum, GA's due process argument based on alleged prejudice of the Commission is premature and provides no basis for dismissal of this proceeding against GA.

CONCLUSION

For the foregoing reasons, GA's Motion should be denied.

Respectfully submitted,



Steven R. Hom
Susan L. Uttal
Richard G. Bachmann
Counsel for NRC Staff

Dated at Rockville, Maryland
this 13th day of April, 1994

MATERIALS LICENSE

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974 (Public Law 93-438), and Title 10, Code of Federal Regulations, Chapter I, Parts 30, 31, 32, 33, 34, 35, 39, 40 and 70, and in reliance on statements and representations heretofore made by the licensee, a license is hereby issued authorizing the licensee to receive, acquire, possess, and transfer byproduct, source, and special nuclear material designated below; to use such material for the purpose(s) and at the place(s) designated below; to deliver or transfer such material to persons authorized to receive it in accordance with the regulations of the applicable Part(s). This license shall be deemed to contain the conditions specified in Section 183 of the Atomic Energy Act of 1954, as amended, and is subject to all applicable rules, regulations and orders of the Nuclear Regulatory Commission now or hereafter in effect and to any conditions specified below.

| Licensee | | 3. License number |
|---|-------------------------------------|--|
| 1. Sequoyah Fuels Corporation | | SUB-1010, Amendment No. 19 |
| 2. Sequoyah Facility I-40 and Highway 10 Gore, Oklahoma 74435 | | 4. Expiration date September 30, 1990 |
| | | 5. Docket or Reference No 40-8027 |
| 6. Byproduct, source, and/or special nuclear material | 7. Chemical and/or physical form | 8. Maximum amount that licensee may possess at any one time under this license |
| Source | Any form | 20 million MTU |
| 9. Authorized use: For use in accordance with the statements, representations, and conditions contained in Chapters 1 through 8 of the license renewal application dated August 23, 1985; supplements dated January 24, 1985; August 20, September 3, September 26, November 13, December 9, and December 19, 1986; February 26, May 11, June 4, September 15 (submitted by letter dated September 17, 1987), September 25 (submitted by letter dated September 29, 1987), September 29, November 6 (submitted by letter dated November 23, 1987), November 6 (submitted by letter dated September 21, 1988), November 30, December 3, and December 7, 1987 (submitted by letter dated December 28, 1987); March 4, March 14, March 31, July 12, July 18, and October 18, 1988; March 2, March 3, April 11, May 10, August 20, September 11, October 20, November 7, December 11, and December 21, 1989; February 12, May 22, June 15, and September 7, 1990; February 27, March 22, April 8, and June 3, 1991; February 28, 1992 (page 5-8), June 19, and September 24, 1992; and January 27, 1993; two letters dated December 19, 1985, and letters dated March 25, and May 22, 1987. | | |
| 10. Authorized place of use: The licensee's existing facilities at Gore, Oklahoma. | | |
| 11. Deleted. | | |
| 12. The licensee shall submit for NRC review and approval the plan and criteria for decommissioning Pond No. 2 upon the completion of sludge removal from Pond No. 2. | | |
| 13. The licensee shall maintain spare pondage having capacity equal to or greater than Pond No. 5. | | |
| 14. At the end of plant life, the licensee shall decontaminate and decommission the facility so that it can be released for unrestricted use. | | |

MATERIALS LICENSE
SUPPLEMENTARY SHEET

License number:
SUB-1010 Amendment No. 19
Docket or Reference number:
40-8027

APR 9 1993

15. The licensee shall "tamper safe" UF₆ cylinder valves when cylinders are received, washed, tested, filled, or emptied to minimize the possibility of introduction of foreign materials into the cylinders.
16. Deleted.
17. The licensee shall inform the NRC Region IV Office in writing of any violation of the National Pollutant Discharge Elimination System (NPDES) permit or changes in the permit, within 10 days of the determination of the event.
18. The licensee shall verify that all telephone numbers listed in its Radiological Contingency Plan are accurate during each major exercise of onsite personnel required by the Radiological Contingency Plan.
19. Deleted.
20. The licensee's President and Senior Vice President shall each spend at least 1 full workday each month at the facility while the DUF6 to DUF4 process is operational.
21. The licensee shall analyze the samples from the dust collection exhaust stack for fluoride.
22. The licensee shall submit a decommissioning funding plan as described in Section 40.36 of 10 CFR Part 40 at the time of the submittal of the renewal application.
23. Deleted.
24. The licensee shall perform representative sampling of the workers' breathing air when measurements of concentrations of radioactive materials in air are necessary to demonstrate compliance with 10 CFR 20.103.
25. Deleted.
26. Deleted.
27. Deleted.
28. The individual identified in the June 3, 1992, letter, who now holds the position of Vice President, Technical Services (formerly Vice President, Regulatory Affairs), is hereby exempted from the experience requirements contained in Part I, Section 2.5, of the license application.

