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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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OFFICE OF SECRETARY
NUCLEAR REGULATORY COMMISSION

_____)	
In the Matter of)	
Sequoyah Fuels Corporation)	Docket No. 40-0827-MLA
(Source Material License No. SUB-1010)	
_____)	

NATIVE AMERICANS FOR A CLEAN ENVIRONMENT'S
SUPPLEMENTAL REQUEST FOR HEARING AND RESPONSE
TO NRC STAFF'S RESPONSE TO NACE'S REQUEST FOR HEARING

Introduction and Background

On August 29, 1990, Sequoyah Fuels Corporation ("SFC") submitted an application for renewal of its source materials license for its uranium processing facility in Gore, Oklahoma. By letter dated September 28, 1990, as supplemented by a letter dated October 22, 1990, Native Americans for a Clean Environment ("NACE") petitioned the Nuclear Regulatory Commission ("NRC" or "Commission") for a hearing on the application. The NRC Staff responded to NACE's letters on November 20, 1990, and argued that NACE had not satisfied the requirements of 10 C.F.R. § 2.1205 and NRC case law for establishing standing to intervene as a matter of right under Section 189a of the Atomic Energy Act.¹

NACE herein responds to the concerns raised by the NRC Staff, by providing a supplement to NACE's initial request for a hearing. Affidavits from NACE members whose interests may be

¹ NRC Staff's (1) Response to Requests for Hearing Filed by the Native Americans for a Clean Environment, Earth Concerns of Oklahoma, and the National Toxics Campaign and (2) Status Report Concerning the Application.

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affected by the relicensing of the SFC plant are attached. As demonstrated below, NACE satisfies the Commission's standing requirements in that its members are persons "whose interest may be affected" by the proceeding for the relicensing of the SFC facility. 42 U.S.C. § 2239(a).

In this pleading, NACE also raises concerns pursuant to 10 C.F.R. § 2.1205(d)(3), based in part on documents filed by the NRC Staff and SFC since the hearing was first requested. The NRC's discovery in late August of uranium-contaminated seepage water and soil at the SFC site, contamination of workers, and failure to make timely report or appropriate response to these issues, has thrown both the question of license renewal and the validity of SFC's current license into doubt. On September 19, 1990, the Staff ordered the modification of SFC's license to require SFC to obtain information and develop characterization studies regarding seepage of uranium-contaminated water into the ground.² On November 5, 1990, the Staff issued a Demand for Information seeking information "necessary to determine whether to modify, suspend or revoke your NRC license, and/or whether to renew your license."³ In its November 20 filing before this Board, the Staff noted that this demand for information remained outstanding; and that it considered SFC's license application to

² 55 Fed. Reg. 40,959 (October 5, 1990).

³ Letter from Hugh L. Thompson, Jr., NRC Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, to Reau Graves, Jr., President, SFC, dated November 5, 1990.

be incomplete without it.⁴ On the same day the Staff filed its response to the hearing requests, SFC filed its response to the November 5 Demand for Information with the NRC Staff. The NRC has not yet stated whether it considers the November 20 submittal to complete SFC's application. Should NRC require submission of further information, or should SFC submit additional information in support of the application on its own initiative, NACE reserves the right to amend its statement of concerns, based on any new issues that are raised therein.

I. NACE's Interest in the SFC License Renewal Proceeding

Native Americans for a Clean Environment is an Indian-controlled and staffed citizens' environmental organization, based in Tahlequah, Oklahoma. Its purpose is to raise the consciousness of the general public about environmental issues, with emphasis on the nuclear industry. NACE's approximately 400 members live in the United States, Canada, Guatamala, and Brazil. One hundred Indian Tribes, including 13 tribes in eastern Oklahoma, are represented in NACE's membership, which is also open to non-Indians.

NACE's membership includes individuals who live close to the SFC facility. For instance, Patricia W. Ballard lives a mile and a half away.⁵ Jessie Deerinwater lives approximately ten miles away and routinely travels past the plant on state and interstate highways.⁶ Pollution of the air, groundwater, soil, and vegeta-

⁴ NRC Staff's Response to Requests for Hearing at 10.

⁵ See Affidavit of Patricia W. Ballard, attached.

⁶ See Affidavit of Jessie Deerinwater, attached.

tion by SFC would affect these NACE members in a number of ways, and in some aspects has already affected them. Radioactive emissions and migrating soil and water contamination of the SFC site may affect the quality of the air they breathe, the groundwater in their wells, and the meat they put on their tables from cattle raised near the plant and game that ranges near the plant. It may also decrease the value of their property. Both Ms. Ballard and Ms. Deerinwater no longer use certain areas near the plant for fishing and recreation because they have become contaminated.

