14915

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter Of	
Sequoyah Fuels Corporation and General Atomics	Docket No. 40-8027EA Source Materials License No. SUB-1010
(Gore, Oklahoma Site Decontamination and Decommissioning Funding)	April 13, 1994

NATIVE AMERICANS FOR A CLEAN ENVIRONMENT'S OPPOSITION TO GENERAL ATOMICS' MOTION FOR SUMMARY DISPOSITION OR FOR AN ORDER OF DISMISSAL

Introduction

Native Americans for a Clean Environment ("NACE") hereby opposes General Atomics' Motion for Summary Disposition or for an Order of Dismissal (February 17, 1994) (hereinafter "GA's Motion"). In its Motion, GA seeks dismissal of an order by the Nuclear Regulatory Commission ("NRC" or "Commission") Staff which, inter alia, imposes liability on GA for the establishment of an $86 million decommissioning fund for the Sequoyah Fuels Corporation ("SFC") uranium processing plant in Gore, Oklahoma. GA has failed to demonstrate that there are no material facts in dispute, and therefore it is not entitled to summary judgment.[1] Moreover, to the limited extent that the facts are not in dispute, they do not support dismissal of this enforcement action against GA as a matter of law, but rather support the NRC's authority over GA.

---

[1] See Attachment 1, Statement of Material Facts in Dispute.

I. STATEMENT OF FACTS

A. GA's Purchase of SFC

In 1988, GA, through its subsidiaries, purchased the SFC uranium processing plant from the Kerr-McGee Corporation. The transfer was conducted pursuant to § 184 of the Atomic Energy Act, 42 U.S.C. 2234, which provides for NRC approval after "full disclosure." In negotiating the terms of the transfer, the NRC accepted GA's refusal to guarantee decommissioning funding for the SFC plant, based on a decommissioning cost estimate of $11.7 million, and the NRC's assessment of the "relative strength" of the financial statements of Sequoyah Holding Corporation, the GA subsidiary which sought to purchase SFC." Memorandum from Robert S. Wood for L. Rouse (September 19, 1988), Attachment 2 to GA's Motion to Dismiss. Had the NRC realized that the true extent of the decommissioning costs for the SFC site would be at least eight times that amount, it might well have reached a different conclusion.

During the time that the negotiations between GA and the NRC were underway, SFC was monitoring, and had been monitoring since 1976, "sandwells" near the solvent extraction ("SX") building. These sandwell monitors showed levels which routinely extended to hundreds of thousands of micrograms per liter ("ug/l").[2] Moreover, the data clearly indicate that "uranium contamination had

---

[2] This historical data is summarized in Roberts/Schornick's Final Environmental Investigation ("FEI") Report, Table 78 (July 31, 1991). The highest level reported was 1.2 million ug/l.

migrated away from the SX building." EA 91-067 at 17 (October 3, 1991). In 1976, SFC also installed a standpipe in the floor of the Main Process Building ("MPB"). The standpipe, known as the "subfloor process monitor," was attached to a pump and piping that connected to the process. According to EA 90-158 (November 5, 1990), "[s]ince 1976, the operator had recognized that contaminated liquid was escaping to the ground beneath the process building floor and periodically pumped liquid from the subfloor process monitor back into the process." Id. at 12. Data recorded in the Roberts/Schornick report shows that in the 1987-89 timeframe, uranium levels in the millions of ug/l, and extending as high as 62 million ug/l, were measured from this subfloor monitor.[3]

Problems such as these would have been evident to GA if it conducted an environmental audit or investigation prior to purchasing the SFC plant, as standard business practice dictates in these sorts of transactions. Yet, the contamination was not revealed to the NRC, either by GA or SFC. Directly after GA's subsidiary bought SFC, discontinued the sandwell monitoring in 1989, and failed to report the sandwell monitoring data in its 1990 license renewal application. EA 91-067 at 26. The subfloor process monitor was never recorded on any plant drawings or plant procedures; nor is it referred to in SFC's decommissioning file records. Id. Moreover, SFC's 1990 license renewal application

---

[3] FFI Report, Table 27. 62 million ug/l were measured on June 8, 1989.

made no mention of this source of groundwater contamination, as it was required to. Environmental Report at 4-22. As a result, the contamination of the site, already at gross levels, was probably exacerbated, thus increasing the costs.

B. Shutdown of SFC and Restart Following Decommissioning Funding Commitments by GA.

In 1991, after public revelations of extensive contamination at the SFC site, the NRC ordered SFC to shut down because of management deficiencies that were posing unacceptable risks to safety and the environment. EA 91-067. Studies conducted by SFC during this period revealed that the site was contaminated with thousands of pounds of uranium and other radioactive and chemical contaminants. Roberts/Schornick, Final Environmental Investigation (July 31, 1991). Six months later, the NRC permitted SFC to resume operations, based in part on oral and written commitments by GA CEO J. Neal Blue to fulfill any decommissioning funding requirements that could not be met by SFC. See, e.g., letter from J. Neal Blue to Ivan Selin (March 19, 1992). While the NRC allowed the SFC plant to restart before GA's written commitment was executed, it ordered the restart in reasonable reliance on GA's promise to fulfill this commitment. See Order, In the Matter of Sequoyah Fuels Corporation General Atomics (Gore, Oklahoma, Site Decontamination and Decommissioning Funding) (October 15, 1993) (hereinafter "October 15th Order). Attachment 2. However, GA reneged on its promise after the uranium processing operation was permanently shut down following an accident in

November of 1992. GA then announced that its commitment to guarantee decommissioning funding for SFC had been conditioned upon the assumption that the plant would go on operating for another license term. Letter from J. Neal Blue to Robert M. Bernero (February 16, 1993). However, no support can be found for this assertion in either the GA's previous correspondence with the NRC or its public statements to the Commissioners.

C. Adequacy of Decommissioning Funding Is Uncertain

As discussed in the NRC's October 15th order, following the shutdown of the SFC plant in November of 1992, GA restructured SFC's business activities by entering into a joint venture with Allied Signal and creating a partnership called "ConverDyn." 58 Fed. Reg. at 55,088. According to GA, the profits from ConverDyn would be used to generate decommissioning funds for SFC. However, there are many questions and uncertainties regarding the reliability of this arrangement to provide adequate decommissioning funds. As the NRC explains,

> Estimates of income from the ConverDyn arrangement re necessarily uncertain because they are based upon assumptions about the market for UF6 conversion services over the next ten years, ConverDyn's ability to keep existing customers or to obtain new customers, and the costs of business operations, and because they are based upon some speculative assumptions about whether SFC will receive the maximum possible amount in fees, in view of the system of priorities for payments to be made under the ConverDyn arrangement.

58 Fed. Reg. at 55,089, Cols. 1-2. In addition, "there are a number of other claims on ConverDyn revenues that have higher payment priority than payments to SFC." Id., Col. 2. For

instance, it is unclear whether these claims include SFC's liability for cleanup costs under the Consent Decree which SFC entered into with the U.S. Environmental Protection Agency on July 26, 1993. Moreover, there is no indication in SFC's Preliminary Plan for Completion of Decommissioning (January 31, 1994), that SFC expects to receive any other revenues through 2003, other than $89 million described in Table 10-2 of the PPCD. Thus, it is unclear how SFC is going to pay for both NRC and EPA-mandated cleanups.

As the NRC also notes, SFC's revenue estimates are based upon optimstic and unsubstantiated assumptions that ConverDyn's fixed costs of operation wil steadily decline after 1994 and that ConverDyn will operate at a 100% capacity utilization rate continuously through the year 2003. 58 Fed. Reg. at 55,089, Col. 2. Finally, SFC's decommissioning costs could be significantly higher than projected. Id. Thus, for many reasons, there is insufficient assurance that SFC will have enough funds to safely and adequately decommission its site.

D. GA Ownership and Control of SFC

As described in § 1.1 of SFC's license, GA is the third tier parent of SFC, with 100% stock ownership of SFC:

> Sequoyah Fuels Corporation is a wholly-owned subsidiary of Sequoyah Fuels International Corporation, which is a wholly-owned subsidiary of Sequoyah Holding Corporation, which is a wholly-owned subsidiary of General Atomics, which is a wholly-owned subsidiary of General Atomic Technologies Corporation. General Atomic Technology Corporation is controlled by James N. Blue, a United States citizen.

SFC's license gives to GA the "corporate oversight and audit responsibilities" that were previously held by Kerr-McGee. Safety Evaluation Report at 2 (October 28, 1988) (Attachment 3). Throughout SFC's license, GA is given extensive supervisory responsibility for the day-to-day operation of the SFC plant. For instance, SFC's license identifies senior GA personnel as the responsible parties for key health and safety duties at SFC: GA's Manager for Health Physics is responsible for "establishing corporate radiation health and safety standards and procedures, and coordinating them with managers and executives directly affected." §§ 2.1, 2.7.3. GA's Corporate Director for Licensing, Safety, and Nuclear Compliance is also responsible for reviewing "the radiation health and safety practices of Sequoyah Fuels Corporation," in order to "ensure compliance with the current company radiation health and safety standards and procedures, applicable federal and state regulations, and license conditions." § 2.1. These reviews must be documented, with recommendations for "new or revised standards and procedures," and submitted to high level GA officials, including GA's Corporate Vice President for Human Resources. Id.

The responsibilities of GA's Corporate Director for Licensing, Safety, and Nuclear Compliance also include directing quarterly audits at SFC "to evaluate and verify compliance" with applicable federal and state standards and NRC license conditions. § 2.2. GA's audit responsibilities are described in more detail in § 2.8. Not only must GA conduct quarterly audits to

"evaluate and verify compliance" with applicable standards and license conditions, but they must be followed up "to ensure corrective actions is being taken in a timely manner." § 2.8.

GA's Corporate Manager, Health Physics, is 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 or she is also "responsible for auditing procedures and plant operations in the health physics area." § 2.2. This person reports to the GA Corporate Director, Licensing, Safety and Nuclear Compliance. He or she also chairs the ALARA [As Low as Reasonably Achievable] Committee, which is responsible for conducting and evaluating the results of quarterly ALARA audits, and making recommendations to SFC for measures to reduce radiation exposures. § 3.2.2. SFC must respond in writing to these recommendations. Id.

SFC's license also contains a separate section entitled "Safety Review," which describes the "independent overview functions carried out under GA's Corporate Vice President, Human Resources." § 2.3. These functions include:

-- establishing corporate standards for contamination control and radiation protection,

-- establishing corporate standards for safe operations procedures, conducting periodic inspections against these criteria,

-- maintaining "technical liaison with regulatory agencies, of local, state, and federal government,"

-- offering "expert professional advice and counsel to corporate [GA] and Sequoyah Facility Management in health and safety matters, and

-- procuring "special audit services, inspections, or calculational capability" from GA "when it appears that an adequate solution definition exceeds the capability of the staff." Id.

SFC's license also establishes "personnel education and experience requirements" for GA personnel having a role in the oversight of SFC's operations. For example, the Corporate Vice President of Human Resources "shall have a minimum of five years of nuclear industry management experience of high level general management nature." § 2.5. Educational and training requirements are also established for GA's Corporate Director, Licensing, Safety and Nuclear Compliance, who must also "be capable of providing authoritative advice and counsel in matters related to NRC licensing, regulations and procedures." Id. Similarly, minimum educational and experience requirements are established for GA's Corporate Manager, Health Physics and the Corporate Manager of Industrial Safety. Id.

Moreover, as stated by the NRC in its October 15th Order, GA "has directed SFC regarding satisfying requirements for site remediation and decommissioning." 58 Fed. Reg. at 55,090. GA has also taken a lead role in setting up ConverDyn, the partnership between General Atomics Energy Services and Allied Signal, whose profits are intended to fund the decommissioning of the SFC

site. See Transcript of December 21, 1992, Commission Briefing at 43-47, Attachment 4.

II. STANDARD FOR SUMMARY DISPOSITION OR DISMISSAL

General Atomics ("GA") has moved for summary disposition under 10 C.F.R. § 2.749, or in the alternative, dismissal of this action. Section 2.749 places the burden on GA to show that there is no genuine issue of material fact to be heard in this case. Cleveland Electric Illuminating Co., (Perry Nuclear Power Plant, Units 1 and 2) ALAB-443, 6 NRC 741, 753 (1977), citing Adickes v. Kress and Co., 398 U.S. 144, 157 (1970). If GA fails to make a requisite showing of a lack of genuinely disputed issues, the motion must be denied, even in the absence of any response by GA's opponents. No defense to an insufficient showing is required. Cleveland Electric Illuminating Co., supra, at 753-54, citing Adickes v. Kress and Co., 398 U.S. at 159. In this case, significant factual dispute exists with respect to all of the legal issues raised by GA. Moreover, in those limited instances where the facts are not in dispute or are established by law (i.e. the role of GA in SFC's licensed activities, as defined by SFC's license), those facts fail to support the dismissal of the case as a matter of law. Accordingly, this motion must be denied in its entirety.

III. THE COMMISSION HAS JURISDICTION TO COMPEL GENERAL ATOMICS TO PROVIDE GUARANTEED DECOMMISSIONING FUNDING FOR THE SFC SITE.

GA asserts that the NRC lacks jurisdiction under the Atomic Energy Act ("AEA" or "Act") to compel GA to guarantee decommissioning funding for the SFC plant. In short, GA claims that the Act gives the NRC no power over GA where, as GA claims, (a) there is no claim of intentional misconduct against either GA or SFC, and (b) GA "is not a licensee, is not engaged in activities within the subject matter jurisdiction of the NRC, and does not possess or use regulated source materials." GA Motion at 7. GA's argument both misconstrues the Atomic Energy Act and rests on incorrect and disputed factual premises.[4]

First, nothing in the Atomic Energy Act limits the NRC's authority solely to its named licensees. To the contrary, the Act is broadly written to encompass the activities covered by the

---

[4] Neither is there any legal basis for GA's argument that the NRC is estopped from asserting its authority over GA by virtue of having failed to require GA to assure decommissioning funding when the SFC plant was conveyed from Kerr-McGee to GA in 1988. GA Motion at 31. The NRC has an overriding responsibility to ensure the continuing safety of the facilities it regulates, which cannot be waived or contracted away. At the time that the transfer was made, the NRC was as yet unaware of the massive contamination at the SFC site. Once the serious extent of this contamination became known, the NRC had a duty to take all necessary action to protect the public health and safety. It should also be noted that, discussed in Section I.A. above, there is significant evidence that GA knew, or should have known, that the SFC site was severely contaminated when it was purchased in 1988. Thus, the NRC did not have "full information" when it approved the transfer, as required by § 184 of the AEA, 42 U.S.C. § 2234. Indeed, had the NRC known of this contamination at the time, it is likely to have insisted on complete financial assurances from GA.

Act, rather than individual entities who receive licenses from the NRC. GA certainly has engaged in numerous activities within the subject matter jurisdiction of the NRC, despite its unsupported assertion otherwise. In addition, the NRC has the authority to hold GA liable for decommissioning costs at the SFC site by piercing the "corporate veil" that GA has placed between itself and SFC. Piercing the corporate veil is appropriate here to prevent frustration of the primary purpose of the AEA, which is to protect the public health and safety.

A. The AEA Gives the NRC Authority Over GA Because It Possesses and Uses Nuclear Material and It Engages in Activities Authorized by the AEA.

In determining whether the NRC has the authority it asserts over GA in this proceeding, the Licensing Board must turn to the AEA to discern "whether Congress has directly spoken to the precise question at issue." Shell Oil Co. v. EPA, 950 F.2d 741, 753 (D.C. Cir. 1991), quoting Chevron USA Inc. v. Natural Resources Defense Council, 467 U.S. 837, 842, 104 S.Ct. 2778 (1984). If so, the Board must, like the courts, "give effect to the unambiguously expressed intent of Congress." Id. "If the statute is silent or ambiguous with respect to the specific issue," however, the Board "must sustain the agency's construction of the statute so long as it is permissible." Id. In this case, the statute shows an unambiguous Congressional intent to grant the NRC jurisdiction over a wide field of actors, such as GA, who are involved in the activities associated with nuclear facility operation. Moreover, the Commission itself has also

interpreted the statute to give it broad authority, including authority over non-licensees who are involved in the activities associated with nuclear facility operation.

1. The AEA Applies To All Those Who Possess Or Use Nuclear Material And Who Engage In Activities Authorized By The Act.

The NRC's authority over GA derives from §§ 161b and 161i of the AEA. Section 161b authorizes the Commission to:

> establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary to desirable to promote the common defense and security or to protect health or to minimize danger to life or property.

42 U.S.C. 2201(b) (emphasis added). Section 161i also authorizes the NRC to "prescribe such regulations or orders as it may deem necessary" to

> govern any activity authorized pursuant to this chapter, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property.

42 U.S.C. § 2201(i) (emphasis added). On their face, these two provisions, taken together, give the NRC a broad sweep of authority to regulate the "possession and use" of nuclear material and the full range of activities authorized by the Atomic Energy Act.