MATERIALS LICENSE
SUPPLEMENTARY SHEET

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|----------------------------|---------------------------|
| License number | SUB-1010 Amendment No. 19 |
| Docket or Reference number | 40-8027 |
| APR 9 1993 | |

29. Notwithstanding the commitment contained in Chapter 6, Item 10 (page I. 6-2), SFC shall not be required to conduct the monthly tests and annual calibration of the safety interlock system (Q circuit) in the fluorine production system during the timeframe for which the fluorine production system is shutdown. These tests and calibrations shall be conducted prior to resumption of fluorine production.



FOR THE NUCLEAR REGULATORY COMMISSION

Original Signed By:

Date: APR 9 1993

By: Elinor G. Adensam, Acting Chief
Division of Fuel Cycle Safety
and Safeguards, NMSS
Washington, DC 20555

Handwritten notes:
4/2/93
4/9/93
4/9/93

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SEQUOYAH FUELS CORPORATION
SEQUOYAH FACILITY
GORE, OKLAHOMA

LICENSE SUB-1010
DOCKET NO. 40-8027

PART I

LICENSE CONDITIONS

CHAPTER 2. GENERAL ORGANIZATIONAL AND ADMINISTRATIVE REQUIREMENTS

2.1 Licensee's Policy

The Corporate Manager, Health Physics shall be responsible for establishing corporate radiation health and safety standards and procedures, and coordinating them with managers and executives directly affected. Corporate radiation health and safety standards and procedures shall require the approval of the Corporate Vice President, Human Resources.

The Corporate Manager, Health Physics shall publish and maintain the Corporate Radiation Health and Safety Manual. This manual shall contain corporate radiation health and safety standards and procedures, and radiation exposure limits for all employees and other persons (e.g., visitors, contractors, etc.) potentially subject to such exposure from company operations.

The Corporate Director, Licensing, Safety and Nuclear Compliance (LS & NC) is functionally responsible for obtaining and maintaining federal and state licenses and permits required for possessing and processing radioactive materials for all operational units of General Atomics with the exception of Sequoyah Fuels Corporation. The Corporate Director, LS & NC may provide counsel to SFC in matters relating to licensing and permits.

The Vice President, Technical Services shall be the primary contact with the Nuclear Regulatory Commission and other federal and state agencies.

All significant actions with regulatory agencies shall be subject to the approval of the Vice President, Technical Services, or the President, SFC.

The Manager, Licensing and Health Physics shall be responsible for the facility's radiation health and safety activities which includes:

- Initiating and directing programs to ensure compliance with all applicable provisions of corporate radiation health and safety standards and procedures, federal and state regulations and license conditions,
- Establishing and maintaining systems for recording facility radiation survey and exposure data,
- Coordinating on-site contacts with representatives of federal and state agencies responsible for regulating radioactive materials and advising the Vice President, Technical Support and the Corporate Director, Licensing, Safety, and Nuclear Compliance, of the results of the on-site contacts.

- Identifying and proposing new and revised radiation health and safety standards and procedures as needed, and
- Notifying the Corporate Manager, Health Physics of radiation related incidents or emergency situations involving radioactive materials.

The Corporate Manager, Health Physics shall be responsible for ensuring the qualifications of the Manager, Licensing and Health Physics to perform these duties and shall assist and advise him on matters involving radiation exposure and related subjects.

The Corporate Director, Licensing, Safety, and Nuclear Compliance shall review the radiation health and safety practices of Sequoyah Fuels Corporation. This review is to ensure compliance with the current company radiation health and safety standards and procedures, applicable federal and state regulations, and license conditions. The Corporate Director, Licensing, Safety, and Nuclear Compliance, shall document and submit the results of each review and any recommendations for new or revised standards and procedures to the Vice President, Operations, and the Vice President, Technical Services, with copies to the Corporate Manager, Health Physics and the Corporate Vice President, Human Resources. Information copies shall be furnished to other corporate executives as appropriate.

In the event of a radiation-related incident or emergency situation, the Manager, Licensing and Health Physics shall conduct or have conducted a thorough investigation, including preparation of an incident report which will be distributed to the appropriate individuals.

2.2 Organizational Responsibilities and Authority

The organization for Sequoyah Fuels Corporation and its corporate oversight is described below and depicted in Figure 2-1.

The President, Sequoyah Fuels Corporation shall have overall responsibility for the safe operation of the Sequoyah Facility. Additional responsibility has been assigned to the Vice President, Operations, the Vice President, Technical Services, and the Controller for various functions as described in this license. These individuals report directly to the President, Sequoyah Fuels Corporation.

The Corporate Director, Licensing, Safety, and Nuclear Compliance who reports to the Corporate Vice President, Human Resources, shall be responsible for directing quarterly audits at the Sequoyah Facility to evaluate and verify compliance with the applicable federal and state regulations, NRC license conditions, permits, corporate policies, adherence to facility procedures, and Emergency Plan and Implementing Procedures and operational matters. The results of each review and any recommendations for new or

revised standards and procedures shall be submitted to the Vice President, Technical Services, with copies to the Vice President, Operations, and the President, SFC, the Corporate Manager, Health Physics and the Corporate Vice President, Human Resources.