SFC's failure to protect workers from contamination or to assure that they leave the plant site in an uncontaminated state also poses a risk to Ms. Ballard and Ms. Deerinwater, as well as other NACE members who live in the general area of the plant and may come into contact with SFC plant workers.⁷ The plant also poses an accident risk to NACE members traveling past it on state and interstate highways. For instance, four years ago when a fluoride tank blew up and killed a SFC plant worker, a toxic and radioactive cloud blew across Interstate 40.

NACE's membership includes approximately 150 citizens of the Cherokee Nation of Oklahoma, which owns the riverbed of the Arkansas River in the vicinity of the SFC plant. The SFC plant discharges effluent into tributaries of the Illinois River, which flows into the Arkansas River within one-half mile of the plant. The Cherokee Nation of Oklahoma has a standing resolution to "generally support the efforts of Native Americans for a Clean

⁷ NRC Demand for Information at 9.

Environment, a Cherokee group whose purpose is to stop pollution in their community through legal means." Resolution 34-85, adopted June 8, 1985. Citizens of the Cherokee Nation of Oklahoma have a vested interest in the environmental integrity of the sediments of the Arkansas River. Any radioactive materials, heavy metals, or other substances from the SFC plant that contaminate the riverbed and affect its health or its economic value may jeopardize these interests.

II. STATEMENT OF NACE'S AREAS OF CONCERNS ABOUT THE LICENSE RENEWAL APPLICATION

A. STANDARD FOR IDENTIFICATION OF CONCERNS UNDER 10 C.F.R. § 2.1205(d)

Under 10 C.F.R. § 2.1205(d)(3), a requestor for a hearing must identify its "areas of concern about the licensing activity that is the subject matter of the proceeding." The purpose of this requirement is to:

provide the presiding officer with the minimal information needed to ensure the intervenor desires to litigate issues germane to the licensing proceeding and therefore should be allowed to take the additional step of making a full written presentation under § 2.1233.

Statement of Considerations, 54 Fed. Reg. 8,269 (March 30, 1989). See also Combustion Engineering, Inc. (Hematite Fuel Fabrication Facility), LBP-89-23, 30 NRC 140, 147 (1989) (noting Commission's view that it "would not be practicable" to require more detailed and specific statements of concern before hearing file has become available). NACE's statement of its concerns is intended to put the Board and parties on notice of the general issues that NACE wishes to address in the hearing. NACE is not able, nor is it required, to provide detailed and comprehensive documentation of

these concerns. Any examples provided in the statement of concerns are provided for illustration purposes, and should not be taken to limit the scope of NACE's general concerns.

B. STATEMENT OF CONCERNS

In considering the license renewal application for the SFC plant, the NRC is charged with the responsibility to find, inter alia, that "the issuance of the license will not be inimical to the common defense and security or to the health and safety of the public." 10 C.F.R. § 40.32(d). The history of the SFC plant, including prior accidents (such as the 1986 explosion of a fluoride tank as a result of improper safety procedures), toxic spills, and other safety violations,⁸ as well as the incidents of August 1990 which led to the modification of SFC's license and the NRC's Demand for Information, raises fundamental doubts as to whether this standard has been, will be, or can be met by SFC. Serious questions have been raised about the severity and extent of the soil and groundwater contamination that have been discovered at the plant. The contamination may extend offsite, or may migrate offsite in the future. NACE believes that the SFC license should not be renewed unless and until the illegal con-

⁸ See, e.g., NRC Inspection Report 90-01 (February 21, 1990) (citing failure to properly use respiratory protection equipment, failure to aggressively follow up on NRC identified open items from previous inspections, and weakness in control of contaminated articles); Notice of Violation (NRC Inspection Report 40-8027/90-02 (citing SFC for spill of 14,000 pounds of depleted uranium tetrafluoride and failure to make immediate report to NRC); letter from Lee R. Lacey, SFC, to Robert D. Martin, NRC, dated November 9, 1990 (discussing results of core samples showing uranium contamination in lime pile outside the security fence).

tamination is thoroughly understood and removed. Moreover, the contamination may be so severe that immediate decommissioning is in the best interest of public health and safety. NACE seeks assurance that the proper choice between continued operation and decommissioning is made; and that if decommissioning is chosen, it is carried out in a thorough and safe manner, with adequate funding to complete it.