Discounting the breadth of this statutory language, GA attempts to dismiss § 161 on the ground that it relates only to the "general subject matter jurisdiction" of the Commission, rather than its "personal jurisdiction." GA Motion at 9. In

essence, GA reads into the statute a nonexistent limitation -- that the NRC only has the authority to regulate "licensees." However, the AEA's actual provisions for asserting regulatory authority require only the presence of the activities which Congress has placed under NRC authority, not the presence of a particular type of actor. Or, in GA's terms, the AEA's provisions for asserting regulatory authority are based on subject matter rather than personal jurisdiction. Thus, this language must be relied upon in establishing the scope of the NRC's authority. As the Commission observed in promulgating recent amendments to its enforcement regulations,

> Where Congress does not include statutory provisions governing in personam jurisdiction, it is appropriate to look to the scope of subject mater jurisdiction in order to determine the scope of in personam jurisdiction. Since Congress did not include any specific personal jurisdiction provisions in the 1954 Act, or any limitations on such jurisdiction, the NRC is authorized to assert its personal jurisdiction over persons based on the maximum limits of its subject matter jurisdiction. The agency's personal jurisdiction is established when a person acts within the agency's subject matter jurisdiction.

56 Fed. Reg. at 40,667, Col. 1.

Indeed, Congress' failure to define the scope of the NRC's authority in terms of personal jurisdiction is an important indicator of its intent to avoid limiting the NRC's regulatory authority strictly to its licensees. Clearly, it would have frustrated the AEA's purpose of protecting public health and safety if the NRC could not assert authority over non-licensees who were in possession of nuclear material, or who were engaging in any of the various activities permitted by the Act.

2. GA "Possesses" or "Uses" Nuclear Material Within the Meaning of § 161b of the AEA.

GA argues that it has no "actual, tangible," possession or use of nuclear material in connection with its ownership of SFC; and thus, § 161b gives the NRC no authority over it as a "possessor" or "user" of nuclear material. GA Motion at 11. However, there is no basis for GA's constrained reading of the meaning of "possession" and "use," either in the plain language of the Act or its legislative history. Turning first to the plain meaning of the words used in § 161b, the word "possession" connotes a broad property interest. Black's Law Dictionary defines "possession" as:

> The detention and control, or the manual or ideal custody, of anything which may be the subject of property, for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name. Act or state of possessing. That condition of facts under which one can exercise his power over a corporeal thing at his pleasure to the exclusion of all other persons.

Black's Law Dictionary, 4th ed. (West 1968). Webster's Dictionary includes in its definition of "possess," "to gain strong influence or control over; to dominate." Webster's New Twentieth Century Dictionary, 2d ed. (Simon and Schuster 1983). The plain meaning of possession, therefore, includes the concept of control and ownership.

The legislative history of § 161b and the policies underlying its enactment show that the terms "possession and use" were intended to be broad rather than narrow, encompassing <u>both</u> owners

and mere possessors of nuclear material. Under the original 1946 Atomic Energy Act, although source material could be privately owned, private industry was "permitted neither to own nor possess [special nuclear] material." S. Rep.1699, 83d Cong., 2d Sess. (1954), reprinted in 1954 U.S.C.C.A.N. 3456, 3463. Instead, the Federal Government had a monopoly over the production and use of special nuclear material, or "fissionable" material as it was called then. 1954 U.S.C.C.A.N. at 3464. The 1954 Act altered this scheme. Although title remained in the United States, private industry was now permitted to "possess and use" the special nuclear material. Id. The 1954 Act also permitted private persons to own reactors intended to produce and utilize special nuclear materials under license by the Commission. Id. Since § 161b applied both to source material, which could be privately owned, and special material, which could not, Congress used the term "possession and use," to cover both ownership and mere possession.

In 1964, Congress further amended the Act to allow private ownership of special nuclear material. S. Rep. 1325, 88th Cong., 2d Sess. (1964) reprinted in 1964 U.S.C.C.A.N. 3105. In amending the Act, Congress stressed its intent for the NRC to "continue to maintain the most stringent controls over the possession and use of special nuclear materials in the interest of protecting the common defense and security and the public health and safety." Id., 1964 U.S.C.C.A.N. at 3112. Congress noted further that this amendment was not intended to detract in any way from the Commis-

sion's jurisdiction or authority to issue licenses, rules, regulations or orders to protect health and safety: "It is clear that the legal effectiveness of regulatory controls over the possession and use of special nuclear material does not depend on mandatory government ownership." Id. at 3124. Moreover, Congress emphasized that these regulatory controls "are today, effectively exercised over owners and users of source materials, byproduct material, and production and utilization facilities in the absence of mandatory Government ownership of those materials and facilities." Id. (emphasis added) Thus, the "possession and use" language does not narrow the scope of NRC's authority but rather broadens it to include both owners and mere possessors of nuclear material.

GA contends, however, that the terms "possession and use" cannot be equated with control or ownership, because Congress specifically used the terms "control" and "ownership" to separately define other regulable interests; thus, if these words are to be given full effect, they cannot be treated as redundant. GA Motion at 12. In support of this argument, GA cites a 1990 amendment to § 161b which adding the following language:

> [I]n addition, the Commission shall prescribe such regulations or orders as may be necessary or desirable to promote the Nation's common defense and security with regard to control, ownership, or possession of any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

42 U.S.C. 2201(b). According to GA, the fact that Congress did not use the words "control" and "ownership" in the first prong of

§ 161b, but used these terms in the second prong of the provision, indicates that Congress did not intend the NRC's authority to extend to parties who have ownership or controlling interests in nuclear material, without "actual, tangible" possession and use of the nuclear material. GA Motion at 11. However, Congress' choice of language in enacting the 1990 amendments stemmed from an entirely different set of concerns that have no bearing on the meaning of the phrase "possession and use." The specific purpose of the 1990 amendment was to allow foreign ownership of a private, foreign-owned uranium enrichment facility proposed for construction in northern Louisiana. Testimony of Sen. Bennett Johnston before the Subcommittee on Energy and the Environment of the House Interior and Insular Affairs Committee, 1, 3 (Mar. 6, 1990). Such foreign ownership otherwise would have been prohibited by Section 103 of the Atomic Energy Act, 42 U.S.C. 2133, which prohibits the NRC from issuing production licenses to any entity that is "owned, controlled, or dominated" by a foreign corporation. Thus, the terms "ownership" and "control," as used in the 1990 amendment to § 161b correspond directly to the same terms in § 103 of the Act. The use of these words stems from Congress' national security concerns rather than the statute's purpose of protecting the public health and safety; and thus the amendment refers only to the purpose of promoting "the common defense and security." Finally, these words are used in relation to equipment or devices, rather than the nuclear material to which the first prong of § 161b is addressed. In summary, the

words "ownership" and "control," as used in § 161b, have an entirely different origin and purpose than the words "possession and use," and thus little can be inferred about the fact that they are not used in the first prong of § 161b.

GA clearly comes within the statutory meaning of a possessor or user of nuclear material, as those terms are employed in § 161b. First, as the third tier owner of 100% of SFC, GA has a possessory or ownership interest in these contaminants. Second, GA not only controls SFC in an economic sense, but SFC's license gives it great control over the day-to-day operation of the plant, including the use and dispcsition of source material at the site. See Astroline Communication Co. Ltd. Ptnrshp v. FCC, 857 F.2d 1556, 1564 (D.C.Cir. 1988) (De facto control exists where an entity is in a position where it actually or potentially controls the operations of a licensed facility); Safety Light Corp., (Bloomsburg Site Decontamination), ALAB-931, 31 NRC 350 364-65 (1990), citing In re N & D Properties, 799 F.2d 726, 732 (11th Cir. 1986) ("control of a license is in the hands of the person or persons who are empowered to decide when and how that license will be used.") Finally, but virtue of its control and involvement in the operation of the site, GA may well have the "tangible," first-hand possession of the nuclear material that it asserts is necessary to invoke the NRC's jurisdiction.

GA has denied, as a matter of fact, that it possesses or uses nuclear material at the SFC site. See GA Statement of Material Facts as to Which There is No Genuine Issue. Clearly,

there is a significant and material dispute between the parties regarding the factual accuracy of that statement, which precludes the granting of GA's Motion for Summary Disposition. However, NACE also believes that there can be no real dispute about the facts established by the provisions of SFC's license which govern GA's relationship to the SFC facility. These provisions clearly show ownership, control, and extensive involvement by GA in all of the licensed activities of SFC. Accordingly, rather than supporting GA's motion to dismiss this case, the indisputable facts established by SFC's license provide a solid basis for the NRC's exercise of jurisdiction over GA.

3. The NRC has jurisdiction over entities which conduct "activities" authorized by the Act.

GA also engages in "activities authorized by [the Atomic Energy Act]," and thus is subject to the NRC's regulatory authority under § 161i of the Act, 42 U.S.C. § 2201(i)(3). GA argues that "by its own terms," § 161i is limited to licensed activities. To the contrary, by its own terms, § 161i is much broader than that. Congress did not limit itself by phrasing § 161i in terms of "licensees' activities," but more generally referred to activities that are "authorized by this chapter" of the AEA. In addition, Reynolds v. United States, 286 F.2d 433, 438 (9th Cir. 1960) does not stand for the proposition that § 161i is applicable only to licensees, as GA claims. GA Motion at 13. Reynolds dealt only with the NRC's authority under § 161i to regulate private citizens who were trespassing on Commission

property, and did not specifically address the NRC's authority over non-licensees who are extensively involved in activities authorized by the Atomic Energy Act. While the Court referred in dicta to licensees as the appropriate target of regulation under 161i, its holding is addressed to the distinction between regulation of private citizens and regulation of the business community involved in the nuclear industry:

> [T]he whole legislative history of the Atomic Energy Act of 1954 supports the conclusion that the "[activities] authorized pursuant to this Act" which § 161(i) refers to are those activities of private industry authorized by the Atomic Energy Commission pursuant to the powers granted to it in sections 31, 41, 53, 81, 103, and 104.

286 F.2d at 438. See also NRC's discussion of Reynolds in 56 Fed. Reg. at 40,667.

As discussed in Section I.D., above, GA's role in the day-to-day operations of the SFC facility and supervision of the operation of the facility is extensive, and involves senior GA personnel in key health and safety responsibilities. These responsibilities include conducting of audits on regulatory complaince, establishment of safety and health standards, and other "independent overview functions." The license also establishes minimum educational and training requirements for GA personnel involved in licensed activities. Moreover, GA's supervisory role has extended to the decommissioning of the facility, including directing SFC regarding satisfying requirements for site remediation and decommissioning; and GA has taken a lead role in setting up ConverDyn, the partnership between General Atomics Energy Ser-

vices and Allied Signal, whose profits are intended to fund the decommissioning of the SFC site. Give the significant and extensive role that GA plays in the licensed activities at the SFC facility, it is absurd for GA to argue that it conducts no "activities" that would bring it within the NRC's subject matter jurisdiction.

GA claims that it "is not engaged in licensed activities" in connection with the SFC facility. GA Statement of Material Facts As to Which There is No Genuine Issue. This statement is contradicted by an overwhelming catalogue of activities as listed in SFC's license, and is therefore a matter of significant dispute between the parties. As with the issue of possession and use, however, NACE believes that this dispute boils down to a question of the legal significance of undisputable conditions in SFC's license, rather than a debate about the facts. As discussed above, the facts established by these license conditions support the NRC's authority over GA.

4. The NRC's authority over non-licensee owners is not limited to the imposition of civil penalties under § 234 of the AEA.

While its position is somewhat unclear, GA appears to argue that the only provision of the AEA which gives the NRC enforcement authority over GA is § 234, which provides for the imposition of civil penalties on "any person" who violates the AEA.[5]

---

[5] GA also argues, without any statutory basis, that Congress could not have intended to give the NRC broad regulatory authority over non-licensee owners of nuclear facilities, because that would have thwarted Congress' purpose of encouraging private investment in nuclear energy. GA Motion at 16-17. The broad statements cited by GA, regarding the general desirability of encouraging private investment in nuclear power, infer no specific legislative intent to insu-

GA Motion at 18-20, citing 42 U.S.C. § 2282(a). GA's argument seems to be that because the Act refers specifically to non-licensees in § 234, no other section of the Act can be interpreted to govern non-licensees. This position is simply inconsistent with the structure of the Act and its legislative history.

It is clear from the legislative history of the 1969 amendments that prior to 1969, the NRC did not have authority to levy civil penalties against any party, whether licensees or non-licensees. Rather, the only penalty that the AEC could levy for noncompliance with the Act was to suspend, modify, or revoke a license, or to issue a "cease and desist" order -- measures which were considered "too harsh a penalty" under some circumstances. S.Rpt. 91-553, reprinted in 1969 U.S.C.C.A.N. 1607, 1616. Thus, according to the Senate Report, the AEC "transmitted to the Congress proposed legislation to authorize the Commission to levy civil monetary penalties for violations of regulations, orders, and license conditions by licensees." Id. at 1608 (emphasis added). In passing the legislation, the Joint Committee on Atomic Energy expanded the provision to cover any "person," in order for the legislation to achieve its "full purpose." Id. at 1618. "Otherwise," as the Committee noted, "it would be possible, for example, for a person who neglected to obtain a

---

(continued)
late such businesses from the NRC's regulatory authority when they participate in and exercise control over nuclear-related activities affecting the public health and safety.

license, or who once had a license but allowed it to expire, to be immune to any penalty under the legislation." Id. (emphasis added)

Thus, it is apparent from this legislative history that the purpose of § 234 was not to set limits on NRC's enforcement authority over non-licensees, but to authorize the AEC (now the NRC) to levy civil penalties for infractions of the Act. In contrast, §§ 161b and 161i give the NRC authority to prescribe standards and issue orders for the safe conduct of activities associated with the possession and use of nuclear materials. Accordingly, contrary to GA's argument, § 234 cannot be read to establish the NRC's only source of authority over non-licensees.[6]

Moreover, there is no statutory basis for GA's argument that Congress' passage of §§ 206 and 210 of the Energy Reorganization Act, 42 U.S.C. §§ 5846 and 5851(a) respectively, demonstrates that § 161 does not give the NRC power to regulate non-licensee owners. GA Motion at 24. Sections 206 and 210 both give the NRC authority over non-licensees who have no possessory interest in nuclear material, and who do not engage directly in activities authorized by the Act, i.e., producers or suppliers of nuclear components. Section 210 also sets up detailed procedures for

---

[6] GA's citation to State of New Hampshire v. Atomic Energy Comm'n, 406 F.2d 170 (1st. Cir. 1969), for this proposition is inapposite. The Court's holding there that the Atomic Energy Act does not permit the NRC to regulate non-radiological pollution provides absolutely no guidance regarding the extent of the NRC's authority over non-licensee owners of nuclear facilities.

complaints against employers, "including a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant." 42 U.S.C. § 5851(a). The fact that Congress had to pass legislation to gain authority over non-licensee contractors establishes nothing about the scope of NRC authority over non-licensee owners of nuclear licensees, who possess nuclear material and/or conduct activities authorized by the Act. Moreover, nothing in § 210 or its legislative history evinces Congressional intent to limit the jurisdiction conferred on the NRC in other portions of the statute by making a more limited class of "employers" subject to the whistleblower protection laws.[7]

IV. THE NRC MAY ASSERT AUTHORITY OVER GA BY PIERCING THE CORPORATE VEIL OF THE NAMED LICENSEE, SFC.

A. GA's Corporate Veil Must be Pierced In the Interest of Justice and to Further the Purposes of the Atomic Energy Act.

The common law "alter ego doctrine" governing piercing of the corporate veil, which stems from tort and contract actions, has been liberalized in the Federal regulatory context. See, e.g., Capital Telephone Co. Inc. v. FCC, 498 F.2d 734 (D.C. Cir. 1973) (Communications Act); Town of Brookline v. Gorsuch, 667 F.2d 215 (1st Cir. 1981) (Clean Air Act); Alman v. Danin, 801

---

[7] GA also relies for its position on the limited scope of entities or individuals covered by NRC enforcement regulations at 10 C.F.R. § 40.10. GA Motion at 26. However, nowhere in the preamble to this rule does the NRC claim that the class of persons covered by § 40.10 comprises the entire universe of persons over which the AEA gives the NRC authority.

F.2d 1 (1st Cir. 1986) (Employee Retirement Income Security Act); Klinger v. Baltimore & Ohio R.R., 432 F.2d 506 (2d Cir. 1970) (Clayton Act); Schenley Distillers Corp. v. U.S., 326 U.S. 432, 66 S.Ct. 247 (1946) (Interstate Commerce Act). As the court noted in Capital Telephone, the "strict standards of the common law alter ego doctrine"[8] need not be applied in the context of a license in a regulated industry where "the applicable standard appears in the statute, not in court decisions involving civil suits." 498 F.2d at 738. Indeed, the "mechanistic, metaphysical incantation of the doctrinal bar of the corporate veil"

> loses "much of [its] sacrosanctity when urged in the context of regulating industries. The fact that a subsidiary corporation exists should be a starting point for searching inquiry, not the finish line.[9]

Id., 498 F.2d at 738, quoting Central & Southern Motor Freight Tariff Ass'n v. United States, 273 F.Supp. 823, 831-32 (D.Del. 1967). Thus, "[a]lthough a corporation and its shareholders are deemed separate entities for most purposes, the corporate form may be disregarded in the interests of justice where it is used to defeat an overriding public policy." Bangor Punta Operations, Inc. v. Bangor & Aroostook RR Co., 417 U.S. 703, 713, 94 S.Ct.

---

[8] See discussion of these common law standards in Section B., below.