The Corporate Manager, Health Physics who reports to the Corporate Director, Licensing, Safety, and Nuclear Compliance, shall be responsible for the preparation of detailed corporate standards dealing with the control of radiation, spread of radioactive contamination and the monitoring of personnel and nuclear facilities. He is responsible for auditing procedures and plant operations in the health physics area. He reports his findings and recommendations for program improvements to the Corporate Director, Licensing, Safety, and Nuclear Compliance and the ALARA Committee.

The Vice President, Technical Services, who reports to the President, SFC, specifically oversees the health and safety programs, the environmental compliance programs, the environmental laboratory, the quality assurance program, and the licensing program. He is responsible for the development and implementation of a Facility Quality Assurance Plan to assure that all operations and safety related activities are performed in accordance with facility procedures. He is also responsible for maintaining the company's NRC licenses and preparing correspondence and reports submitted to NRC. He advises management on nuclear regulatory issues and provides regulatory compliance oversight in environmental compliance and other regulatory areas.

The Manager, Licensing and Health Physics, who reports to the Vice President, Technical Services, shall be responsible for developing and implementing programs, procedures and guidance in the functional areas of health physics, industrial hygiene, and industrial safety. He shall be responsible for the effluent monitoring program, the respiratory protection program, the bioassay program, the health physics and safety programs, and the program for surveillance of all plant activities related to these areas. He shall be responsible for maintaining all radiation exposure and other health and safety records required by General Atomics, Sequoyah Fuels Corporation and by regulatory agencies. He shall assist the Corporate Manager, Health Physics in establishing radiation health and safety standards and procedures and in coordinating them with the managers and executives directly affected. He assists the Vice President, Technical Services in maintaining the Sequoyah Facility's NRC licenses and overseeing compliance with NRC regulations and license conditions. He provides technical support for various regulatory activities and assists other departments in implementing new regulatory requirements. He also oversees compliance with environmental and other federal and state regulatory programs. He manages the Licensing and Health Physics Department.

He serves as the Contingency Plan Coordinator and is responsible for the implementation of the Congingency Plan and

Contingency Plan Implementing Procedures. He works with the Technical Training Coordinator to ensure that all facility employees and members of the response organizations receive initial and continuing training.

The Manager, Environmental, who reports to the Vice President, Technical Services, shall be responsible for developing and implementing programs and procedures to comply with all environmental monitoring requirements required by federal and state agencies. This includes the maintenance of environmental records required by Sequoyah Fuels Corporation and by regulatory agencies.

The Manager, Quality Assurance and Laboratory Support reports to the Vice President, Technical Services. He shall be responsible for implementing the Facility Quality Assurance Program. This includes assuring safe and efficient operation of the Sequoyah Facility. He shall also audit and provide oversight of safety related activities, systems, and components, as well as regulatory requirements and commitments. He shall be responsible for both the Process Laboratory and the Environmental Laboratory which provides quality control and process development support, as well as other designated analytical work. Required analytical and calibration procedures shall be prepared and maintained under his direction and approved by the Vice President, Operations.

The Technical Training Coordinator who reports to the Vice President, Technical Services, shall be responsible for managing the facility's training program. This individual and the cognizant Department Manager, or their designated representatives, shall certify that each employee's on-the-job training and module certification has been adequate and that the employee is competent and qualified to perform his or her responsibilities.

The Vice President, Operations shall be responsible for all nuclear manufacturing activities, which includes operations, waste management, maintenance, and engineering. He specifically oversees the operations, modifications, and process and equipment criteria. He shall be responsible for safe and efficient plant operations. He reviews all operating procedures, plant modifications and processes, equipment criteria and other general and administrative matters. He reports to the President, SFC.

The Manager, Maintenance reports to the Vice President, Operations, and is responsible for all maintenance activities, including the preparation and maintenance of maintenance and surveillance procedures which specify maintenance-related activities within the requirements of approved health and safety standards and regulations.

The Manager, Engineering Support, who reports to the Vice President, Operations, shall provide and supervise engineering services to the Sequoyah Facility in support of operational activities. He shall be responsible for planning and coordinating

the safe and efficient operation of the operating areas. They also provide technical direction to the Shift Supervisors and shall perform short and long range planning involving the overall operation of the production areas.

The Manager, Operations, who reports to the Vice President, Operations, shall be responsible for all operational activities at the Sequoyah Facility. He shall also be responsible for investigating off-normal conditions and conducting special studies that provide safe and efficient operations. Operating procedures, which specify operating steps within the requirements of the approved health and safety standards and process and equipment criteria, shall be prepared and maintained under his direction.

The Shift Supervisors, who report to the Manager, Operations, shall be responsible for directing the activities of operators and for assuring that all operating procedures are followed in the performance of the production activities.

The Manager, Waste and By-Product Management, who reports to the Vice President, Operations, shall be responsible for the implementation of the facility's waste management program and fertilizer distribution.