As demonstrated by the SFC plant's long history of accidents, illegal spills of toxic and radioactive materials, unsafe and illegal discharges into surface waters and air, and failure to protect workers from contamination or to assure that they don't bring contamination into the surrounding community, the SFC plant poses a risk to public health and safety on many fronts.⁹ The causes of SFC's poor performance are as yet unclear. In fact, they are now being investigated by the NRC. NACE seeks to ensure that the causes of SFC's poor safety and environmental record are addressed and resolved in this proceeding, and that they are not perpetuated in a renewed license.

The long record of safety problems at the SFC plant and the more recent problems cited in the NRC's Demand for Information raise substantial concern that SFC management is at best incompetent, and at worst contemptuous of its safety and environ-

⁹ For instance, NRC's Weekly Information Report for the Week Ending December 7, 1990, reports that SFC declared an "Unusual Event" on November 28, 1990, when a denitrator experienced a "packing failure" and released approximately 400 pounds of UO₃ in the building. Two workers were apparently contaminated. The NRC reported that the licensee believed that the packing had not been properly installed.

mental obligations under the terms of its license and the Atomic Energy Act. For instance, in reviewing the August 1990 incident of worker contamination, the Augmented Inspection Team ("AIT") concluded that SFC had: "(1) failed to properly survey the excavation area prior to workers entering the pit; (2) failed to identify the contamination beneath the SX building in its decommissioning file; and (3) failed to properly report the contamination discovery to the NRC."¹⁰ The NRC also found that SFC had failed to report existence of a pump installed for the purpose of removing contaminated water from the ground under the process building back into the plant process¹¹; and failed to investigate the cause of uranium seepage into groundwater or to understand the significance of the event¹². SFC's response to the Demand for Information gives even more cause for alarm, as it refuses to acknowledge the seriousness or legal significance of these failures.¹³ NACE is concerned that SFC's proposed changes to its management structure may not provide adequate assurance that management is capable of or willing to provide adequate oversight of compliance with NRC safety and environmental requirements.

¹⁰ Demand for Information at 11.

¹¹ See Demand for Information at 2.

¹² See Demand for Information at 4-5.

¹³ See Response of Sequoyah Fuels Corporation to the Nuclear Regulatory Commission's Demand for Information, dated November 20, 1990, at 4, stating that SFC "does not believe that its activities either violated NRC regulations or its license or that the August events threatened worker safety, public health and safety or the environment."

Aside from assuring that the contamination of the past and present is cleaned up and that reasonable assurance is provided that illegal and unsafe practices will not be perpetuated, NACE is also concerned that the cumulative impacts of another ten years of operation of the SFC plant may pose a risk to public health or to the environment. These include cumulative impacts of permitted discharges to the air, the Illinois and Arkansas Rivers, and agricultural land. NACE also wishes to examine the environmental and safety impacts of continuing the raffinate fertilizer program.

NACE also believes the NRC Staff should gather the necessary data and make a determination, pursuant to the National Environmental Policy Act, regarding whether renewed operation of the SFC plant would have a significant impact on the environment; whether those impacts would be mitigated by decommissioning; and whether the costs of continued operation outweigh the costs of decommissioning the plant.

Finally, NACE hereby adopts and incorporates by reference all of the concerns raised by the NRC Staff in its Order for Modification of License, 55 Fed. Reg. 40,959 (October 5, 1990), and its Demand for Information, dated November 5, 1990.

III. How NACE's Interests May Be Affected by the Results of This Proceeding

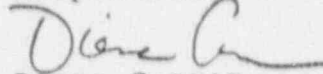
To demonstrate that its interests may be affected by the results of this proceeding, NACE "need only show that [its] stated concerns could have an impact on [its] interests." Combustion Engineering, Inc., 30 NRC at 147. NACE "need not show

that the effect on its interest is likely, only that it is plausible." Id. NACE members Ballard and Deerinwater, who live within a few miles of the plant, clearly have health and property interests that qualify them as "interested persons" under Section 189(a) of the Atomic Energy Act. Releases and seepage of toxic and radioactive materials from the SFC plant could affect them in a number of ways, including contamination of their drinking water, tainting of their food source, loss of property value, and loss of recreational opportunities. Their vulnerability to the effects of contamination that now exists on the site, as well as accidents and contamination that could be caused under a renewed license, will be directly affected by the terms of any order regarding license renewal that is issued by this Board.

CONCLUSIONS

For the foregoing reasons, NACE respectfully seeks a hearing on the renewal of SFC's source materials license, for the purpose of raising the concerns stated herein.

Respectfully submitted,



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