[9] It should be noted that in International Brotherhood of Painters v. George A. Kracher, Inc., 856 F.2d 1546 (D.C. Cir. 1988), cited by GA in support of the proposition that piercing of the corporate veil is disfavored, no claim was made that the corporate veil should be pierced, and thus the validity of corporate veil-piercing was not even at issue. Id., 856 F.2d at 1547.

2578, 2584 (1974). See also First Natl City Bank v. Banco para el Camerico Exterior de Cuba, 462 U.S. 611, 630, 103 S.Ct. 2591, 2601 (1983); Town of Brookline; 667 F.2d at 221; Alman v. Danin, 801 F.2d at 3; Lowen v. Tower Asset Management, Inc., 829 F.2d 1209, 1220 (2d Cir. 1987). Accordingly, there is no basis for GA's argument that the elements of the common law doctrine must be satisfied in order to pierce the corporate veil. GA Motion at 36.

In determining whether to pierce the corporate veil, courts must look at the purpose of the federal statute to determine whether the statute places importance on the corporate form. Schenley Distillers 326 U.S. at 437 (Interstate Commerce Act would otherwise be frustrated if the Interstate Commerce Commission were not allowed to separately license and tax several corporations carrying on one business); Town of Brookline, 667 F.2d at 221 (where regulations exempted non-profit organizations from financial burdens of complying with Clean Air Act, EPA was allowed to consider fact that parent of regulated for-profit facility was a non-profit organization); Alman v. Danin, 801 F.2d at 3-4 (ERISA purpose would be defeated by allowing shareholders to invoke corporate shield for purposes of avoiding financial obligations to employee benefit plans); Capital Telephone, 498 F.2d at 737, ("broad, equitable standards of the statute, enacted to further public convenience, clearly support the Commission's decision to look beyond the corporate entity").

In this case, the fundamental purpose of the Atomic Energy Act is to assure that nuclear facilities licensed by the NRC operate in a manner that does not jeopardize the public health and safety. Union of Concerned Scientists v. NRC, 824 F.2d 108, 116 (D.C. Cir. 1987). This assurance must be provided throughout the life of a facility, including its cleanup and decommissioning. In order to achieve it, the NRC has promulgated decommissioning financing regulations, including 10 C.F.R. § 40.36, which requires licensees to guarantee adequate decommissioning funds. SFC has never met this requirement, nor is there sufficient assurance that the profits from ConverDyn will be sufficient to cover SFC's decommissioning costs. See Section I.C. above. Yet, its parent corporation, GA, has the resources necessary to provide more complete assurance that sufficient decommissioning funds will be available. Therefore, as in the other regulatory situations cited above, piercing the corporate veil is appropriate here in order to achieve the fundamental purpose of the AEA. Indeed, it would "do violence" to the purpose of the AEA if this corporate structure could be used to thwart the NRC's efforts to assure that there is adequate funding for the safe decommissioning of the SFC site. See Safety Light Corp., 31 NRC at 368 (citing Capital Telephone, supra, with approval).[10] Accordingly, the Licensing Board may and should pierce the corpo-

---

[10] In Safety Light, the Appeal Board recognized that piercing the corporate veil may be necessary to ensure effective enforcement of the AEA, and remanded to the Licensing Board the resolution of that issue in the first instance.

rate veil and hold GA liable for the decommissioning fund ordered by the NRC Staff.

B. SFC Has Acted As A Mere Agent, Instrumentality Or Alter Ego Of GA.

Even if the common law factors did apply, General Atomics has failed to demonstrate that there is no material issue of fact regarding whether the corporate veil should be pierced. It is a generally accepted common law principle that corporate entities retain a separate existence. However, while separate corporate entities do not lose their separateness simply by virtue of stock ownership, corporate forms will be disregarded in certain circumstances, many of which are present or arguably present here. 18 Am. Jur. 2d Corporations, section 55, (1985); Milgo Electronic v. United Business Communications, 623 F.2d 645 (10th Cir. 1980), cert. den'd., 449 U.S. 1066. For instance, if there is such a unity of interest between the two corporations so that the subsidiary is simply a business conduit of the parent and the subsidiary lacks its own identity, mind, or will, the veil will be pierced. 18 Am. Jur. 2d Corporations, section 57 (1985); G.E.J. Corp. v. Uranium, Inc., 311 F.2d 749 (9th Cir. 1962).

As GA acknowledges, numerous factors go into the consideration of whether it is appropriate to pierce the corporate veil at common law. A review of the list of factors cited by the court in American Bell Inc. v. Federation of Telephone Workers, 736 F.2d 879 (3rd Cir. 1984) and quoted by GA in its Motion, shows that piercing of the corporate veil is appropriate here:

1. Fraud and Injustice

There is significant evidence that GA knew, or should have known, that the SFC site was severely contaminated when it was purchased in 1988.[11] As discussed in Section I.A., above, when GA bought SFC in 1988, SFC had, for years, been collecting sandwell and subfloor process monitor data which showed high contamination levels. This serious degree of contamination would have been evident to GA if it conducted an environmental audit or investigation prior to purchasing the SFC plant, as standard business practice dictates in these sorts of transactions.

Rather than investigating and taking responsibility for the contamination, GA attempted to shield itself from liability for the cleanup. Moreover, SFC never reported either the sandwell or subfloor process monitor data in its 1990 license renewal application, as it was required to. As a result, the contamination of the site was probably exacerbated, thus increasing the costs. Accordingly, it would perpetrate an injustice, and perhaps a fraud, to allow GA to use its corporate structure to hide from liability for the decommissioning of the SFC site.

---

[11] General Atomics incorrectly asserts that a claimant must at least plead and prove some form of fraud, illegality, or misconduct against the parent when making a claim under the corporate veil doctrine. GA Motion at 36. While some courts have held that proof of fraud is a requisite element, see C M Corp. v. Oberer Development Co., 631 F.2d 536 (7th Cir. 1980), others have not, e.g., Milgo v. Electronic v. United Business Communications, 623 F.2d at 662.

2. Corporation a facade for dominant stockholder

In American Bell and Milgo Electronic v. United Business Communications, 623 F.2d 645, 660 (10th Cir. 1980), cert. den'd, 449 U.S. 1066, the courts discussed various factors tending to demonstrate that a corporation is only a facade for its parent. Many of these factors are met here. For instance, as discussed above in Section I.D., GA holds 100% ownership in SFC through its subsidiaries, and has supervisory control over the day-to-day operations of the facility. Indeed, a "General Atomics Organization Chart for Sequoyah Fuels Corporation," attached to the NRC's Safety Evaluation Report approving the transfer of SFC to GA's subsidiary, the Sequoyah Holding Corporation, shows that SFC reports directly to the Chairman of the Board and Chief Executive Officer of GA. Attachment 3. Moreover, as discussed above in Section I.D., GA has directed SFC regarding satisfying requirements for site remediation and decommissioning; and was also responsible for setting up the ConverDyn arrangement which is intended to fund decommissioning costs for the SFC site.

GA and SFC also have and have had overlapping directorates, a factor also identified in Milgo.[12] 623 F.2d at 660. See Octo-

---

[12] Other factors identified in Milgo are as yet unknown and must be determined through discovery. These issues include whether the parent finances the subsidiary, whether the parent pays the salaries or expenses or losses of the subsidiary, and whether the formal legal requirements of the subsidiary as a separate and independent corporation were observed. Milgo, 623 F.2d at 660, citing Fish v. East, 114 F.2d 177 (10th Cir. 1940). See also C M Corp. v. Oberer Development Co., 631 F.2d 536.

ber 15th Order, 58 Fed. Reg. at 55,090. Indeed, as demonstrated by the 1993 Annual Reports in Attachment 5, there is a great deal of overlap between the directors and officers of SFC, Sequoyah Fuels International Corporation, Sequoyah Holding Corporation, and Tenaya, a parent of GA.[13]

Accordingly, GA has failed to establish that as a matter of law, it is inappropriate to pierce the corporate veil in this instance. Thus, GA's motion must be denied.

V. GENERAL ATOMICS MAY BE HELD LIABLE FOR DECOMMISSIONING FUNDING ON A THEORY OF DETRIMENTAL RELIANCE.

GA may also be held liable for decommissioning funding under the theory of promissory estoppel, which provides that if a party who reasonably relied on a promise made by another changed its position in reliance on that promise, then that promise is enforceable if injustice would otherwise result.[14] In other words, estoppel arises when one party has made a misleading representation to another party and that other party has reasonably relied to its detriment on that representation. See, e.g., FDIC v. Jones, 846 F.2d 221 (4th Cir. 1988); LaSalle National Bank v.

---

[13] NACE was unable to obtain GA's Annual Report for 1993, which was filed in California.

[14] The Restatement 2d on Contracts states that:

> A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires. Restatement (Second) on Contracts, section 90(1) (West 1981).

General Mills Restaurant Group, Inc., 854 F.2d 1050 (7th Cir. 1050); In re J.F. Hink & Son, 815 F.2d 1314 (9th Cir. 1987); Hass v. Darigold Dairy Products Co., 751 F.2d 1096 (9th Cir. (1985); Mediterranean Shipping Co. v. Elof Hanson, Inc., 693 F.Supp. 80 (S.D.N.Y. 1988). As articulated by the Supreme Court in Dickerson v. Colgrove:

> The law upon the subject [of equitable estoppel] is well settled. The vital principle is that he who by his language or conduct leads another to do what he would not otherwise have done, shall not subject such person to loss or injury by disappointing the expectations upon which he acted.

100 U.S. (10 Otto) 578, 580 (1879).[15]

The doctrine of promissory estoppel applies in enforcement proceedings by a regulatory agency as well as under common law civil claims. For example, in FDIC v. Jones, a mortgagor waived his right to assert that the FDIC failed to take a deficiency judgment at a foreclosure proceeding in exchange for FDIC promising not to proceed with foreclosure. When the mortgagor later reneged on his promise and tried to assert the claim against the FDIC, the Court held that the agreement was enforceable. Id., 846 F.2d at 234. See also Dohmen-Ramirez v. Commodity Futures Trading Com'n, 837 F.2d 847 (9th Cir. 1988) rev'd in part on other grounds, 846 F.2d 1200 (9th Cir. 1988) (court considered estoppel theory in context of the Commodity Exchange Act). As in FDIC v. Jones, GA made statements to the NRC agreeing to guaran-

---

[15] See also, Lyng v. Payne, 476 U.S. 926, 106 S.Ct. 2333, 2340 (1986); Heckler v. Community Health Services, 467 U.S. 51, 59, 104 S.Ct. 2218, 2223 (1984).

tee SFC's decommissioning costs in exchange for NRC authorization to resume operation of the facility after a prolonged shutdown. See GA correspondence and statements cited in October 15th Order, 58 Fed. Reg. at 55,089-90. The NRC subsequently authorized the restart of the plant, in reasonable reliance on GA's commitment. GA makes much of the fact that the NRC did not extract a "binding written agreement" from GA before permitting the plant to restart. GA Motion at 42-44. However, the relevant inquiry is whether the NRC allowed the restart and continued operation of the SFC plant in the reasonable belief that GA would make good on its oral promise and provide a written agreement. In failing to keep its commitment, GA took "unconscionable advantage" of the NRC through "deception and unfair dealing," requiring redress by this Board. FDIC v. Jones, 846 F.2d at 234. GA has failed to demonstrate that there is no material issue of fact regarding the reasonableness of the NRC's reliance on the commitments made by GA in connection with the restart of the SFC plant, and thus it is not entitled to summary disposition.

VI. THIS PROCEEDING DOES NOT VIOLATE GA'S DUE PROCESS OR ADMINISTRATIVE PROCEDURE ACT RIGHTS.

General Atomics argues that each of the Commissioners must be disqualified because they have personal knowledge of disputed evidentiary facts and must be material witnesses in this case. GA Motion at 44. GA also claims that the Commissioners have prejudged this case, and thus GA cannot get a fair hearing. GA's claims are utterly without merit.

A. GA's Claims That the Due Process Clause and the Administrative Procedures Act Will be Violated Are Premature, and in Any Event, GA Has Brought Them to the Wrong Forum.

All of GA's claims should be rejected at the outset by the Licensing Board, because they are premature. GA is now before the Licensing Board, whose fairness has not been challenged. If GA prevails at this level, its claim of unfairness by the Commission will be mooted. Tnus, there is no reason for the Licensing Board to take up GA's claims.

Moreover, even if they were ripe for review, GA has not brought its claims to the right tribunal. Arguments that a decisionmaker should be recused because of personal knowledge of evidentiary facts, prejudgment of a case, or bias, should be brought directly before the person whose disqualification is sought, as "'only the individual judge knows fully his own thoughts and feelings and the complete context of facts alleged.'" U.S. v. Azhocar, 581 F.2d 735, 738 (9th Cir. 1978), cert. denied, 440 U.S. 907 (1979), quoting United States v. Mitchell, 377 F.Supp. 1312, 1315-16 (D.D.C. 1974). See also 10 C.F.R. § 2.704(c), which requires that motions for disqualification of a presiding officer or Licensing Board member must be brought before the individual sought to be disqualified.

B. Disqualification Is Not Required Because The Alleged "Disputed Evidentiary Facts" Are Irrelevant To This Proceeding.

Even assuming for purposes of argument that GA's claims are ripe and that it is in the correct forum, however, there is no merit to its arguments. As a preliminary matter, the so-called "disputed evidentiary facts" of which the Commissioners are purported to have personal knowledge, and for which GA asserts their testimony is required in this case -- i.e., the Commissioners' impressions regarding the strength of the commitments made by GA in relation to the establishment of a decommissioning fund -- are not relevant evidentiary facts under a theory of detrimental reliance. The theory of detrimental reliance or promissory estoppel, to which GA presumably considers such statements to be relevant, is based on the concept of reasonable reliance.[16] Thus, the standard is objective rather than subjective, and the relevant inquiry is whether the statements were reasonably relied upon -- not the state of mind of the promisee. See, e.g., LaSalle Nat'l Bank v. General Mills Restaurant Group, Inc., 854 F.2d 1050 (7th Cir. 1988); Lone Mtn. Production Co. v. Natural Pipeline Co. of America, 710 F.Supp. 305 (D.Utah 1989). Accordingly, the Commissioners' testimony regarding their subjective views would be irrelevant and inadmissible.

---

[16] As explained by the Restatement, "A promise which the promisor would reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise."

C. The Commissioners Need Not Disqualify Themselves Because Their Personal Knowledge of Disputed Evidentiary Facts Does Not Stem From an Extrajudicial Source.

Even if the Commissioners' personal knowledge could be deemed relevant, however, it is well established that a judge need only disqualify himself or herself if his or her knowledge of disputed evidentiary facts concerning the proceeding was obtained from an extrajudicial source. U.S. v. Widgery, 778 F.2d 325 (7th Cir. 1985); U.S. v. Baker, 441 F. Supp. 612 (D. Tenn. 1977); Skill v. Martinez, 91 F.R.D. 498 (D.C.N.J. 1981) aff'd, 677 F.2d 368 (3rd Cir. 1982). Earlier judicial proceedings conducted by the same judge are not "extrajudicial sources." Liteky v. United States, __ U.S. __, No. 92-6921, Slip Op. at 15-16 (March 7, 1994). The fact that the judge is familiar with the factual and procedural background of a case by reason of having served as judge in previous related cases is insufficient, standing alone, to compel disqualification of the judge. Weber v. Garza, 570 F.2d 511 (5th Cir. 1978); U.S. v. Page, 828 F.2d 1476, (10th Cir. 1987), cert. den'd, 484 U.S. 989 (1987).[17]

---

[17] Presiding officers in administrative proceedings, including proceedings involving the NRC, are governed by the same disqualification standards that apply to Federal judges. Houston Lighting and Power (South Texas Project, Units 1 and 2), CLI-82-9, 15 NRC 1363, at 1365-67 (1982); Public Service Electric and Gas Co. (Hope Creek Generating Station, Unit 1) ALAB-759, 19 NRC 13 at 20 (1984); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2) ALAB-819, 22 NRC 681, at 721 (1985). Thus, the Commissioners are subject to disqualification only if they learned the facts from a source other than through their official capacities.

Here, the Commissioners' knowledge of evidentiary facts does not stem from any extrajudicial source, but rather was obtained wholly from facts learned during official agency proceedings regarding the restart of the SFC plant. The mere fact that the Commissioners have prior knowledge, without any allegation that this knowledge was obtained from sources outside official proceedings is not sufficient to require the Commissioners to disqualify themselves. See, U.S. v. Baker, supra.

D. The actions of the NRC do not suggest that the Commissioners have prejudged the contested matters raised in the October 15 Order.

General Atomics also argues that all of the Commissioners must be disqualified for having prejudged contested matters.[18] GA Motion at 52. First, GA relies exclusively on statements made by Chairman Selin, and attempts to attribute prejudgment to the entire Commission by his use of the word "we" in several instances. This is much too tenuous a thread on which to hang the disqualification of the other three Commissioners, none of whom have made any statements that are challenged by GA.