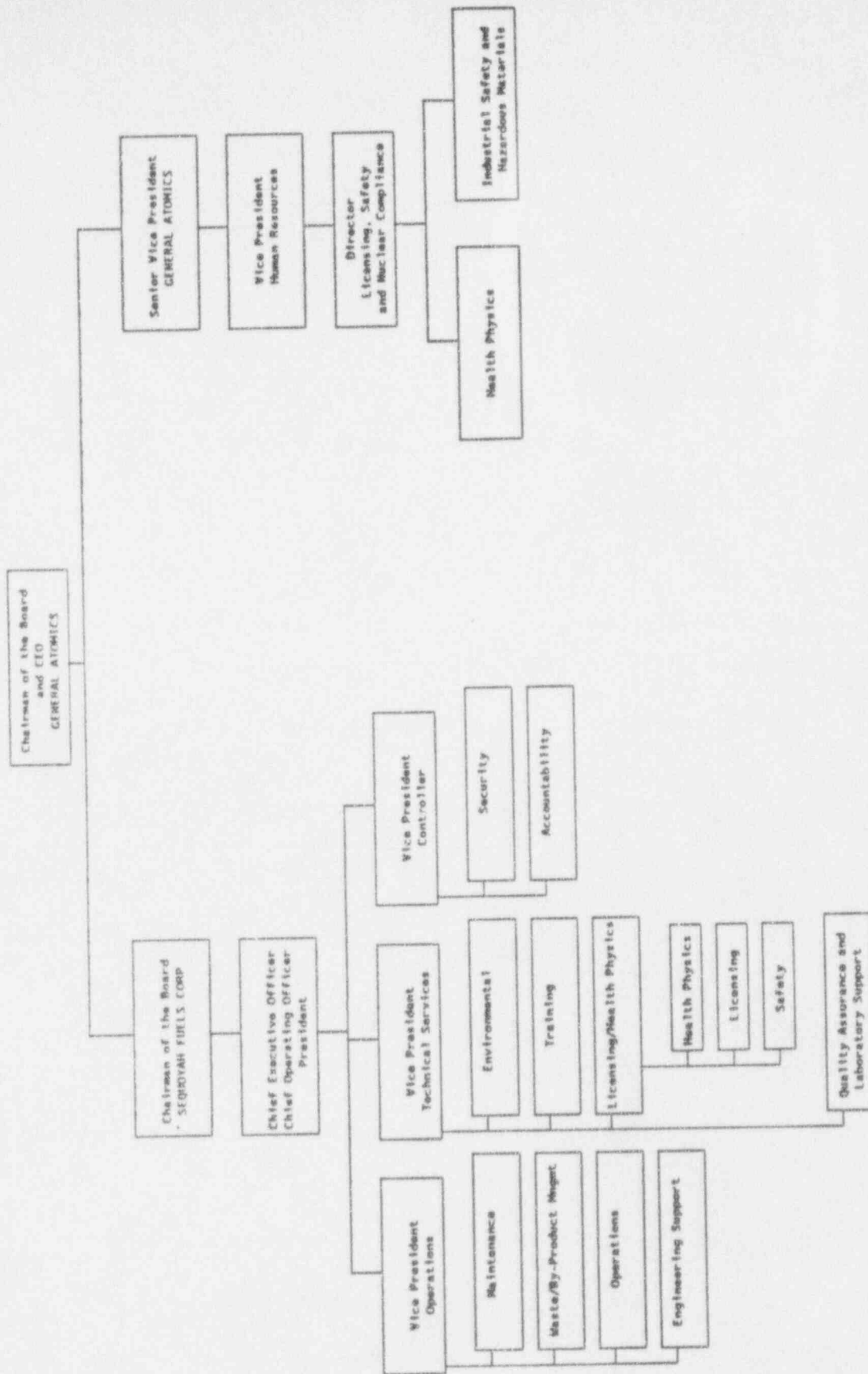
The Vice President and Controller, who reports to the President, SFC, shall be responsible for nuclear material accountability, and the physical security of the facility.

2.3 Safety Review

The independent overview functions carried out under the Corporate Vice President, Human Resources through his staff shall be as follows:

1. To establish the corporate criteria and standards for contamination control and radiation protection for manufacturing processes and equipment.
2. To establish the corporate standards for procedures to be followed by operations management in assuring that processes and equipment are operating in a way to prevent spread of contamination and radiation exposure.
3. To make periodic routine and non-routine inspections against the criteria, standards and procedures of the program.
4. To maintain technical liaison with regulatory agencies, of local, state, and federal government.

SEABOARD FUELS CORPORATION
 Organization Chart
 Figure 2-1



5. To offer expert professional advice and counsel to Corporate and Sequoyah Facility Management in health and safety matters.
6. To procure, as required, special audit services, inspections or calculational capability for problems from qualified consultants or other divisions of General Atomics when it appears that an adequate solution definition exceeds the capability of the staff.

The Sequoyah Facility Plant Review Committee is composed of senior facility managers having key roles in ensuring that facility operations are conducted safely and in compliance with regulatory requirements. The Committee is responsible for reviewing and approving new and revised operating procedures; determining training requirements prior to implementing new or revised procedures; and reviewing revisions to the chemical operator qualification and certification system.

2.4 Approval Authority for Personnel Selection

The President, SFC, shall approve personnel selection for safety related Sequoyah Facility staff positions described in Section 2.5 of this license.

2.5 Personnel Education and Experience Requirements

The education, training, and experience requirements for all safety-related management and staff positions shall be as follows:

The Corporate Vice President of Human Resources of General Atomics shall have a minimum of five years of nuclear industry management experience of high level general management nature.

The Corporate Director, Licensing, Safety and Nuclear Compliance of General Atomics shall hold a degree in science or engineering and shall have at least 5 years experience in matters related to radiation protection. The individual shall be thoroughly familiar with NRC license requirements, NRC, and EPA regulations and regulations of other agencies having oversight responsibilities for activities conducted at the Sequoyah Facility. He shall be capable of providing authoritative advice and counsel in matters related to NRC licensing, regulations and procedures.

The Corporate Manager, Health Physics of General Atomics shall hold a degree in the physical sciences, biological sciences, or other related fields with a minimum of two years experience in appropriate phases of nuclear health physics and the evaluation of potential radiological hazards. He will have demonstrated his proficiency in managing a radiological health and safety program.

The Corporate Manager of Industrial Safety of General Atomics shall hold a degree in science or engineering with a minimum of two years applicable work experience. He shall have demonstrated experience in managing or implementing fire, safety, and health programs.

The Vice President, Technical Services shall hold a degree in science or engineering with 5 years experience in a chemical or nuclear processing plant, and 3 years of management experience in programs having quality assurance responsibilities. The individual shall have demonstrated through progressively more responsible management positions the ability to manage technical and administrative programs similar to those found in a chemical processing plant or other type nuclear fuel cycle facility.

The Manager, Licensing and Health Physics shall hold a degree in science or engineering and have at least 5 years experience in areas such as radiation protection, radiation monitoring, health physics, emergency preparedness and personnel exposure evaluation. He shall have demonstrated a proficiency to conduct specified radiation safety programs, recognize potential radiation safety problem areas in operations and advise operation supervision on radiation protection matters. He shall be capable of directing the surveillance activities of the Health Physics and Safety Technicians.

The Manager, Environmental shall hold a degree in science or engineering with 2 years of technical experience. The individual shall have demonstrated proficiency to formulate and conduct specified non-radiological environmental monitoring programs and to recognize potential environmental problem areas.

The Manager, Quality Assurance and Laboratory Support shall hold a degree in science or engineering. This person shall have 3 or more years of experience in a chemical, nuclear, or manufacturing facility. The individual must possess a demonstrated proficiency in evaluating technical activities at such facilities.

The Vice President, Operations shall hold a degree in science or engineering and have at least 5 years of supervisory or management experience, with at least 2 years management experience in chemical or nuclear materials manufacturing facilities. The individual shall have demonstrated through progressively more responsible management positions the ability to manage complex technical and administrative programs similar to those found in a chemical processing plant or other type nuclear fuel cycle facilities.

The Manager, Maintenance shall hold a degree in science or engineering or have equivalent experience in maintenance of a chemical, nuclear, or manufacturing plant.

The Manager, Engineering Support shall hold a degree in science or engineering with 5 years experience in maintenance/operation of a chemical or nuclear materials processing plant. The individual shall have 3 years experience in a supervisory position.

The Manager, Operations shall hold a degree in science or engineering with 5 years experience in the operation of a chemical or nuclear materials processing plant with demonstrated management experience. He shall have 3 years experience in project engineering and proficiency in identifying process changes which require health physics and safety analysis.

The Shift Supervisors shall hold a degree in science or engineering or have a high school diploma with 5 years experience in a chemical processing plant. The individual shall be thoroughly familiar with the uranium production activities and have a thorough knowledge of the approved operating procedures.

The Technical Training Coordinator shall hold a degree in science or business administration and have at least 3 years experience in training and development. He shall have demonstrated proficiency in directing activities in those functional areas.

The Manager, Waste and By-Product Management, shall hold a degree in science or engineering and have at least 3 years experience in waste management, environmental compliance, or a related field.

2.6 Training

SFC is committed to a comprehensive training program to ensure that all employees receive the instruction necessary to be able to perform their jobs safely and efficiently. Components of the training program include:

2.6.1 General Employee Training

General Employee Training consists of classroom lectures and demonstrations for all new hires. Topics covered include radiation protection, emergency requirements, and procedures, as appropriate to the individual's position.

Each employee signs a statement committing to following corporate policy and procedures.

2.6.2 Chemical Operator Training and Certification

Chemical Operator Training consists of classroom lectures and on-the-job training modules for specific operating area positions. Before being permitted to perform the position requirements without direct supervision, operators are certified by operating position

based upon successful completion of required classroom and on-the-job training. The certification system is promulgated in an operating procedure which is reviewed and approved by the Plant Review Committee.

2.6.3 Retraining

Refresher training is conducted each calendar year for all employees whose normal duties expose them to licensed or hazardous materials, and includes such subjects as plant operations, chemistry and physics, health physics, safety, hazard communications, specified procedures, and the Emergency Plan.

2.6.4 Development and Approval of Training Materials

Development and approval of training materials is conducted by the department under whose cognizance the subject matter falls. New training materials and revisions to existing training materials are approved by the cognizant Department Manager.