With respect to Chairman Selin, it is indisputable that decisionmakers in an administrative hearing must be impartial to comport with the Due Process Clause and the Administrative Procedures Act. Withrow v. Larkin, 421 U.S. 35, 95 S.Ct. 1456 (1975). However, as the court held in Withrow, the mere fact that members

---

[18] As discussed above, this issue is neither ripe nor appropriate for initial review by any decisionmaker other than the Commissioners themselves.

of an agency carry out both investigative and adjudicatory roles does not, without more, violate the Administrative Procedures Act or due process of law. 421 U.S. at 47. Nor does the impartiality requirement compel a decisionmaker to be disqualified on the grounds that he or she is familiar with the facts of a case: "Mere familiarity with the facts of a case gained by an agency in the performance of its statutory role does not . . . disqualify a decisionmaker." Hortonville Joint School District v. Hortonville Education Assoc., 426 U.S. 482, 493, 96 S.Ct. 2308, 2314, 49 L.Ed.2d 1 (1976), citing, Withrow v. Larkin, 421 U.S. at 47 See also FTC v. Cement Institute, 333 U.S. 683, 700-703, 68 S.Ct. 793, 803-804 (1948) (fact that members of the Federal Trade Commission had formed opinions as a result of a prior official investigation on the issue now before the Commission and had previously testified before Congress concerning their opinions on that issue, "did not necessarily mean that the minds of its members were irrevocably closed on the subject.") Thus, the mere fact that Commissioner Selin, as the head of the NRC Staff, pursued and discussed an enforcement action against GA, does not mean that he will be unable to judge the merits of the case.

Moreover, prejudgment of the law is never valid grounds for disqualification. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-777, 20 NRC 21, 34-35 (1984), citing, Consumers Power Co. (Midland Plants, Units 1 and 2), ALAB-101, 6 AEC 60, 66 (1973). Accordingly, Commissioner Selin's statements regarding his views on the nature of GA's legal obli-

gations are not grounds for recusal. See also Nuclear Engineering Co, Inc., (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 4 (1980), holding that a Commissioner's statement of his "preliminary opinion" was not grounds for disqualification where the Commissioner would be free to "reconsider" his opinion in the full adversary proceeding to follow.

GA charges that the NRC has made GA "a target of the NRC's frustration and displeasure." GA Motion at 56. However, Mr. Selin's remark that he is "not pleased" with GA's refusal to commit decommissioning funding hardly amounts to the type of prejudgment which warrants disqualification. As the Supreme Court recently held, "expressions of impatience, dissatisfaction, annoyance, or even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display," do not require recusal. Liteky, slip op. at 15-16. Indeed, in numerous cases, the NRC has held that a decisionmaker is not disqualified merely for publicly expressing "controversial" or "strong views" on the subject of a case. Metropolitan Edison Co., (Three Mile Island Nuclear Station, Unit 1) CLI-85-5, 21 NRC 566, 568-9 (1985), aff'd sub nom. Three Mile Island Alert, Inc. v. NRC, 771 F.2d 720 (3rd Cir. 1985); Limerick, supra, at 721; Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) LBP-88-29, 28 NRC 637, at 640 (1988). Courts are mindful of the fact that statements made to the public must be considered in their entirety. Ken-

necott Copper Corp. v. FTC, 467 F.2d 67, at 80 (10th Cir. 1972), cert. den'd, 416 U.S. 909 (1974), reh'g den'd, 416 U.S. 963 (1974). Judging the totality of the circumstances here, nothing in the evidence provided by GA shows that the Commission has prejudged the case. Mr. Selin's brief discussion of the elements of the NRC's enforcement action against GA is hardly comparable, for instance, to the statements held to warrant disqualification in Cinderella Career and Finishing Schools, Inc. v. FTC, 425 F.2d 583 (D.C. Cir. 1970), where the chairman of the FTC publicly ridiculed and questioned the ethics of a party that was before him. Accordingly, GA has provided no legal basis for disqualification of any of the NRC Commissioners.

CONCLUSION

For the foregoing reasons, GA's motion for summary disposition, or in the alternative, motion for dismissal, must be denied.

Respectfully submitted,

Diane Curran
6935 Laurel Avenue, Suite 204
Takoma Park, MD 20912
(301) 270-5518

April 13, 1994

Attachment 1

STATEMENT OF MATERIAL FACTS IN DISPUTE

1) GA possesses and uses source material, through its ownership and control of SFC, its supervisory authority over SFC's licensed activities, and its extensive day-to-day involvement in those activities.

2) GA engages in activities authorized by the Atomic Energy Act, through its ownership and control of SFC, its supervisory authority over SFC's licensed activities, and its extensive day-to-day involvement in those activities.

3) GA committed to the NRC to guarantee decommissioning funding for SFC in support of its bid to restart the SFC plant the spring of 1992, and later reneged on that commitment. Moreover, in allowing the SFC plant to resume operation, the NRC reasonably relied to its detriment on GA's unfulfilled promise.

4) There is insufficient assurance that SFC will have enough funds to safely and adequately decommission its site.

5) The NRC was not aware of the severe extent of contamination at SFC when it approved the transfer of SFC from Kerr-McGee to GA in 1988. Moreover, there is significant evidence that GA knew, or should have known, that the SFC site was severely contaminated when it purchased SFC, and thus did not provide the NRC with the full information necessary for an adequate review of the transfer.

6) The NRC Commissioners do not possess relevant personal knowledge of facts that are material to this case.

7) The statements of Chairman Selin during this proceeding do not demonstrate that either he or the other Commissioners have prejudged this case.

Environmental Impacts of the Proposed Action

A slight change in the environmental impact can be expected for an increase in plant power level, but the effects were found to be minimal and did not alter the findings stated in NUREG–0878, "Final Environmental Statement Related to the Operation of Wolf Creek Generating Station, Unit No. 1" (FES).

The proposed core uprating is projected to increase the rejected heat by approximately 4.5 percent. However, the expected thermal discharges from the circulating and service water systems remain bounded by the values evaluated in the FES. Thus, the 4.5 percent increase in rejected heat has been evaluated and determined to not significantly impact on the quality of the human environment.

The licensing basis analyses related to radiological source terms were originally performed assuming a core power of 3565 MWt which corresponds to the proposed rerate conditions. The NRC review of these calculations was documented in NUREG–0881, "Safety Evaluation Report Related to the Operation of Wolf Creek Generating Station, Unit No. 1." Additional assessments by the licensee related to the rerated conditions (power level and reactor coolant temperature) and other changes related to plant operation (Amendment 61 to Facility Operating License NPF–42) determined there would be no significant increase in the potential radioactive releases resulting from plant operation or design basis reactor accidents. In addition, no significant increases in individual or cumulative occupational radiation exposure would result from the proposed changes in operating conditions. Also, the proposed increase in the NSSS power involves no significant change in the amount of any nonradiological effluents that may be released offsite compared to those evaluated and approved in the FES.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed changes, any alternatives with equal or greater impacts need not be evaluated. The principal alternative to the proposed action would be to deny the requested amendment. Denial would not significantly reduce the environmental impact of plant operation and would restrict operation of the Wolf Creek Generating Station, Unit 1, to the currently licensed power level, thereby reducing operational flexibility.

Alternate Use of Resources

This action does not involve the use of resources not considered previously in the FES for Wolf Creek Generating Station, Unit 1.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and consulted with the Kansas State official. The State official had no comments regarding the NRC's proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment. Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For additional details with respect to this action, see the application for amendment dated January 5, 1993, and supplemental letter dated October 1, 1993. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Rooms, Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and the Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 15th day of October 1993.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Director, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–26179 Filed 10–22–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8027; License No. SUB–1010]

Order

In the Matter of Sequoyah Fuels Corporation General Atomics (Gore, Oklahoma, Site Decontamination and Decommissioning Funding).

I

Sequoyah Fuels Corporation (SFC or Licensee) is the holder of Source Material License No. SUB–1010 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 40. SFC is a wholly-owned subsidiary of General Atomics (GA). The License authorizes SFC to possess and use source material in the production of uranium hexafluoride (UF_6) and depleted uranium tetrafluoride (DUF_4) in accordance with the terms and conditions of the License. The License for UF_6 production was originally issued on February 20, 1970, by the Atomic Energy Commission (now the NRC). On March 25, 1987, the NRC granted Amendment 8, which authorized SFC to convert DUF_6 to DUF_4. The License was due to expire on September 30, 1990; on August 29, 1990, SFC submitted an application to the NRC to renew the License, so that pursuant to 10 CFR 40.43, the License currently remains in effect and has not expired. That application is currently pending in a proceeding before an Atomic Safety and Licensing Board.

II

SFC operates the Sequoyah Fuels Facility (the Facility), which is located near the intersection of Interstate 40 and Oklahoma State Highway 10 near Gore, Oklahoma. The Facility, soil, and groundwater on the site are contaminated with uranium that will require remediation in order for the site to be released for unrestricted use. The Commission's regulations in 10 CFR part 40 require licensees to provide financial assurance for decommissioning. They require applicants for and holders of licenses specified therein to have in place a funding assurance mechanism which satisfies 10 CFR 40.36. They also require, at the time of termination of all activities involving materials authorized under the license, an updated detailed cost estimate for decommissioning and a plan for assuring the availability of adequate funds for the completion of decommissioning. 10 CFR 40.42(c)(2)(iii)(D). In its August 29, 1990 application to renew the License, SFC included a decommissioning funding plan (1990 DFP) intended to satisfy the requirements of 10 CFR 40.36.

During 1991, extensive contamination was discovered near the Main Process Building and the Solvent Extraction Building and on October 3, 1991, the Commission issued an Order to suspend licensed activities at the Facility. At a public meeting with the Commission on March 17, 1992, at which the Commission was considering restart of Facility operations, SFC stated its expectation that it would fund the remediation of the contamination at the site through cash flows from operations at the Facility. This was supported by commitments made by GA, through its chairman, Mr. J. Neal Blue, to supply funding in order to guarantee that SFC will satisfy its obligations to provide financial assurance of funding for decommissioning. These commitments were confirmed by SFC's letter, with

attachments, of March 20, 1992 and by GA's letter to NRC Chairman Selin dated March 19, 1992, which reiterated GA's commitment to fund site remediation should SFC fail to do so. These commitments are discussed in greater detail in Section V, below. The Commission relied on the GA financial commitments in authorizing restart of the SFC Facility on April 16, 1992. In response to the May 6, 1992, NRC request to formalize those commitments, GA agreed by letter dated June 24, 1992, to execute an agreement with SFC and submitted a draft agreement to the NRC which was to be presented to the boards of directors of SFC and GA for approval. SFC and GA, however, have not executed that agreement.

However, by letter dated November 23, 1992, SFC informed the Commission that it intended to "clean out" the UF_6 facility and put it in a "standby" mode, that SFC intended to restart the DUF_4 facility in order to fulfill one existing contract, and that the unexecuted agreement between SFC and GA was "no longer applicable." Because of SFC's decision to continue with only short term limited operations at the Facility, GA and SFC asserted that those operations are expected to generate cash flow greatly reduced from that expected at the time of the March 17, 1992, public meeting. The November 23, 1992, letter indicated SFC's intent to cease permanently all production operations by the summer of 1993.

Additionally, the lack of financial and other information provided regarding SFC's plans raised serious questions as to whether SFC would have the financial resources to accomplish site remediation and decommissioning. For these reasons, the Commission held a public meeting on December 21, 1992, with the management of SFC and GA to obtain information concerning the plans for the Sequoyah Fuels Facility, particularly concerning assurance of financial resources needed to decontaminate and decommission the Facility and site. At the December 21, 1992, meeting, Mr. Blue again addressed the Commission regarding GA's support for the decommissioning of the Facility and site, but at this meeting Mr. Blue stated that GA could no longer provide financial assurance because the earlier commitment to do so was premised on license renewal and long term operation of the Facility. However, GA and SFC indicated that GA had restructured the business activities of SFC by entering into a joint venture with Allied Signal Corporation, creating a partnership, ConverDyn, to satisfy outstanding business commitments of SFC. GA and SEC asserted that funds for cleanup of the Facility would be provided through anticipated revenues generated by ConverDyn.

Because the 1990 DFP did not consider the extensive additional contamination discovered during 1991, it is inadequate to satisfy 10 CFR 40.36 and the funding plan requirement of 10 CFR 40.42. SFC's Revision 1 to its application to renew the License, submitted on September 30, 1992, stated that:

> [t]he revised and updated [Decommissioning Funding] Plan will be submitted by November 30, 1992 and will identify the decommissioning activities that will be performed after the 10-year license renewal term, and will summarize how they will be accomplished. While the estimated costs associated with these activities have not yet been fully quantified, they will be higher than the cost estimate previously submitted on August 29, 1990. (Revision 1 at 6–1)

SFC did not submit the revised DFP.

As a result of Mr. Blue's statements at the December 21, 1992 meeting, the Commission did not have an adequate basis to conclude that funding would in fact be available as needed to carry out necessary decontamination and decommissioning of the Facility and site.

The specific mechanisms for assurance of funding for decommissioning contained in 10 CFR 40.36 are important health and safety requirements of the Commission for providing adequate protection of the public health and safety. SFC and GA cannot escape the requirement to provide a description of the method of assuring funds for decommissioning pursuant to 10 CFR 40.36(d) and (e) by announcing termination of SFC's operations. In view of SFC's failure to submit a revised DFP, its stated intention to discontinue operations at the Facility, as described above, and the lack of an adequate basis to conclude that funding would in fact be available as needed to carry out necessary decontamination and decommissioning of the Facility and site, the NRC Staff issued a Demand for Information on December 29, 1992, to SFC and to GA. Further information was needed to determine whether NRC action was necessary to assure that SFC and GA would be able to satisfy their obligations to provide funding for the ultimate decommissioning of the Facility and whether the health and safety of the public would be protected. GA and SFC were required to submit the following information:

> A. On or before February 16, 1993, a plan, including schedule, for decontaminating and decommissioning the SFC Facility, including the soil, buildings, and groundwater, for release for unrestricted use in accordance with the criteria set forth in Appendices A, B, and C [APPENDIX A: Option 1 or 2 of Branch Technical Position (BTP), "Disposal or Onsite Storage of Thorium or Uranium Wastes From Past Operations," 46 FR 52061 (Oct. 23, 1981); APPENDIX B: "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, or Special Nuclear Material" (August 1987); APPENDIX C: Proposed National Drinking Water Regulations, 40 CFR part 141, 56 FR 33050–51, 33066–69, 33126 (July 18, 1991)]; and
>
> B. On or before February 16, 1993, a decommissioning funding plan that contains a cost estimate for decommissioning the SFC Facility to the criteria identified in section IV.A above and a description of the method of assuring funds for decommissioning satisfying the requirements of 10 CFR 40.36 and the guidelines in Reg. Guide 3.66 * * *.

III

On February 16, 1993, SFC and GA responded separately to the Demand for Information. SFC supplied a Preliminary Plan for Completion of Decommissioning (PPCD), which included a plan and schedule for decontaminating and decommissioning the SFC site, and a preliminary cost estimate of $21.1 million for activities directly related to decommissioning. The PPCD described the source of funds for decommissioning as the revenues from the ConverDyn arrangement. SFC described its plans as fitting "more closely the situation contemplated by 10 CFR 40.42", because of SFC's plans to terminate operations by July 31, 1992, and as providing a notification of termination of activities pursuant to 10 CFR 40.42, with information relevant to financial assurance as specified in 10 CFR 40.42(c)(2)(iii)(D). (Response of the Sequoyah Fuels Corporation to the Demand For Information Dated December 29, 1992, p. 4). By a separate letter dated February 16, 1993, SFC provided current notification that licensed activities involving the UF_6 facility had already been terminated, and advance notification that licensed DUF_4 activities would be terminated no later than July 31, 1993.

Neither SFC nor GA provided a description of the method of assuring funds for decommissioning which satisfies 10 CFR 40.36, as required by Section IV.B. of the Demand for Information. The ConverDyn arrangement is not a prepayment method, a surety method, insurance or other guarantee of financial assurance required by the Commission's regulations in 10 CFR part 40, § 40.36(e). The "voluntary assistance" proffered by GA in its letter of February 16, 1993, does not amount to a parent corporation

guarantee, and even if it did, it would not satisfy 10 CFR 40.36(e). Moreover, neither SFC nor GA have provided the financial assurance of adequate funds for completion of decommissioning required by 10 CFR 40.42, as explained below in Section IV.

IV

After review of the formal responses of SFC and GA to the December 29, 1992 Demand for Information, and of certain proprietary documents associated with the ConverDyn arrangement made available to the NRC Staff, the NRC Staff issued a "Supplement to December 29, 1992, Demand for Information" (Supplemental DFI) to GA and SFC on July 2, 1993. The Supplemental DFI requested additional information and certain documents associated with the ConverDyn arrangement. The formal answer to the questions of the NRC Staff and the additional documents requested were supplied by a response dated July 21, 1993.

ConverDyn is a partnership established by agreement between General Atomics Energy Services, Inc. and Allied-Signal Energy Services, Inc., subsidiaries of General Atomics and Allied-Signal, Inc., respectively. The arrangement establishes that ConverDyn will provide the services necessary for SFC to meet its contractual obligations to supply UF_6 conversion services; in return, SFC is given rights to a share of ConverDyn's revenues, defined by a system of payment priorities and calculated pursuant to certain guidelines established by the partnership documents.

SFC projects that it will receive, at the maximum, less than $72 million in fees from the ConverDyn arrangement through the year 2003, and an income of more than $17 million from other sources. SFC estimates that the cost of decontaminating and decommissioning the SFC site will consist of some $21 million in direct costs and approximately $65 million in indirect costs, which reflect overhead such as personnel costs, legal expenses, NRC fees, taxes, insurance, DUF_4 operating costs, transition costs, interest, and ranch costs.