2.7 Conduct of Operations

2.7.1 Operating Procedures

It shall be the responsibility of the Vice President, Operations, to see that written operating procedures are established, maintained and adhered to for all operations and safety-related activities involving source or hazardous materials. All operating procedures shall be reviewed by the Manager, Licensing and Health Physics, and approved by the Vice President, Operations, and appropriate training conducted and documented prior to the implementation of the procedure. Temporary changes shall not be made to operating procedures without review by the procedure's proponent or his designee and written approval of the Vice President, Operations, or his designee. All operating procedures shall be reviewed and revised whenever necessary to reflect changes in facility operations, but in no event, less than once every 24 months. The Sequoyah Operating Procedure System shall establish requirements for the development of new operating procedures, revisions to existing operating procedures, the review and approval process, the level of training required, if any, and the degree of documentation necessary to demonstrate that the appropriate facility operating personnel are knowledgeable of new or revised operating procedures.

2.7.2 Document Control

A document control system shall be established and maintained to assure that the procedures in use are the latest revision. A

sanction statement regarding the serious nature of failure to follow the procedures shall be included in the Sequoyah Operating Procedures System and emphasized in the employee training program.

2.7.3 Activities Involving Uranium

All activities involving uranium shall be conducted in accordance with approved radiation health and safety standards. The radiation health and safety standards shall be prepared by the Corporate Manager, Health Physics, and shall be reviewed by the Vice President, Technical Services. The standards shall be reviewed for operability by the Manager, Licensing and Health Physics, and the Vice President, Operations, and approved by the Corporate Vice President, Human Resources. Changes to the health and safety standards shall follow the same administrative review and approval system as original standards.

2.7.4 Design Control

Process and equipment design, which delineate the process and prescribe critical design parameters, shall be prepared by the Manager, Engineering Support, reviewed by the Manager, Operations and the Manager, Licensing and Health Physics, and shall be approved by the Vice President, Operations. Major changes to process operations and to equipment design shall be reviewed for operability and approved by the Vice President, Operations, or the President, SFC.

Modifications or changes to process operations or equipment that normally occur during operations shall be authorized via an Engineering Change Notice (ECN). The ECN shall be prepared by the Manager, Engineering Support; reviewed by the Manager, Licensing and Health Physics, and the Manager, Operations; and approved by the Vice President, Operations. All experimental and developmental work to be performed at the Sequoyah Facility shall be approved by the Vice President, Operations, prior to its initiation.

2.7.5 Maintenance Work

All maintenance work shall be performed in accordance with the Maintenance Work Order Procedure. Operations department supervisors shall determine if any planned maintenance work involves a potential release of radioactive material or potential exposure to radioactive material. If a determination is made that the work could involve uncontained uranium, the operation supervisor shall prepare a Hazardous Work Permit in accordance with established procedure.

The maintenance supervisor shall inspect the repaired work and shall sign the work order indicating that the work has been completed and is acceptable. For work that could involve

uncontained uranium, the operations supervisor shall inspect the repair work prior to removal of protective devices and closing out the Hazardous Work Permit by signature.

At the completion of major modification work, a Safety Review and Acceptance Team, including the Manager, Licensing and Health Physics, shall review the completed work in accordance with the established Engineering Change Notice Procedure. The Safety Review and Acceptance Team shall document that the work has been completed in an acceptable manner. For work orders involving modifications authorized by an ECN, a copy of the completed work order will be forwarded to the Engineering Department for updating plant drawings.

A maintenance surveillance program shall be established for critical instrumentation, alarms and interlocks. The critical instruments, alarms and interlocks covered in the maintenance surveillance program shall be periodically checked and calibrated commensurate with the safety function but at least once every 12 months plus or minus 2 months.

2.8 Audits and Inspections

The Manager, Licensing and Health Physics, or the Assistant Manager, Health Physics, shall conduct an inspection of all plant activities involving radioactive materials on a monthly basis in accordance with a written procedure. A written report documenting the inspection findings shall be made to the Vice President, Operations, with a copy to the Vice President, Technical Services.

The Corporate Director, Licensing, Safety and Nuclear Compliance, shall ensure that quarterly audits are conducted at the Sequoyah Facility to evaluate and verify compliance with applicable federal and state regulations, NRC license conditions, permits, corporate policies and facility procedures in accordance with a written plan. The audits shall apply to major areas such as operations and safety-related activities involving radioactive materials, radiation protection, health physics, industrial safety, environmental control and emergency response programs. The audits shall be conducted by qualified personnel trained in basic radiation protection and knowledgeable about federal and state regulations, corporate policies and facility procedures. At the conclusion of the audit, the auditor shall conduct an exit interview with the Vice President, Technical Services, or his designee, and apprise him of any significant findings and the need for any immediate corrective actions. A formal report of findings, observations, and recommendations shall be prepared and submitted by the Corporate Director, Licensing, Safety and Nuclear Compliance to the Vice President, Technical Services. Copies of the report shall be furnished to the Corporate Manager, Health Physics, the Vice President, Operations, and the President, SFC. In responding to the report, the manager of the area affected shall give the status of corrective action that has been taken and provide a schedule for

additional action which will be taken. The auditor shall conduct a follow-up review to ensure corrective action is being taken in a timely manner.