Our review of the information provided by SFC and GA in response to the Demands for Information, indicates that the proposed ConverDyn arrangement appears to be a *bona fide* business arrangement among the various parties and their principals. Estimates of income from the ConverDyn arrangement are necessarily uncertain because they are based upon assumptions about the market for UF_6 conversion services over the next ten years, ConverDyn's ability to keep existing customers or to obtain new customers, and the costs of business operations, and because they are based upon some speculative assumptions about whether SFC will receive the maximum possible amount in fees, in view of the system of priorities for payments to be made under the ConverDyn arrangement. Nonetheless, the NRC Staff concludes that the proposed arrangement may be capable of producing a substantial portion of the funds that SFC estimates will be needed for Facility decommissioning.

However, there are a number of important shortcomings in the proposed arrangement from the standpoint of financial assurance that adequate funding will in fact be available to properly decommission the Facility as required by Commission regulations. Because of these shortcomings, the SFC funding plan based on the ConverDyn arrangement does not fully satisfy the requirements of 10 CFR 40.36 and 40.42. No financial assurance mechanism, as required by 10 CFR 40.36, is in place, and the ConverDyn arrangement does not constitute the equivalent. Additionally, the $72 million in projected revenues from ConverDyn are of necessity based on inherently speculative assumptions about anticipated market conditions. Also, since there are a number of other claims on ConverDyn revenues that have higher payment priority than payments to SFC, there is significant uncertainty that SFC's projected revenues will in fact materialize. Furthermore, SFC's estimate of the amount of revenue projected to be derived from the ConverDyn arrangement is based upon the unsubstantiated assertion that ConverDyn's fixed costs of operation will steadily decline after 1994. Revenue estimates also assume that ConverDyn will operate at a 100% capacity utilization rate continuously through the year 2003. Finally, there is uncertainty concerning SFC's projected decommissioning costs. The proposed decommissioning plan has not yet been submitted to NRC, although a preliminary plan (the PPCD) has been submitted. SFC's cost estimate for decommissioning is based on assumptions as to acceptable decommissioning alternatives. If more costly decommissioning alternatives are required by NRC as a result of its review of SFC's decommissioning plan, the $89 million in revenues from the ConverDyn arrangement and other sources are unlikely to be sufficient.

Thus, although the funding plan proposed by SFC based on the ConverDyn arrangement may be capable of producing a substantial portion of the funding that may be required for Facility decommissioning and should be carried out in order to provide funding for this purpose, the funding plan does not provide the level of assurance required by the Commission that adequate funds will be available to fully decommission the Facility. Accordingly, to satisfy the Commission's requirements, the ConverDyn arrangement must be supplemented by funding assurances to protect against SFC revenue shortfalls, and to assure additional funding if more costly decommissioning alternatives are required. This Order imposes the supplemental conditions necessary to fully satisfy the Commission's financial assurance requirements. However, since the ConverDyn arrangement appears to be SFC's only source of income, SFC does not appear to be able to satisfy the Commission's financial assurance standards. Accordingly, supplemental financial assurance is required from SFC's parent corporation, GA.

V

GA made a number of commitments to the NRC concerning the operation and cleanup of the SFC Facility and GA has had direct involvement with the operation of SFC.

As mentioned above, in connection with the Commission's consideration of the restart of the Facility after the October 3, 1991 Order suspending operations, the Commission was concerned about funding for the required cleanup of the Facility site. At a public meeting of the Commission, Mr. J. Neal Blue, Chairman of GA, the parent corporation of SFC, made commitments on behalf of GA to the NRC to supply funding in order to guarantee that SFC will satisfy its obligations to provide financial assurance of funding for decommissioning. In a letter of NRC Chairman Selin dated March 19, 1992, GA confirmed this commitment. In addition, recognizing the need to remediate existing environmental concerns on a reasonable schedule, GA stated in the March 19, 1992 letter its commitment to fund site remediation during operation should SFC fail to do so. In the March 10, 1992 letter, GA set forth its commitments as follows:

> To summarize the highlights of our commitments to the support of SFC's operations:
>
> (1) SFC complies fully with all present regulatory requirements to provide financial assurance for the decommissioning of the facility. Further, GA supports SFC's program to minimize or prevent any adverse

environmental effects resulting from SFC's future operations and to remediate existing environmental concerns on a reasonable schedule as may be agreed to by SFC, the NRC and other governmental entities. SFC should be able to fund these programs from current revenues when operations are resumed. Should those revenues prove insufficient, the associated commitments will be fulfilled by GA.

(2) The longer term program to decontaminate and decommission the SFC facility will be backed by such guarantees from GA as may be required to satisfy NRC regulations. This is a matter which will be determined in connection with the NRC's action on the pending SFC license renewal application. SFC's renewal application utilizes alternative financial mechanisms permitted under the regulations. However, GA is prepared to provide its guarantee or financial support, if that proves necessary.

The Commission relied on the above GA financial commitments in authorizing restart of the SFC Facility on April 16, 1992. In addition, the NRC acknowledged GA's commitments in a letter dated May 6, 1992, in which the NRC requested GA to formalize those commitments and advised GA that these commitments were in addition to, and not in lieu of, satisfaction of the Commission's decommissioning funding requirements. See 10 CFR 40.36. By letter dated June 24, 1992, GA agreed to formalize its commitments by executing an agreement with SFC and submitted a draft agreement to the NRC which it stated would be presented to the boards of directors of SFC and GA for approval. SFC and GA, however, have not executed that agreement.

GA has had and now has de facto control over the day-to-day business of SFC. That control is demonstrated by, but not limited to, the following facts: GA owns all the capital stock of SFC indirectly through a subsidiary, Sequoyah Fuels International Company. GA and SFC have and have had common directors or officers. For example, Richard Dean, former Chairman of the SFC Board, was also a GA Engineering Director, and Max 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 cleanup 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 made "a strong commitment" to SFC that resources are available to SFC for site remediation and decommissioning. Moreover, GA's Chairman, J. Neal Blue, represented to the NRC at the Commission's March 17, 1992, public meeting, that GA would guarantee the financial resources necessary for SFC site remediation and decommissioning. As indicated above 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.

On November 23, 1992, SFC informed the Commission that it intended to continue with only short-term limited operations at the Facility and that the unexecuted funding guarantee agreement between SFC and GA was "no longer applicable." GA and SFC asserted that such limited operations are expected to generate cash flow greatly reduced from that expected at the time of the March 17, 1992, public meeting. The November 23, 1992, letter raised serious questions as to whether SFC would have the financial resources to accomplish site remediation and decommissioning. Accordingly, the Commission held a public meeting on December 21, 1992, with the management of SFC and GA to obtain information concerning the plans for the Sequoyah Fuels Facility, particularly concerning assurance of financial resources needed to decontaminate and decommission the Facility and site. At the December 21, 1992, meeting, Mr. Blue addressed the Commission regarding GA's support for the decommissioning of the Facility and site. Contrary to Mr. Blue's March 17, 1992, financial assurance commitments, as well as his March 19, 1992, letter affirming his "financial support and guarantees", Mr. Blue stated on December 21st that GA could no longer provide financial assurance because the commitment to do so was premised on license renewal and long-term operation of the Facility.

Mr. Blue's December 21st statement that GA's March 17th and 19th commitments were conditional is contrary to the record. Mr. Blue's March 17th statements to the Commission and his March 19th letter to Chairman Selin were clear and unconditional financial assurance guarantees. On March 17 and 19, Mr. Blue represented that SFC's operating revenues would be sufficient to cover remediation and decommissioning costs. On December 21, he assured the Commission that revenues paid to SFC by ConverDyn likewise would be sufficient. This latter assurance is inconsistent with Mr. Blue's December 21 representation that the financial status of SFC was significantly deteriorated such that GA's financial assurance of remediation and decommissioning costs was no longer possible. Furthermore, Mr. Blue's characterization of Citicorp's reason for not approving GA's financial assurance guarantee is not supported by Citicorp's letter of December 18, 1992 (submitted to the NRC by GA as proprietary confidential information), which is a general prohibition on assuming financial liability and is not based on any changed financial conditions of SFC. In short, Mr. Blue's stated bases for GA's withdrawal of its financial assurance commitments not only appears to be internally inconsistent, but also contrary to the clear record of GA's financial assurance guarantees of March 17th and 19th on which the Commission relied in authorizing restart of the Facility on April 16, 1992. As a result of Mr. Blue's statements at the December 21, 1992 meeting, the Commission did not have an adequate basis to conclude that funding would in fact be available as needed to carry out necessary decontamination and decommissioning of the Facility and site. Accordingly, on December 29, 1992 the NRC Staff issued a Demand for Information to SFC and GA concerning this matter.

The December 29, 1992 Demand for Information required GA and SFC to submit a plan for decontaminating and decommissioning the SFC Facility and a decommissioning funding plan for decommissioning the SFC Facility in compliance with 10 CFR 40.36. Although SFC submitted a Preliminary Plan for Completion of Decommissioning (PPCD) the SFC site, and preliminary cost estimates for activities directly and indirectly related

to decommissioning, neither SFC nor GA provided a description of the method of assuring funds for decommissioning which satisfies 10 CFR 40.36, as required by Section IV.B. of the Demand for Information, or which satisfies 10 CFR 40.42, as discussed above.

Mr. J. Neal Blue states in his letter of February 16, 1993, transmitting the GA response to the Demand for Information, that GA has been consistent in its willingness, on a voluntary basis, to assist SFC in meeting its remediation objectives. For example, between October 1988 and October 1991, GA enabled SFC to commence clean-up of the environmental conditions at the site. Mr. Blue also states that the ConverDyn arrangement is a good-faith effort by GA to assist SFC in arranging resources necessary to meet SFC's obligations. Nevertheless, neither the voluntary assistance by GA nor the ConverDyn arrangement are sufficient to satisfy NRC requirements for financial assurance under 10 CFR 40.36 or 10 CFR 40.42, as discussed above.

In the "Response of General Atomics to December 29, 1992 Demand for Information" attached to Mr. Blue's letter of February 16, 1993, GA disputes that Mr. Blue's statements at the March 17, 1992, meeting constituted a commitment to provide financial guarantees by GA, and asserts that Mr. Blue only committed GA to make it possible for SFC to use its operating revenues and retained earnings for remediation and other capital improvements, and that any GA financial commitment would arise after a period of continued operation under a renewed license. GA also disagrees that Mr. Blue's letter of March 19, 1992, to Chairman Selin constituted a financial guarantee, asserts that it evidenced only an intention to provide "stop-gap" funding for items not covered by SFC operating revenues, and maintains that any offer of financial guarantees was dependent upon renewal of the SFC operating license. Notwithstanding GA's assertions, Mr. Blue's statements of March 17 and 19, 1992, constituted a guarantee of financial resources necessary for SFC site remediation and decommissioning.

Mr. Blue argues that his commitments must be viewed in the context of GA's acquisition of SFC, specifically, that in 1988, when GA's subsidiary, Sequoyah Holding Company, acquired the stock of SFC, the NRC "fully understood and accepted that GA explicity refused to furnish any guarantee" for decontamination and decommissioning of the SFC Facility, and that the license makes only SFC financially responsible for decontamination and decommissioning. (Letter of J. Neal Blue, dated February 16, 1993, to Robert M. Bernero, p. 2, and its Attachment, "1988 Acquisition of SFC and Subsequent NRC Financial Review", pp. 1–5) Although at the time of the purchase GA may have refused to guarantee SFC's obligation to decontaminate the facility, GA's actions in control over the day-to-day operations and business of SFC, and GA's representations of financial guarantees described above, on which the Commission has relied, make GA responsible, along with SFC to satisfy the NRC financial assurance requirements.

GA asserts that the DFI incorrectly states that the Commission relied on the GA financial commitments in authorizing restart of the SFC facility on April 16, 1992. Although the Staff Requirements Memorandum of March 27, 1992, specified that NRC Staff efforts to make the March 19, 1992, commitments legally binding were not a necessary precondition to restart, nonetheless, Mr. Blue's commitments of March 17 and March 19 were relied upon by the Commission in authorizing restart. The Commission reasonably took Mr. Blue at his word. The Commission's decision not to delay the SFC Facility restart to await legal documents formalizing Mr. Blue's commitments hardly means, as GA would have it, that the Commission was indifferent to GA's guaranty. To the contrary, Mr. Blue's promise to stand behind SFC reassured the Commission that SFC's cleanup effort was creditable and would proceed upon restart.

GA disputes the conclusions in the DFI that GA has had and now has *de facto* control over the day-to-day business of SFC, and that this control makes GA and SFC jointly and severally responsible for funding decontamination and decommissioning of the SFC site. In this regard, GA relies upon immaterial facts,[1] disputes the significance of virtually each individual indicia of control relied upon by the DFI, and even provides additional evidence of GA's control over SFC.[2] GA, however, provides no basis to change the conclusion that the entire body of evidence establishes that GA exercised and exercises *de facto* control over the day-to-day business of SFC.

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.

VI

In summary, although SFC has outlined its plan for funding Facility decommissioning through the ConverDyn arrangement and while such arrangement may be a reasonable business arrangement, it does not satisfy the requirement of the Commission's regulations in 10 CFR 40.36(e) for financial assurance or in 10 CFR 40.42 to submit a plan assuring the availability of adequate funds for completion of decommissioning. Neither SFC nor GA proposed or established a funding mechanism in compliance with 10 CFR 40.36(e). Moreover, after review of the ConverDyn arrangement and SFC's financial projections, the NRC Staff has concluded for the reasons set forth above that SFC's funding plan must be supplemented with additional assurances before it can be accepted by NRC as providing reasonable assurance that SFC will be able to satisfy its obligations to provide adequate funding for the ultimate decommissioning of the Facility or that the health and safety of the public will be protected. Since decommissioning will likely commence in the near future, I find that steps must be taken now to assure the availability of adequate funding for decommissioning.

Independent of the NRC's activities regarding the cleanup of the Facility, the United States Environmental Protection agency (EPA) recently issued an Administrative Order on Consent which required SFC to study and correct contamination at the SFC site in Gore, Oklahoma. Sequoyah Fuels Corporation, U.S. EPA Docket No. VI–005–(h)93–H (August 3, 1993). Although EPA's action

[1] For example, GA asserts that none of the six members of GA's Board of Directors were simultaneously members of the SFC Board of Directors. *See*, "Response of General Atomics to December 29, 1992, Demand for Information" (February 16, 1993), p. 14. The NRC Staff did not assert that any of these individuals were simultaneously on both the GA and SFC Boards of Directors. The NRC Staff cited as indicia of GA's *de facto* control of SFC that GA and SFC shared "common directors or officers", specifically that Dr. Dean was on the SFC Board of Directors while at the same time he was the GA Engineering Director, and that Mr. Kemp was the GA Finance Manager while at the same time he was the Chief Executive Officer of SFC. *See*, Demand for Information (December 29, 1992), pp. 3–4.

[2] For example, GA states that Mr. James R. Edwards is a Vice-President, General Counsel and Secretary of GA while also acting as SFC's Secretary and General Counsel and sitting on the SFC Board of Directors. *See*, "Response of General Atomics to December 29, 1992 Demand for Information" (February 16, 1993), pp. 14–15.

was taken under the authority of section 3008h of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous Waste Amendments of 1984, 42 U.S.C. 6928h, it was coordinated with the NRC staff in an effort to avoid duplication of regulation by the Federal government and to maximize the benefits to the agencies' mutual objective of assuring a timely cleanup and decommissioning of the Facility. Thus, while the EPA Consent Order is directed only at nonradioactive materials under the terms of the EPA's authorizing statutes, the NRC believes that the conduct of the required activities may provide information that will satisfy some of the terms of this Order. Accordingly, SFC, in discharging its obligations under this Order, may avoid duplication by submitting to the NRC information prepared in fulfillment of the EPA Consent Order to the extent that it is also responsive to the provisions of this Order.

VII

Accordingly, pursuant to sections 62, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 40, it is hereby ordered that:

A. General Atomics Corporation and Sequoyah Fuels Corporation are and shall be jointly and severally responsible for:

1. Providing funding to continue remediation of existing contamination at the SFC Facility site, regardless of whether the Facility continues to operate or not;

2. Providing financial assurance for decommissioning in accordance with the requirements of 10 CFR 40.36; and

3. Providing an updated detailed cost estimate for decommissioning and a plan for assuring the availability of adequate funds for completion of decommissioning, in accordance with the requirements of 10 CFR 40.42(c)(2)(iii)(D);

B. Sequoyah Fuels Corporation shall: Carry out the funding plan described in its February 16, 1993 submission;

C.1. To the extent Sequoyah Fuels Corporation fails to or is unable to do so, GA shall complete the actions required of Sequoyah Fuels as described in Section VII;

2. If the revenues provided by ConverDyn or other sources to SFC in any year are less than the revenue projected in the Preliminary Plan for Completion of Decommissioning, GA shall make up the shortfall by providing funds to SFC to carry out the decommissioning activities up to the amount specified in the Preliminary Plan for Completion of Decommissioning, or by directly funding such activities so that total funding for decommissioning activities is not less than that specified in the Preliminary Plan for Completion of Decommissioning;

3. If the decommissioning alternative approved by NRC is more costly than those upon which the Preliminary Plan for Completion of Decommissioning is based, GA shall make up the shortfall by providing funds to SFC to carry out required decomissioning in accordance with schedules approved by NRC or by directly funding such decommissioning activities; and

4. On or before November 19, 1993, GA shall provide financial assurance for decommissioning and decontamination in the amount of $86 million through (a) prepayment, (b) a surety method, insurance, or other guarantee method, or (c) an external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund, in accordance with the requirements of 10 CFR 40.36 and the guidelines in Reg Guide 3.66;

5. If GA demonstrates to the satisfaction of the Commission that the amount of financial assurance provided in satisfaction of Section VII, Paragraph C.4. of this Order exceeds the amount sufficient to properly decontaminate and decommission the SFC Facility and site, GA may request the Commission to authorize a reduction in that amount; and

6. If the Commission later determines that the amount of financial assurance provided in satisfaction of Section VII, Paragraph C.4. of this Order is insufficient to properly decontaminate and decommission the Facility and site, the Commission may direct an increase in the amount or take such other action as the Commission may deem appropriate;

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by the Sequoyah Fuels Corporation or General Atomics of good cause.

VIII

In accordance with 10 CFR 2.202, SFC and GA must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and set forth the matters of fact and law on which SFC, GA, or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Services Section, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Director, Office of Nuclear Material Safety and Safeguards at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, suite 400, Arlington, Texas 76011–8064, and to SFC and GA if the answer or hearing request is by a person other than SFC or GA. If a person other than SFC or GA requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by SFC, GA, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, the provisions specified in Section VII above shall be final 20 days from the date of this Order without further order or proceedings.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 15th day of October 1993.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 93–26180 Filed 10–22–93; 8:45 am]

BILLING CODE 7590-01-M

UNITED STA
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

OCT 2 8 1988

Docket No. 40-8027
License No. SUB-1010
Amendment No. 22

Sequoyah Fuels Corporation
ATTN: Dr. John C. Stauter
Director, Nuclear Licensing
and Regulation
Kerr-McGee Center
Oklahoma City, Oklahoma 73125

Gentlemen:

In accordance with Sequoyah Holding Corporation's application dated October 18, 1988, which was submitted on behalf of Sequoyah Fuels Corporation, and pursuant to Title 10, Code of Federal Regulations, Part 40, Materials License No. SUB-1010 is hereby amended to authorize organizational and administrative changes based on a change in corporate ownership. This amendment becomes effective at the time that the transaction to transfer control of Sequoyah Fuels Corporation is consummated. Condition No. 2 has been revised to reflect the address of the new owner. Condition No. 9 has been revised to include the date of October 18, 1988. This authorization is subject to the following additional license condition:

52. 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.

Condition Nos. 22, 27, 28, 29, 31, and 33 are hereby terminated.

All other conditions of your license shall remain the same.

Enclosed are copies of revised License No. SUB-1010 and our Safety Evaluation Report.

FOR THE NUCLEAR REGULATORY COMMISSION

Original signed by
John P. Roberts for

Leland C. Rouse, Chief
Fuel Cycle Safety Branch
Division of Industrial and
Medical Nuclear Safety, NMSS

Enclosures:
1. Revised License No.
SUB-1010
2. Safety Evaluation Report

cc: Mr. Reau Graves, Jr., President
Sequoyah Holding Corporation

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, 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	
1. Sequoyah Fuels Corporation	3. License number: SUB-1010 Amendment No. 22
2. Sequoyah Facility I-40 and Highway 10 Gore, Oklahoma 74435	4. Expiration date: September 30, 1990
	5. Docket or Reference No.: 40-8027 OCT 28 1988

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; 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. The licensee shall by April 20, 1986, prepare and submit to the Fuel Cycle Safety Branch the following reports. These reports shall contain sufficient detail and analysis to allow an independent review and shall contain licensee commitments for the actions described.

    a. A report detailing handling procedures for product cylinders containing liquid UF_6. The report shall include a detailed analysis of each step in handling of hot cylinders and identify the possible scenarios which could result in cylinder rupture. The report shall also provide an assessment of the modifications and actions which could be taken to reduce the potential for a UF_6 release and justify the procedures being used.

    b. A report detailing measures and actions to mitigate the effects of a UF_6 release. The report shall deal with the potential release of material within the facility and outside of the facility.

12. The licensee shall by January 20, 1986, reevaluate the existing groundwater conditions in the area of the treated raffinate storage ponds and submit for NRC review a report which describes these conditions and either justifies the current groundwater monitoring program or proposes a new program.

13. The licensee shall implement the Vegetation Monitoring Program which was transmitted by letter dated December 19, 1985. An annual report of the findings shall be submitted to NRC for review by January 31 of each year.

14. The licensee shall investigate and verify that the elevated uranium and nitrate concentrations found in Well FTP-2A are not the result of the liquid seepage from Ponds 3 or 4. A report of the investigation shall be submitted to NRC within 6 months from the date of renewal of the license.

15. Deleted.

16. The licensee shall investigate the cause of some of the elevated uranium concentrations in the runoffs identified in the submittal for Condition 15 dated December 19, 1985, relating to the surface water monitoring and contamination mitigation program. Within 3 months from the date of renewal of the license, a report of the investigation shall be submitted to NRC. The report shall describe what mitigating measures, if any, were taken to eliminate the source(s).

17. The licensee shall conduct a comprehensive soil/sediment radiological survey to determine the extent of uranium accumulation along the length of the effluent stream (001), at the confluence, upstream and downstream of the Illinois River, and along the intermittent runoff areas identified in the submittal for Condition 15 dated December 19, 1985, relating to the surface water monitoring and contamination mitigation program. The results of this survey and any recommendations for mitigation shall be reported to NRC within 12 months from the date of the renewal of the license.

18. 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.

19. The licensee shall maintain a spare pond having capacity equal to or greater than Pond No. 5, unless the licensee's deep well injection plan has been approved.

20. At the end of plant life, the licensee shall decontaminate and decommission the facility so that it can be released for unrestricted use.

21. The licensee shall, by November 15, 1986, prepare and submit to the NRC changes to the decommissioning plan which provide for the permanent disposal of all solid wastes generated by the facility. The plan shall include an estimate of the costs involved in disposing of these wastes and the financial arrangements that have been or will be made to assure that adequate funds will be available to cover these costs at the time of disposal.

22. Deleted.

23. The licensee shall use the printout capability of the cylinder filling scales to produce a record of final cylinder weight prior to removal of the cylinder from the cylinder filling area. This record shall be attached to the cylinder status sheet for the cylinder and shall be made part of the permanent record for that cylinder at the facility.

24. The licensee shall implement a method to "tamper safe" UF_6 cylinder valves. UF_6 cylinders shall be "tamper safe" on or before October 1, 1988.

25. Deleted.

26. The licensee shall, prior to heating any cylinder containing UF_6, verify the amount of UF_6 in the cylinder using the accountability scale. A printout of the weight shall be attached to the cylinder status sheet.

27. Deleted.

28. Deleted.

29. Deleted.

30. The licensee shall provide a comprehensive monitoring program for those employees exposed to uranium during the January 4, 1986, incident. At a minimum, the monitoring program shall consist of the following:

    a. Semimonthly quantitative urine uranium bioassay.

    b. Semimonthly urinalysis for physiologic parameters including specific gravity, pH, protein, ketones, blood, and nitrate presence. A microscopic examination of the urine for the presence of formed elements such as casts and cells shall also be performed.

    c. Semiannual pulmonary function testing.

    d. Annual routine physical examinations.

    A report of the findings of this study, including pertinent data allowing an independent analysis of results, shall be submitted to the NRC on or before July 1, 1988.

31. Deleted.

32. Deleted.

33. Deleted.

34. 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.

35. Deleted.

36. No cylinder shall be heated in an autoclave unless the over-pressure sensor/steam interlock shutoff system is operable.

37. Pages 6-1 and 6-2 of the revised amendment application, dated November 5, 1986, are hereby incorporated as additional pages to Chapter 6, License Conditions, SUB-1010.

38. Deleted.

39. The licensee shall verify that all telephone numbers listed in its Radiological Contingency Plan are accurate during each major exercise of on-site personnel required by the Radiological Contingency Plan.

40. The licensee shall maintain the level of staffing outlined below whenever UF_6 to UF_4 operations are being conducted. The licensee shall report to the NRC any significant change in the duties of the staff within 30 days of that change, and shall not make changes which reduce the number of persons assigned to the UF_6 to UF_4 facility without prior NRC approval.

    a. A shift supervisor with responsibilities for the UF_6 to UF_4 facility shall be present during each shift. This individual shall devote 80 to 90 percent of the shift time to the UF_6 to UF_4 facility. For purposes of compliance with this condition, the shift supervisor may temporarily substitute for the control room operator identified in paragraph b or the chemical operator identified in paragraph c.

    b. A control room operator whose sole responsibility is the operation of the UF_6 to UF_4 facility shall be continually present in the control room during each shift.

    c. A chemical operator with responsibilities for observation and operation of the facility in coordination with the control room operator shall be continually present in the UF_6 to UF_4 facility area during each shift.

    d. A chemical operator shall be present as required to perform product drumming.

    e. A cylinder handling yard crew shall be present as required to handle UF_6 cylinders, including the loading of cylinders into the autoclaves.

MATERIALS LICENSE
SUPPLEMENTARY SHEET

License number
SUB-1010, Amendment No.22

Docket or Reference number
40-8027

41. The licensee's President and General Manager shall each spend at least one full workday each month at the facility while the DUF_6 to DUF_4 process is operational.

42. Deleted.

43. Deleted.

44. The licensee shall analyze the samples from the dust collection exhaust stack for fluoride.

45. The licensee shall ship any DUF_4 that is not suitable for sale or recycle to an authorized facility for disposal.

46. Deleted.

47. Deleted.

48. Deleted.

49. Deleted.

50. Autoclave internal steam pressure shall not exceed 6 PSIG during controlled heating of a UF_6 cylinder weighing in excess of the applicable maximum fill limit specified in ORO-651, Revision 5, September 1987.

51. For Model 48G cylinders containing depleted uranium hexafluoride, the excess fill weight of 500 pounds authorized by Chapter 6, License Conditions, Special Process Commitment No. 16, page I.6-3, of License SUB-1010 shall be applicable to the ORO-651, Revision 5, September 1987, maximum fill weight of 28,840 pounds. The excess fill weight of 500 pounds shall not be applicable to the ORO-651 maximum fill weight of 28,000 pounds.

52. 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.

FOR THE NUCLEAR REGULATORY COMMISSION

Originial Signed By
John P. Roberts
for
Leland C. Rouse

Date: OCT 28 1988

By: Division of Industrial and
Medical Nuclear Safety, NMSS
Washington, DC 20555

OCT 2 8 1988

DOCKET NO: 40-8027

LICENSEE: Sequoyah Fuels Corportion (SFC)

FACILITY: Sequoyah Facility,
Gore, Oklahoma

SUBJECT: SAFETY EVALUATION REPORT, AMENDMENT APPLICATION DATED OCTOBER 18, 1988, RE CHANGE OF OWNERSHIP AND ORGANIZATIONAL AND ADMINISTRATIVE CHANGES

BACKGROUND

Sequoyah Fuels Corporation is a subsidiary of Kerr-McGee Corporation. By separate letters dated August 15, 1988, Sequoyah Fuels Corporation and Kerr-McGee Corporation stated that they have entered into an agreement to sell, subject to NRC approval, the outstanding stock of Sequoyah Fuels Corporation to Sequoyah Holding Corporation (SHC) and support the submittal of an amendment application by SHC to reflect a change of ownership.

By application dated October 18, 1988, Sequoyah Holding Corporation (SHC), on behalf of SFC, requested a license amendment to reflect a change of ownership and to incorporate proposed organizational and administrative changes to the current license. The submittal also included changes to the safety demonstration section in support of the application.

In accordance with License Condition 21, SFC submitted the Comprehensive Radiological Solid Waste Management Plan dated November 13, 1986. By letter dated March 31, 1988, SFC requested a license amendment to reflect organizational changes. The subject application withdraws the request dated March 31, 1988, and incorporates the proposed changes and the Comprehensive Radiological Solid Waste Management Plan by reference.

Also, by letter dated October 18, 1988, SHC submitted a request for NRC consent to the transfer of control of SFC to SHC. A separate assessment has been prepared for this request.

DISCUSSION

A. Corporate Information

The applicant has proposed changes to the current license to reflect the transfer of ownership of SFC from Kerr-McGee Corporation to Sequoyah Holding Corporation. SHC is a wholly-owned subsidiary of General Atomics (GA) which is itself a wholly-owned subsidiary of General Atomic

Technologies Corporation (GATC). GATC is controlled by Mr. James N. Blue, a United States Citizen. The principal office of SFC will be moved from Oklahoma City, Oklahoma, to the Sequoyah Facility near Gore, Oklahoma.

The application makes no changes to the possession limits or the location where licensed material will be used. In the application, all references made to Kerr-McGee Corporation have been replaced with General Atomics. References to Kerr-McGee standards, policies, and procedures have also been removed.

B. Organization

Corporate

The current license designates corporate oversight and audit responsibilities to staff positions of Kerr-McGee Corporation. The applicant has proposed changes to these corporate positions in the application to reflect the transfer of Kerr-McGee's corporate responsibilities to corporate staff of GA. Figure 1 shows the Kerr-McGee positions with license identified responsibilities and the corresponding GA positions. The Kerr-McGee Corporate Hydrologist will be replaced with a consultant retained by SFC.

The SFC positions of Sequoyah Fuels Operations General Manager and Sequoyah Facility General Manager will be merged. The surviving position will be renamed Sequoyah Fuels General Manager and will assume the responsibilities of both positions. The Sequoyah Fuels General Manager will report to the President, Sequoyah Fuels Corporation.

Sequoyah Facility

The Manager of Administration and Services is currently responsible for providing administrative services to support the safe and efficient operation of the facility. This responsibility includes such programs as labor relations, procedure development, security, procurement, and training. The Manager of Procedures and Training reports to the Manager of Administration and Services and together they are responsible for maintaining the Technical Training Center and the facility training program.

The applicant proposes to change the responsibility of the Manager of Administration and Services to include the programs for labor relations, nuclear material accountability, procurement, and material control. Responsibility for the security program will be transferred to the Manager, Health Physics and Industrial Hygiene. The Manager of Procedures and Training will assume the responsibility for managing the facility's procedures system and training program and will report directly to the Sequoyah Fuels General Manager.

OCT 28 1988

FIGURE 1

Kerr-McGee Corporation	General Atomics
President	Chairman & Chief Executive Officer
Vice-President and Director Environmental and Health Management Division	Vice President Human Resources
Corporate Medical Director	Manager, Health Physics
Director, Nuclear Licensing and Regulation	Manager, Licensing, Safety and Nuclear Compliance
Director, Safety Services	Manager, Industrial Safety
Director, Regulatory Compliance	Manager, Licensing, Safety and Nuclear Compliance
Staff Health Physicist	Manager, Health Physics
Corporate Hydrologist	None
Sequoyah Fuels Operations General Manager	Sequoyah Fuels General Manager (SFC position)

Existing License Condition 29 requires the presence and participation of the Manager of Health, Safety and Environment and the Manager of Administration and Services in the training certification process. The applicant has revised the condition to replace the Manager of Administration and Services with the Manager of Procedures and Training. The revised condition has been incorporated into the responsibility descriptions of the application for the Manager of Health, Safety and Environment and the Manager of Procedures and Training.

Figure 2 shows the proposed reporting channels for the General Atomics and Sequoyah Fuels Corporation positions discussed above.

The applicant has proposed other organizational changes including the replacement of the Area Manager responsible for the the UF_6 to UF_4 facility with the new Manager of DUF_4 and Process Engineering and the removal of the Area Superintendents in the UF_6 production areas. The Manager of DUF_4 and Process Engineering will have responsibilities similar to that of the current Area Manager and will report to the Manager of Operations. The Area Superintendent of the UF_6 to UF_4 facility, who currently reports to the Area Manager, will report to the Manager of DUF_4 and Process Engineering. The Shift Supervisors in the UF_6 production areas, who currently report to the Area Superintendents, will report directly to the Area Managers.

C. Personnel Selection and Qualification Requirements

Because the responsibilities of the Sequoyah Fuels Operations General Manager will be transferred to the Sequoyah Fuels General Manager, the latter position shall approve personnel selection for onsite safety-related SFC positions.