The Manager, Quality Assurance and Laboratory Support shall conduct periodic audits, at least once every 12 months, of operations and safety-related activities in accordance with the QA Plan and Procedures. The audits shall be conducted to verify compliance with corporate policies, procedures, license conditions and federal regulations. A report of the areas audited shall be made quarterly to the President, SFC. Audit findings shall be documented with copies of the report forwarded to the Vice President, Operations, the Vice President, Technical Services, and the President, Sequoyah Fuels Corporation. The Vice President, Operations shall be responsible for assuring that audit findings are addressed in a timely manner. Follow-up action, including reaudit of deficient areas, shall be taken where indicated.

2.9 Investigation and Reporting of Non-Normal Occurrences

The Sequoyah Facility shall establish an "Incident Report" system. An incident report shall be made for each release of material resulting in gross airborne alpha activity in excess of 3 MPC based on uranium. This incident report shall be initiated by the Manager, Licensing and Health Physics and is directed to the supervisor whose personnel were potentially exposed and then forwarded to the Vice President, Operations. The supervisor shall sign the report including any pertinent observations as to the correction of the condition to avoid further incidents. The report shall then be distributed to the Vice President, Operations, the Manager of Operations, the Vice President, Technical Services, the Corporate Manager, Health Physics, and the Corporate Director, Licensing, Safety and Nuclear Compliance. These reports form a basis for the quarterly ALARA review and include a dose assessment based upon the occupancy conditions and protective equipment used at the time of the incident.

Releases of radioactive material to the environment exceeding established release reporting criteria given in 10 CFR Part 20 shall be reported promptly to the Manager, Licensing and Health Physics, and the Corporate Director, Licensing, Safety and Nuclear Compliance and reported to the NRC as required by Sequoyah Operating Procedures and Federal regulations. Subsequently, the matter shall be investigated by a designated manager and the Manager, Licensing and Health Physics at the Sequoyah Facility and a written report submitted as required.

Chemical releases to the environment exceeding State or EPA limits shall be reported as appropriate in accordance with the above reference procedures and regulations.

2.10 Records

All plant and personnel health physics data and reports shall be recorded and filed in accordance with applicable regulations. Timely trend analyses and reports shall be made at monthly intervals to plant management. The records of surveys and personnel exposure records are retained and reports are made in accordance with applicable regulations.

All required plant training activities shall be documented in the facility training files. Facility audit results by both the Corporate Director, Licensing, Safety, and Nuclear Compliance, or his designee, and the Manager, Quality Assurance and Laboratory Support, or his designee, shall be maintained in accordance with the Quality Assurance Plan and Implementing Procedures and Corporate Policies.

All documentation, records and tests required as a part of this License shall be maintained for a minimum of 5 years, or longer if applicable regulations so require.

HWP's shall be issued for all operations associated with licensed material which are not covered by established procedures. In accordance with Sequoyah Facility Operating Procedure - Hazardous Work Permits, the Shift Supervisor shall be responsible for determining when an HWP is required and for issuing it. The Health and Safety Technicians shall provide appropriate clothing and equipment requirements. At the completion of the work the HWP shall be released in accordance with the requirements noted in the referenced procedure.

3.2.2 ALARA Committee

An ALARA Committee shall be established for the Sequoyah Facility. The Committee shall be comprised of personnel from the Human Resources Department of General Atomics, and personnel from Sequoyah Fuels Corporation. The General Atomics membership includes the Corporate Manager, Health Physics and the Corporate Manager, Licensing, Safety and Nuclear Compliance. Sequoyah Fuels Corporation membership includes the Vice President, Operations, the Vice President, Technical Services, the Manager, Licensing and Health Physics, the Manager, Operations, the Manager, Maintenance, and the Manager, Engineering Support. The Corporate Manager, Health Physics shall serve as the Chairman of the ALARA Committee.

Quarterly ALARA audits shall be performed by the Corporate (GA) Manager, Health Physics resulting in a report to the Committee consisting of a review of trend and cause analysis of radiological exposure conditions within the facility, employee exposures, and progress of administrative and engineering controls needed to assure that exposures to personnel and release to the environment are maintained "as low as is reasonably achievable" (ALARA).

The ALARA Committee shall meet at least annually to evaluate the quarterly trend and cause analysis. The ALARA Committee shall also review exposure and effluent release data to determine (1) if there are any upward trends developing in personnel exposures for identifiable categories of workers, types of operations, or effluent releases, (2) if exposure and release might be lowered in accordance with the ALARA objectives, and (3) if equipment for effluent control is being properly used, maintained, and inspected. From this review the Committee may recommend additional investigations be conducted and revise equipment and/or procedures to improve ALARA performance. A report documenting the results of the annual meeting shall be prepared by the Chairman of the ALARA Committee and forwarded to the President, Sequoyah Fuels Corporation. The Manager, Licensing and Health Physics shall respond in writing to the recommendations in the annual ALARA report to the Chairman of the ALARA Committee.