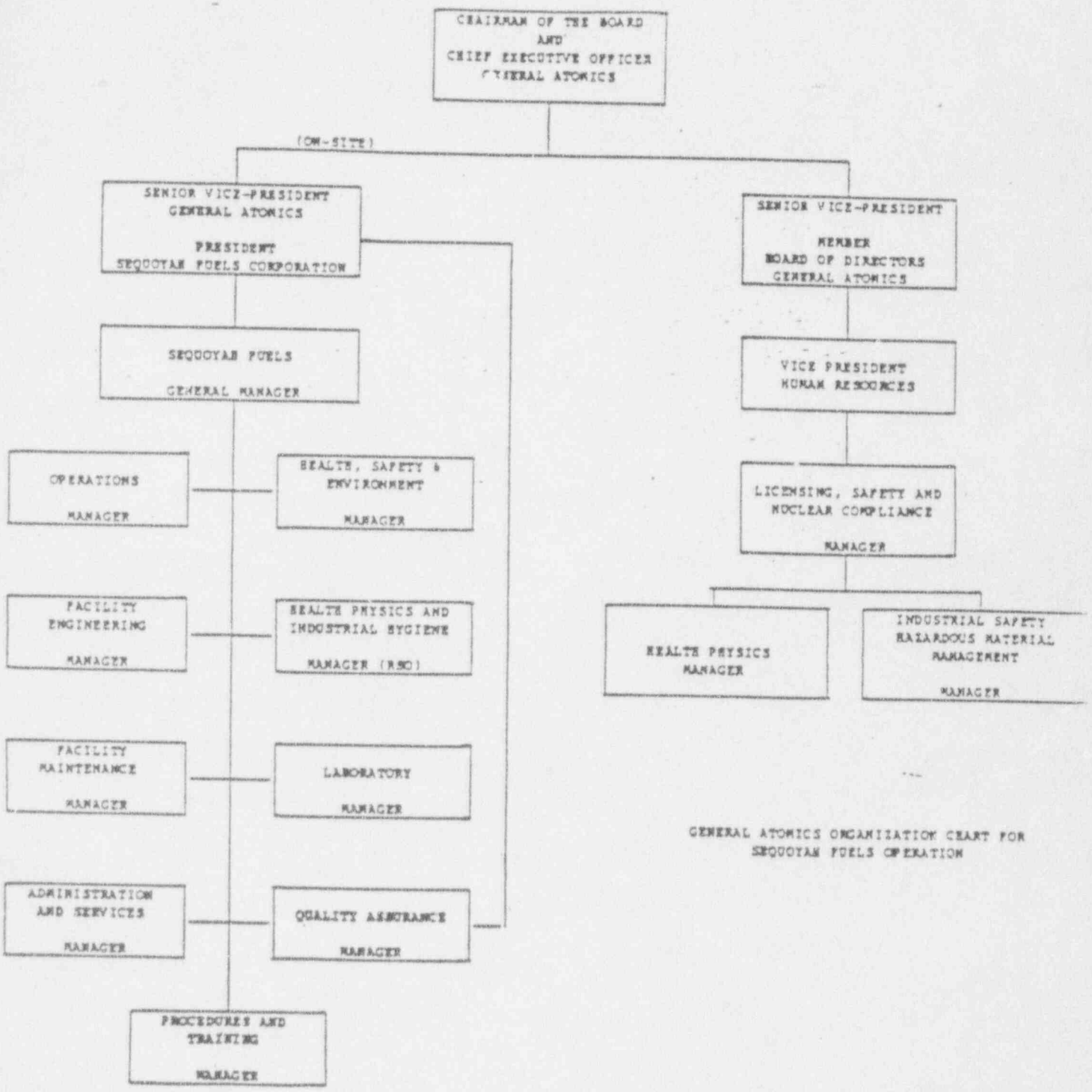
The educational and experience requirements of the Sequoyah Fuels Operations General Manager and Sequoyah Facility General Manager have been assigned to the position of Sequoyah Fuels General Manager. The applicant proposes to reduce the requirement for management experience in chemical or nuclear materials manufacturing facilities from 3 years to 2 years.

The application states that GA's Manager of Licensing, Safety and Nuclear Compliance will have the same experience and educational requirements as Kerr-McGee's Director of Nuclear Licensing and Regulation. The applicant has proposed minimum experience and educational requirements for the other GA corporate positions which will assume the oversight and audit responsibilities of the Kerr-McGee corporate positions. The current license does not provide experience and educational requirements for these positions.

The amendment application provides minimum educational and experience requirements for the proposed position of Manager of DUF_4 and Process Engineering that are the same for Area Managers. Qualification requirements are also stated for the Manager of Procedures and Training that are not provided in the current license. The proposed requirements are equivalent to those required of the Manager of Administration and Services.

FIGURE 2

OCT 2 8 1988



GENERAL ATOMICS ORGANIZATION CHART FOR
SEQUOYAH FUELS OPERATION

Staff believes that the proposed educational and experience requirements are adequate for the new positions. The revised safety demonstration section of the application excludes Kerr-McGee employees and incorporates the qualifications of the GA corporate staff and new SFC positions. Staff has reviewed their qualifications and concludes that the individuals assigned to the new positions meet the proposed educational and experience requirements.

Existing License Condition 27 had also been incorporated to establish minimum qualification requirements for the Manager of Quality Assurance.

D. Training

Existing License Condition 28 requires that the licensee ensure that each employee receives and understands the information necessary to safely perform his function. Each employee shall sign a statement indicating the receipt of training and committing to following corporate policy and procedures. Supervisory personnel shall document that all employees under their supervision are aware of and understand changes made in procedures affecting the performance of their job functions.

The applicant has incorporated the condition into the application.

E. Audits and Inspections

Existing License Condition 31 requires that the minimum frequency established by the licensee for audits of operations and safety-related activities that are a part of the ongoing Quality Assurance Program not exceed 12 months. A report of the areas audited shall be made quarterly to the General Manager, Sequoyah Facility.

The applicant has replaced the General Manager, Sequoyah Facility, with the Sequoyah Fuels General Manager and incorporated the revised condition into the application.

F. Records

Existing License Condition 33 requires that the licensee maintain all documentation, records, and tests required as a part of the license for a minimum of 5 years or longer if the regulations so require.

The applicant has incorporated the condition into the application.

G. ALARA Committee

The license states that an ALARA Committee shall be established for the Sequoyah Facility. Committee membership includes positions from both the Kerr-McGee Corporation and Sequoyah Fuels Corporation. In the application, Kerr-McGee personnel have been replaced with GA corporate positions to assume the responsibilities of the Committee.

H. Solid Waste Disposal

The Comprehensive Radiological Solid Waste Management Plan submitted by SFC on November 13, 1986, contains commitments for solid waste handling and offsite disposal at licensed facilities and supersedes the plan previously submitted on May 25, 1985, which sought authorization under 10 CFR 20.302 to dispose of contaminated materials at the Sequoyah Facility. The former plan was the subject of a proceeding before the Atomic Safety and Licensing Board (ASLB). By letter dated November 2, 1987, the ASLB declared its decision to terminate the proceeding based on SFC's commitment to dispose of contaminated sludges and refuse by transfer to other licensees authorized to receive them under 10 CFR 40.51(b)(5).

In the license, the applicant proposes to remove statements regarding the request for onsite burial and to incorporate by reference the Comprehensive Radiological Solid Waste Management Plan dated November 13, 1986. In addition, the applicant commits to handle in a similar manner as described in the Plan the contaminated wastes resulting from the operation of the UF_6 to UF_4 facility.

I. Decommissioning Plan

By letter dated October 26, 1978, Kerr-McGee Corporation committed SFC to create and to fund a reserve for decommissioning and reclamation expenses. This commitment is currently in the license. The applicant proposes to delete the Kerr-McGee commitment. However, in accordance with the letter dated October 18, 1988, requesting NRC consent to the transfer of control of SFC to SHC, SHC commits SFC to maintain the reserve and to submit a decommissioning funding plan at the time of the submittal of the SFC renewal application. Moreover, the letter giving NRC consent to the transfer of ownership is subject to the SHC commitment being made a condition in the license. Accordingly, staff recommends the following condition:

> 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.

J. Contingency Plan

Existing License Condition 22 requires the licensee to implement, maintain, and execute an NRC approved Radiological Contingency Plan. The applicant has incorporated the condition into the application with the exception of the requirements for the licensee to maintain records of changes that are made to the Plan and Implementing Procedures that are made without prior NRC approval for a period of 2 years and for the submittal of reports describing changes to the Plan and summaries of the types of changes to the Implementing Procedures to the appropriate NRC Regional Office. Because the revised condition requires the submittal of

these reports and summaries to the NRC Headquarters Office, staff believes the exclusion of the above requirements will not adversely affect the intent of the condition.

CONCLUSION/RECOMMENDATIONS

Based on the discussion, staff concludes that approval of the amendment application to authorize organizational and administrative changes resulting from a change in ownership will not adversely affect the protection provided for the health and safety of the employees and public or the environment. Therefore, staff recommends that License Condition 2 be revised with the new owner's address, License Condition 9 be revised to incorporate the date of October 18, 1988, and a condition be added to the license as stated above in Section I.

Staff also concludes that Conditions 22, 27, 28, 29, 31, and 33 have been adequately incorporated into the application and, therefore, recommends their deletion in the license.

Because the application is subject to the transfer of ownership of SFC, staff recommends that the amendment authorizing the application become effective at the time the transaction is consummated. In accordance with SHC's consent request, SHC will notify the NRC of the completed transfer.

The amendment application was discussed with Region IV on October 28, 1988, and they have no objection to this proposed licensing action.

Original Signed By:

W. Scott Pennington
Uranium Fuel Section
Fuel Cycle Safety Branch
Division of Industrial and
Medical Nuclear Safety, NMSS

Approved by: Original Signed By:

George H. Bidinger, Section Leader

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

- - - -

BRIEFING ON STATUS OF
GENERAL ATOMIC - SEQUOYAH FUELS FACILITY

- - - -

PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Monday, December 21, 1992

The Commission met in open session, pursuant to notice, at 2:00 p.m., Ivan Selin, Chairman, presiding.

COMMISSIONERS PRESENT:

IVAN SELIN, Chairman of the Commission
KENNETH C. ROGERS, Commissioner
FORREST J. REMICK, Commissioner
JAMES R. CURTISS, Commissioner
E. GAIL de PLANQUE, Commissioner

STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

WILLIAM C. PARLER, General Counsel

NEAL BLUE, Chairman of the Board and CEO, General Atomics

JAMES SHEPPARD, President, Sequoyah Fuels Corporation

JAMES EDWARDS, Vice President, General Counsel, General Atomics Board of Directors, SFC

MAURICE AXELRAD, Esquire, Newman & Holtzinger

JACK NEWMAN, Esquire, Newman & Holtzinger

pleased to discuss these commercial arrangements and their financial benefits with the NRC in whatever detail you might wish to pursue it. Such discussion, however, obviously requires the communication of proprietary business information, including data on costs, marketing arrangements, projected profitability and other highly sensitive commercial information. Sequoyah believes that this would be helpful to the NRC and is ready to discuss these plans on a proprietary basis.

I can, however, make these observations at this point. One, as a result of the agreements with ConverDyn, Sequoyah has developed a source of revenue which, assuming continued economically viable operation of Allied Signal's Metropolis, Illinois facility, should provide sufficient revenues to allow Sequoyah to complete site remediation and decommissioning of the facility over the next 12 years.

Two, the significant site remediation work already in progress and to which Sequoyah can justifiably point with pride, I think as your reports would indicate, will be continued with respect to removal of the raffinate sludge, the calcium fluoride sludge, nitrate fertilizer, the yellowcake inventory,

UF6 cylinders and intermediate products. We expect significant progress will be made in the next three years.

Finally, I would like to address the concerns which Commissioner Curtiss raised during his recent visit to GA and his visit to Sequoyah regarding GA's support for decontamination and decommissioning activities at the site and which have been discussed, of course, in the trade press. I want to set the record straight with this regard to our prior statements in this matter, our present situation and our intentions with respect to the future.

I would like to start with a brief recap of GA's historical support for Sequoyah. General Atomics has, since the acquisition of the company from Kerr-McGee, provided significant services and financial assistance in support of Sequoyah's operations. During this entire period, none of Sequoyah's earnings were ever transferred or dividended to GA. GA has provided a great deal of support for Sequoyah in the fields of health physics, quality assurance and engineering. GA continues to devote substantial resources to assist Sequoyah. For example, GA has provided funds to assist Sequoyah's cash flow needs on an month to month basis and it

continues to support the company's activities in such areas as QA and health physics.

I want to emphasize also that these are voluntary actions since GA is neither operator of Sequoyah nor a guarantor of its performance under the terms of the license. Rather, it is simply a constructive shareholder of Sequoyah. When I appeared before this Commission on March 17th and subsequently when I wrote to Chairman Selin on March 19th, I outlined the course of action under which Sequoyah would continue its remediation and cleanup activities, which we have been doing. Although at that time we believed that these activities would be funded through the continued operation of the plant for many years to come, the alternative arrangements which have been developed under agreements with ConverDyn appear to be adequate to provide a stream of revenues necessary to carry out the program.

Incidentally, I should note that an effort was made to inform the NRC staff of the ConverDyn discussion from the very beginning. GA and Allied Signal offered to meet in July with the NRC staff on a confidential basis when the ConverDyn discussions were at a very early stage. The staff declined to meet on a confidential basis which, given the

preliminary status of our business negotiations, made an open meeting with the NRC quite impossible. On reflection, that was unfortunate for it would have furnished us an opportunity, an early opportunity to discuss the reasons for those business developments and minimized any possibility of misunderstanding regarding the timing of our notification to NRC with respect to these related matters.

However, to return to my March 19 letter to the NRC and the immediately preceding discussions with the Commissioners, at that time we fully expected that with Sequoyah's return to service, its profitable operation should enable us to provide assurances with respect to supporting continuing remediation and decommissioning activities. It was our expectation, and this was reflected in my March 19 letter to Chairman Selin, that the obligations which would be undertaken by GA to support Sequoyah's decommissioning commitments would be developed in the context of action on Sequoyah's application for license renewal, which would have authorized continuing operation of the facilities for at least an additional term of ten years.

The deteriorating business and financial conditions I have mentioned made such continued

operation and the license renewal impossible and thus made the course of action outlined in my letter of the 19th of March impossible to implement.

In addition, of course. it became obvious that our bank, under the deteriorating conditions, would not consent to any GA guarantee of Sequoyah's financial obligations. We have furnished -- we've obtained confirmation of the bank's position in this matter and have provided it this morning to Mr. Bernero.

As I've stated, it was our belief that the expectations upon which we base the course of action outlined in my March 19 letter were reasonable expectations. Accordingly, we had our attorneys prepare a draft GA-Sequoyah agreement for this purpose which was sent to the NRC staff. Thereafter, however, the financial position on which the scenario was based became more precarious. Had we been able to discuss the potential ConverDyn arrangements in July with the staff on a proprietary basis, as we had requested, the Commission staff might have had some earlier notice of the changed circumstances. But as I've noted, the staff was unable to accommodate that particular request.

We regret the lack of communication

regarding our intentions during this period when we were effectively precluded from meaningful discussions with the staff. Moreover, our intentions have never varied from those expressed in my letter of March 19th. As I indicated in my statement before the Commission on March 17, GA does not have unlimited financial resources. We expected that the commitment levels for our financial assurance for decommissioning would be established during the license renewal process and I referred throughout my statement to the remediation that would take place during continuing operations. I did not, and I could not, make an open ended commitment that GA would guarantee decommissioning costs of unspecified magnitude at any time, but rather I expected this to be resolved in the course of the license renewal process which was, in fact, pending. Thus, the precise magnitude of the guarantees to be provided by GA or third parties would have been negotiated as agreed to in the license renewal process.

So, let me summarize clearly. The statements made in our 19 March letter were made in good faith. Financial and business events have, however, overtaken the basis on which this earlier intended course of action was developed. This change

in circumstance was not anticipated by GA and the employees at Sequoyah worked very hard to manage the financial situation and mitigate the impact. The current course of action taken by Sequoyah is certainly the best alternative under the circumstances and we believe it to be an excellent solution. Sequoyah is in much better position today to satisfy its remediation and cleanup obligations now than if it had tried to continue operations or if it had simply closed its doors without the ConverDyn arrangement.

In conclusion, let me share with you my perspective on the present situation. Last spring, the NRC was concerned about Sequoyah's ability to meet its remediation and cleanup obligations. To address that concern, I stated that GA was committed to dealing with Sequoyah's residual reclamation obligations and the arrangements with ConverDyn fulfill that objective. Although our approach is different due to changed circumstances beyond our control, the goal of assisting Sequoyah to enable it to meet its remediation and cleanup obligations is unchanged. GA and Sequoyah have made a substantial effort to provide a revenue flow to cover remediation and cleanup activities at Sequoyah over a reasonable period of time. I would further like to express my

conviction that a satisfactory resolution of the issues associated with cleanup of the Sequoyah site can best be accomplished through a cooperative effort with the NRC which assures that these revenues are effectively applied to accomplishing work at the site for its safe and orderly decommissioning.

Finally, I appreciate the opportunity to discuss these matters with you and Mr. Sheppard will summarize the overall presentation and then I would be very happy to answer further questions.

CHAIRMAN SELIN: Well, we behaved reasonably well in allowing you to finish statements before we came in, but I can't wait for Mr. Sheppard. I have a few things I must say to your remarks, Mr. Blue.

First of all, I completely disagree with your characterization of who shot John, you know, why the place closed down, et cetera. I don't think that's all that germane to where we come from here, but I can't just let that stand. It's sort of like driving a car off the cliff and blaming a rigorous application of the law of gravity for the problem of the accident. I think your company steps had led to the regulatory environment which made things so difficult. I don't ask you to agree. It's not really

State of Delaware

Office of the Secretary of State

I, WILLIAM T. QUILLEN, Secretary of State of the State of Delaware, do hereby certify that the attached is a true and correct copy of the Annual Report of the "SEQUOYAH FUELS CORPORATION", as received and filed in this office on February 12, 1993.