3.3 Technical Requirements

License No. SUB-1010
Amend. No. Revision

Docket No. 40-8027
Date 01/27/93

Page
I. 3-4

November 2, 1993

UNITED STATES
NUCLEAR REGULATORY COMMISSION

_____)
In the Matter of)

GENERAL ATOMICS)

(NRC Order dated)
October 15, 1993))
_____)

Docket No. 40-8027
License No. SUB-1010

GENERAL ATOMICS'
ANSWER AND REQUEST FOR HEARING

General Atomics ("GA") hereby answers a Nuclear Regulatory Commission ("NRC") order issued to GA on October 15, 1993 (hereafter "Order") in the above-captioned docket and purportedly with respect to NRC Source Material License No. SUB-1010. GA requests that the Order be withdrawn, or in the alternative, requests a hearing on the Order.

GA specifically denies that the NRC has any jurisdiction over GA with regard to the matters set forth in the Order. GA denies that NRC has any authority to issue and/or to enforce orders directed to GA relating to NRC License No. SUB-1010 (hereafter, "SFC License"), which is held by the Sequoyah Fuels Corporation ("SFC"), a third tier subsidiary of GA. GA is not the holder of the SFC License and is not named as an NRC licensee with respect to the SFC License.

GA denies that the NRC has any authority to conduct further proceedings or to take further action directed to GA

31. GA denies that GA agreed by letter dated June 24, 1992, to execute an agreement with SFC.

32. GA admits that SFC and GA have never executed the draft agreement, but GA denies any implication that if the draft agreement had been executed, GA would be obligated to assure funding for decommissioning the SFC Facility under the current circumstances.

33. GA denies that it now has or ever had de facto control over the day-to-day business of SFC and denies that the facts listed in the Order, individually or collectively, are indicative of GA control over the day-to-day business of SFC.

34. GA denies that its stock ownership of SHC, which owns the stock of SFIC, which owns the stock of SFC, is indicative of control over the day-to-day business of SFC, and denies that there are any common directors of both GA and SFC. GA admits that three of the nine officers of SFC also hold positions with GA; admits that SFC's former Chairman, Dr. Richard Dean, was also an officer of GA during some of the time he held that position with SFC; and admits that Max Kemp, who is an officer of GA, serves a member of SFC's Board of Directors and temporarily served for a period of months as SFC's CEO (but never as SFC's Chief Operating Officer, a position which was then held by James J. Sheppard). GA denies that the existence of some common officers/directors with SFC demonstrates control by GA of the day-to-day business of SFC.

35. GA admits that its QA Director conducts periodic oversight and audits of SFC's QA program, but GA denies that such activities indicate that GA has control over the day-to-day business of SFC. GA denies that it controls the Nuclear Committee of the SFC Board of Directors and denies that the Nuclear Committee directs SFC activities. GA admits that a GA Quality Systems Manager and the Director, Manufacturing & Product Support in GA's Engineering Department were temporarily assigned to positions at SFC pursuant to SFC's request (reporting to SFC management and providing services paid for by SFC), and GA admits that the SFC License specifies certain activities by GA personnel. However, GA denies that such activities indicate GA control over the day-to-day business of SFC, and GA notes that there are numerous indicia of SFC control over its own activities which clearly demonstrate the lack of GA control over the day-to-day business of SFC.

36. GA denies the allegation that "GA has directed SFC regarding satisfying requirements for site remediation and decommissioning." (Order at 15). GA admits that it has made a voluntary "strong commitment" to SFC that SFC resources would remain available to SFC for site remediation and decommissioning.

37. GA denies that its Chairman made any representations which could reasonably be construed to be a commitment that GA would unconditionally guarantee the availability of unlimited financial resources for SFC site remediation and decommissioning.

38. GA denies that it has structured the business activities of SFC by entering into a joint venture with "Allied Signal Corporation." GA admits that it assisted SFC in obtaining favorable contractual arrangements with ConverDyn, which are helping SFC satisfy its business commitments and D&D obligations.

39. GA admits that on November 23, 1992, SFC informed the Commission that it intended to continue with only short term limited operations at the SFC Facility and that an unexecuted draft agreement with GA was "no longer applicable," because it only had effect in the context of the previously contemplated ten year license renewal of the SFC License. GA denies that the draft agreement would have constituted a decommissioning "funding guarantee." GA notes that the GA Board of Directors never voted to approve the draft agreement.

40. GA admits that following SFC's announcement of November 23, 1992 the NRC had questions regarding whether SFC would have the financial resources for D&D; that the Commission held a public meeting on December 21, 1992 in order to obtain further information from GA and SFC management; and that its Chairman addressed the Commission at this meeting. GA denies any implication that its Chairman's statements on December 21, 1992 were contrary to or inconsistent with his statements on March 17, 1992 or his March 19, 1992 letter. GA denies the allegation that its Chairman's December 21, 1992 statement (that GA's previous commitments were conditional) is "contrary to the record" and denies the allegation that its Chairman's previous statements