William T. Quillen

William T. Quillen, Secretary of State

AUTHENTICATION: J. Robinson

DATE: 07/19/1993

054323

STATE OF DELAWARE
1992 ANNUAL FRANCHISE TAX REPORT

DO NOT ALTER FILE NUMBER

FILE NUMBER	CORPORATION NAME	FEDERAL EMPLOYER ID NO.
2205047	SEQUOYAH FUELS CORPORATION	44-3108503

PHONE NUMBER	INCORPORATION DATE	RENEW. L/REVOCATION DATE	DATE OF INACTIVITY:	FROM	TO
(602) 455-3582	AUGUST 15, 1989			/ /	/ /

AUTHORIZED STOCK BEGIN DATE	ENDING DATE	DESIGNATION OR STOCK CLASS	NO. OF SHARES	PAR VALUE / SHARE	NO. SHARES ISSUED	TOTAL GROSS ASSETS	ASSET DATE	ASSETS FOR REGULATED INVESTMENT CORPS
08/15/89		COMMON	1,000	0.000000				Jan. 1st / Dec. 31st

FRANCHISE TAX	$58.00 PENALTY	1.5% MONTHLY INTEREST	QUARTERLY INTEREST	ANN. FILING FEE	PREV CREDIT OR BALANCE	PREPAID QRTY. PAYMENTS
$ 30.00	$ .00	$ .00	$ .00	$ 20.00	$ .00	$ .00

AMOUNT DUE
$ 50.00

REGISTERED AGENT 9000010
THE CORPORATION TRUST COMPANY
CORPORATION TRUST CENTER
1209 ORANGE STREET
WILMINGTON, DE 19801

[redacted]

MAKE CHECK PAYABLE TO:
DELAWARE SECRETARY OF STATE

CHECK NO.	AMOUNT ENCLOSED
	50.00

$50.00 PENALTY if not Received on or before March 1, 1993

2 030193 2205047 000005000 0 1

NATURE OF BUSINESS	PRINCIPAL PLACE OF BUSINESS OUTSIDE OF DELAWARE
Uranium Processing	I-40 and Highway 10, Gore OK 74435

APPOINTED DATE OF NEXT ANNUAL MEETING OF STOCKHOLDERS TO ELECT DIRECTORS (MM/DD/YY) 02/02/94

DIRECTORS	NAME	STREET/CITY/STATE/ZIP	DATE TERM EXPIRES
1.	Richard A. Dean	3550 General Atomics Ct, San Diego CA 92121	02/02/94
2.	Admiral Ralph Bird	PO Box 20328, Jackson, WY 83001	02/02/94
3.	James R. Edwards	3550 General Atomics Ct, San Diego, CA 92121	02/02/94
4.	Max D. Kemp	3550 General Atomics Ct., San Diego, CA 92121	02/02/94

OFFICERS	NAME	STREET/CITY/STATE/ZIP	DATE TERM EXPIRES
1. President	James J. Sheppard	PO Box 610, Gore, OK 74435	02/02/94
2. Vice President	Reginald B. Cook	PO Box 610, Gore, OK 74435	02/02/94
3. Treasurer	Anthony G. Navarra	3550 General Atomics Ct, San Diego CA 92121	02/02/94
4. Secretary	James R. Edwards	3550 General Atomics Ct. San Diego CA 92121	02/02/94

ORIGINAL SIGNATURE (OFFICER, DIRECTOR OR INCORPORATOR)		TITLE	DATE
X Max D Kemp	max D. KEMP	Director	02/5/93

State of Delaware

Office of the Secretary of State

I, WILLIAM T. QUILLEN, Secretary of State of the State of Delaware, do hereby certify that the attached is a true and correct copy of the Annual Report of the "SEQUOYAH FUELS INTERNATIONAL CORPORATION", as received and filed in this office on February 12, 1993.

William T. Quillen

William T. Quillen, Secretary of State

AUTHENTICATION: J Robinson

DATE: 07/19/1993

054375

STATE OF DELAWARE
1992 ANNUAL FRANCHISE TAX REPORT

DO NOT ALTER FILE NUMBER

FILE NUMBER	CORPORATION NAME				FEDERAL EMPLOYER ID NO.
2016968	SEQUOYAH FUELS INTERNATIONAL CORPORATION				731132364
PHONE NUMBER	INCORPORATION DATE	RENEWAL / REVOCATION DATE	DATE OF INACTIVITY		FROM / / TO / /
(619) 455-3582	SEPTEMBER 14, 1983				

AUTHORIZED STOCK BEGIN DATE	ENDING DATE	DESIGNATION OR STOCK CLASS	NO. OF SHARES	PAR VALUE / SHARE	NO. SHARES ISSUED	TOTAL GROSS ASSETS	ASSET DATE	ASSETS FOR REGULATED INVESTMENT CORPS
09/14/83		COMMON	1,000	1.000000				Jan. 1st Dec. 31st

FRANCHISE TAX	$50.00 PENALTY	1.5% MONTHLY INTEREST	QUARTERLY INTEREST	ANN. FILING FEE	PREV CREDIT OR BALANCE	PREPAID QRTY. PAYMENTS
$ 30.00	$ .00	$ .00	$ .00	$ 20.00	$ .00	$ .00

AMOUNT DUE
$ 50.00

REGISTERED AGENT 9000010
THE CORPORATION TRUST COMPANY
CORPORATION TRUST CENTER
1209 ORANGE STREET
WILMINGTON, DE 19801

[redacted]

MAKE CHECK PAYABLE TO:
DELAWARE SECRETARY OF STATE

CHECK NO.	AMOUNT ENCLOSED
	50.00

2 030193 2016968 000005000 0 7

$50.00 PENALTY if not Received on or before
March 1, 1993

NATURE OF BUSINESS	PRINCIPAL PLACE OF BUSINESS OUTSIDE OF DELAWARE
Precise Uranium O&G	I-40 and Highway 10, Gore, OK 74435

APPOINTED DATE OF NEXT ANNUAL MEETING OF STOCKHOLDERS TO ELECT DIRECTORS (MM/DD/YY) 02/02/94

DIRECTORS	NAME	STREET/CITY/STATE/ZIP	DATE TERM EXPIRES
1.	Paul Bissonnette	1216 Camino Del Ville, Poway, CA 90264	02/02/94
2.	Leobert R. Fernandez Jr.	4698 Convoy St #207, San Diego, CA 92111	02/02/94
3.	Anthony G. Navarra	3550 General Atomics Ct. San Diego, CA 92121	02/02/94
4.			

OFFICERS	NAME	STREET/CITY/STATE/ZIP	DATE TERM EXPIRES
1. President	Max D. Kemp	3550 General Atomics Ct San Diego CA 92121	02/02/94
2. Vice President	Bruce B. Lenz	3550 General Atomics ct, San Diego CA 92121	02/02/94
3. Treasurer	Anthony G. Navarra	3550 General Atomics Ct, San Diego CA 92121	02/02/94
4. Secretary	James R Edwards	3550 General Atomics Ct, San Diego CA 92121	02/02/94

ORIGINAL SIGNATURE (OFFICER, DIRECTOR OR INCORPORATOR)	TITLE	DATE
X Max D Kemp	Max D. Kemp President	2/5/93

State of Delaware

Office of the Secretary of State

I, WILLIAM T. QUILLEN, Secretary of State of the State of Delaware, do hereby certify that the attached is a true and correct copy of the Annual Report of the "SEQUOYAH HOLDING CORPORATION", as received and filed in this office on February 12, 1993.

William T. Quillen

William T. Quillen, Secretary of State

AUTHENTICATION: J. Robinson

DATE: 07/19/1993

CS4382

STATE OF DELAWARE
1992 ANNUAL FRANCHISE TAX REPORT

DO NOT ALTER FILE NUMBER

FILE NUMBER	CORPORATION NAME	FEDERAL EMPLOYER ID NO.
2154324	SEQUOYAH HOLDING CORPORATION	943080288

PHONE NUMBER	INCORPORATION DATE	RENEWAL / REVOCATION DATE	DATE OF INACTIVITY:	FROM	TO
(619) 455-3000	JUNE 20, 1988			/ /	/ /

AUTHORIZED STOCK BEGIN DATE	AUTHORIZED STOCK ENDING DATE	DESIGNATION OR STOCK CLASS	NO. OF SHARES	PAR VALUE / SHARE	NO. SHARES ISSUED	TOTAL GROSS ASSETS	ASSET DATE	ASSETS FOR REGULATED INVESTMENT CORPS
08/20/88		COMMON	1,000	0.000000				Jan. 1st Dec. 31st

FRANCHISE TAX	$50.00 PENALTY	1.5% MONTHLY INTEREST	QUARTERLY INTEREST	ANN. FILING FEE	PREV CREDIT OR BALANCE	PREPAID QRTY. PAYMENTS
$ 30.00	$ .00	$ .00	$ .00	$ 20.00	$ .00	$ .00

AMOUNT DUE
$ 50.00

REGISTERED AGENT 8000C10
THE CORPORATION TRUST COMPANY
CORPORATION TRUST CENTER
1209 ORANGE STREET
WILMINGTON, DE 19801

[redacted]

MAKE CHECK PAYABLE TO:
DELAWARE SECRETARY OF STATE

CHECK NO.	AMOUNT ENCLOSED
	50.00

$50.00 PENALTY if not Received on or before March 1, 1993

2 030193 2164324 000005000 0 3

NATURE OF BUSINESS	PRINCIPAL PLACE OF BUSINESS OUTSIDE OF DELAWARE
Holding Company	3550 General Atomics Ct. San Diego, CA. 92121-1194

APPOINTED DATE OF NEXT ANNUAL MEETING OF STOCKHOLDERS TO ELECT DIRECTORS (MM/DD/YY) 02 : 02 : 94

DIRECTORS	NAME	STREET/CITY/STATE/ZIP	DATE TERM EXPIRES
1.	Beaul Graves Jr.	POBox 610, Gore, OK 74435	2/2/94
2.	Thomas A. Johnston	3550 General Atomics Ct. San Diego, CA 92121	2/2/94
3.	George Martinez	2735 Congress St. #2M, San Diego, CA. 92110	2/2/94
4.			

OFFICERS	NAME	STREET/CITY/STATE/ZIP	DATE TERM EXPIRES
1. President	Max D. Kemp	3550 General Atomics Ct. San Diego, CA 92121	2/2/94
2. Vice President	John E. Jones	3550 General Atomics Ct. San Diego CA 92121	2/2/94
3. Secretary	James R. Edwards	3550 General Atomics Ct. San Diego, CA 92121	2/2/94
4. Treasurer	Anthony G. Navarra	3550 General Atomics Ct San Diego CA 92121	2/2/94

ORIGINAL SIGNATURE (OFFICER, DIRECTOR OR INCORPORATOR)		TITLE	DATE
X	Max D Kemp	MAX D. KEMP	PRESIDENT	2/5/93

DUE ON OR BEFORE: FEB 01, 1993

STATE OF WYOMING

CID 06-234024 WY 419721 1993 ANNUAL PROFIT CORPORATION REPORT

10— TO SECRETARY OF STATE

266885

OFFICE USE ONLY

Name and address of corporation:

GENERAL ATOMIC TECHNOLOGIES CORPORATION
3550 GENERAL ATOMICS
CT.
SAN DIEGO CA 921211194

IMPORTANT! Please read instructions on back of yellow copy.
Incorrect reports will be returned.

RECEIVED
1993 FEB -1 AM 8:03
SECRETARY OF STATE
WYOMING

1. ADDRESS CORRECTION, if any, for mailing annual report forms:
   Same

2. The ADDRESS of the principal place of business is: (IF DIFFERENT FROM ADDRESS LISTED ABOVE)
   Same

3. The names and addresses of its OFFICERS are:

		Street Address-City-State-Zip
President	James N. Blue	5000 S. Quebec St., Ste. 450, Denver, CO 80237
Vice-President	Linden J. Blue	3550 General Atomics Ct., San Diego, CA 92121-1194
Secretary	John E. Jones	3550 General Atomics Ct., San Diego, CA 92121-1194
Treasurer	John E. Jones	3550 General Atomics Ct., San Diego, CA 92121-1194

4. The names and addresses of its Directors, if any, are:

	Street Address-City-State-Zip
James N. Blue	5000 S. Quebec St., Ste. 450, Denver, CO 80237
Jerry M. Jones	8545 Avenida de las Ondas, La Jolla, CA 92037
David A. Goldberg	750 Park Ave., New York, NY 10021

5. Based on the attached worksheet, the license tax of $ 10.00 is paid herewith. *Please return worksheet with your annual report.*

BE SURE TO SIGN AND ENCLOSE CORRECT TAX

I HEREBY CERTIFY under the penalty of perjury that this information is true and correct to the best of my knowledge.

Jan 27, 19 93

John E. Jones
Treasurer or other fiscal agent

DO NOT ALTER CID NUMBER OR NAME

Thank you for keeping Wyoming current!

State of Delaware

Office of the Secretary of State

I, WILLIAM T. QUILLEN, Secretary of State of the State of Delaware, do hereby certify that the attached is a true and correct copy of the Annual Report of the "[redacted]NAYA CORPORATION", as received and filed in this office on March 1, 1993.

William T. Quillen

William T. Quillen, Secretary of State

AUTHENTICATION: J. Robinson

DATE: 07/19/1993

3C5475

STATE OF DELAWARE
1992 ANNUAL FRANCHISE TAX REPORT

DO NOT ALTER FILE NUMBER

FILE NUMBER	CORPORATION NAME	FEDERAL EMPLOYER ID NO.
0881920	TENAYA CORPORATION	840820210

PHONE NUMBER	INCORPORATION DATE	RENEWAL / REVOCATION DATE	DATE OF INACTIVITY:	FROM	TO
(619) 455-4274	NOVEMBER 8, 1979			/ /	/ /

AUTHORIZED STOCK BEGIN DATE	ENDING DATE	DESIGNATION OR STOCK CLASS	NO. OF SHARES	PAR VALUE / SHARE	NO. SHARES ISSUED	TOTAL GROSS ASSETS	ASSET DATE	ASSETS FOR REGULATED INVESTMENT CORPS
11/08/79		A PREFERRED	8,000	1.000000	446.44	1,351,040	12/31/92	Jan. 31st
		COMMON	1,000	0.100000	120			Dec. 31st
		B PREFERRED	1,000	0.100000	None			

FRANCHISE TAX	50.00 PENALTY	1.5% MONTHLY INTEREST	QUARTERLY INTEREST	ANN. FILING FEE	PREV CREDIT OR BALANCE	PREPAID QRTY. PAYMENTS
$ 90.00	$ .00	$ .00	$ .00	$ 20.00	$ .00	$ .00

AMOUNT DUE
$ 110.00

REGISTERED AGENT 9000013
UNITED STATES CORPORATION COMPANY
32 LOOCKERMAN SQUARE
SUITE L-100
DOVER, DE 19901

[redacted]

MAKE CHECK PAYABLE TO:
DELAWARE SECRETARY OF STATE

CHECK NO.	AMOUNT ENCLOSED
155	$110.00

$50.00 PENALTY if not Received on or before March 1, 1993

2 030193 0881920 000011000 0 2

BUSINESS	PRINCIPAL PLACE OF BUSINESS OUTSIDE OF DELAWARE
	5000 S. Quebec St., Ste 450, Denver, CO 80237-2701
D DATE OF NEXT ANNUAL MEETING OF STOCKHOLDERS TO ELECT DIRECTORS (MM/DD/YY)	06 / 07 / 93

ORS NAME	STREET/CITY/STATE/ZIP	DATE TERM EXPIRES
N. Blue	5000 S. Quebec St., Ste 450, Denver, CO 80237	06/06/93
P. Blue	1 Tenaya Lane, Englewood, CO 80110	06/06/93

RS NAME	STREET/CITY/STATE/ZIP	DATE TERM EXPIRES
dent James N. Blue	5000 S. Quebec St., Ste 450, Denver CO 80237	06/06/93
President Anne P. Blue	1 Tenaya Lane, Englewood, CO 80110	06/06/93
tary John E. Jones	5000 S. Quebec St., Ste 450, Denver CO 80237	06/06/93
urer John E. Jones	5000 S. Quebec St., Ste 450, Denver CO 80237	06/06/93

SIGNATURE (OFFICER, DIRECTOR OR INCORPORATOR)	TITLE	DATE
John E Jones	John E. Jones, Secretary/Treasurer	02/24/93

CERTIFICATE OF SERVICE

I certify that on April 13, 1994, copies of the foregoing NATIVE AMERICANS FOR A CLEAN ENVIRONMENT'S OPPOSITION TO GENERAL ATOMICS' MOTION FOR SUMMARY DISPOSITION OR FOR AN ORDER OF DISMISSAL were served by first-class mail on the following:

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge James P. Gleason
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge G. Paul Bollwerk
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge Jerry R. Kline
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge Thomas D. Murphy
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Steven R. Hom, Esq.
Richard G. Bachmann, Esq.
Susan G. Uttal, Esq.
Office of General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Maurice Axelrad, Esq.
Newman, Bouknight & Edgar, P.C.
1615 L Street N.W. Suite 1000
Washington, D.C. 20036

Stephen M. Duncan, Esq.
Bradfute W. Davenport, Jr., Esq.
Mays & Valentine
110 South Union Street
Alexandria, VA 23314

Office of the Secretary
Docketing and Service
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

John R. Driscoll
General Atomics
3550 General Atomics Court
San Diego, CA 92121

John H. Ellis, President
Sequoyah Fuels Corp.
P.O. Box 610
Gore, OK 74435

Diane Curran