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RELATED CORRESPONDENCE

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

James P. Gleason, Chairman
Dr. Jerry R. Kline
G. Paul Bollwerk, III
Thomas D. Murphy

In the Matter of)
)
SEQUOYAH FUELS CORPORATION)
and)
GENERAL ATOMICS)
)
(Gore, Oklahoma Site)
Decontaminating and Funding))

Docket No. 40-8027-EA

August 24, 1994

GENERAL ATOMICS' FIRST SET OF INTERROGATORIES
TO THE NRC STAFF

Pursuant to 10 C.F.R. §§ 2.740(b) and 2.720(h)(2)(ii),
General Atomics hereby submits its First Set of Interrogatories to
be answered by the NRC Staff.¹

INSTRUCTIONS AND DEFINITIONS

1. The terms "NRC" and "Commission" refer to the
Nuclear Regulatory Commission itself, i.e., to the body of the
commissioners appointed by the President. The term "Commissioner"

¹ General Atomics submits that the answers to these
interrogatories are necessary to a proper decision in this
proceeding and are not reasonably obtainable from any other
source. Pursuant to agreement, the NRC Staff will
voluntarily answer and/or object to these interrogatories
within fourteen (14) days from service, or with such other
period as General Atomics and the NRC Staff may agree upon.

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refers to the current individual members of the Commission and to all former members who served subsequent to January 1, 1988.

2. The term "identify," when used in reference to an individual, means to state his or her full name, current or last known address, current and prior employment positions, and the dates of each. When used in reference to a document, the term "identify" means to describe the date of the document, its current or last known location or custodian, its author, all of its addresses, and all other information which is necessary to satisfy the requirements for its inclusion in a request for production of documents or a subpoena duces tecum.

3. Whenever appropriate, the words "and" and "or" shall be construed either in the conjunctive or the disjunctive, the singular form of a word shall be interpreted in the plural and vice-versa, and the "his" shall include "her" or "their," and vice-versa, so as to bring within the scope of this discovery request any information that might otherwise be construed to be outside its scope.

4. "Relating to" means in whole or in part constituting, containing, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to.

5. Each interrogatory shall be answered separately and fully, in writing and under oath or affirmation, and shall include all pertinent information known or available to the Commission, to individual commissioners, to the Staff of the NRC, and to all employees, consultants, investigators, representatives, attorneys, and other agents of the NRC.

6. All responses to this discovery request shall be in accordance with the above-referenced provisions of the NRC Rules of Practice, and all other applicable provisions. Responses shall be supplemented in accordance with 10 C.F.R. § 2.740(e).

7. The term "October 15 Order" refers to the Order of October 15, 1993 which was signed "for the Nuclear Regulatory Commission" by the Deputy Executive Director for Nuclear Materials, Safety, Safeguards, and Operations Support.

8. The terms "Licensee" and "SFC" refer to Sequoyah Fuels Corporation and all of its predecessors, successors, affiliates, subsidiaries, officers, employees, consultants, and all other persons acting on its behalf.

9. In the event that information which is responsive to these interrogatories is protected from public disclosure for any reason, the information shall be identified in the answers to the interrogatories, preserved and produced within fourteen days subsequent to the entry of a protective order by the Atomic Safety and Licensing Board.

10. In the event that an objection is made to any interrogatory on the basis of a claim of privilege or the attorney work product doctrine, or because of any other legal objective, state the specific basis upon which the objection is made.

INTERROGATORY NO. 1

On pages 2-3 of the October 15 Order there is a reference to "commitments made by GA, through its chairman, Mr. J. Neal Blue" at a public meeting with the Commission on March 17, 1992 to

allegedly "supply funding in order to guarantee that SFC will satisfy its obligations to provide financial assurance of funding for decommissioning."

(a) Identify by page and line reference to the transcript of the March 17, 1992 public meeting all statements by Mr. J. Neal Blue which you contend constitute such "commitments made by GA."

(b) Identify further any other statements of Mr. J. Neal Blue or anyone else whom you contend was speaking for GA at the March 17, 1992 public meeting, whether transcribed or not, transcribed and whether on or off the record, which you contend constitute such "commitments."

INTERROGATORY NO. 2

On pages 3, 12-13, and 17 of the October 15 Order it is alleged that "the Commission relied" on certain "financial commitments" and "financial assurance guarantees" by General Atomics in authorizing restart of the SFC Facility on April 16, 1992." Other allegations of such purported reliance appear on pages 13, 20 and 21 of the October 15 Order.

(a) State the name, title and current address of each individual Commissioner or other person constituting "the Commission" whom you contend relied upon such alleged GA financial commitments;

(b) for each such Commissioner or other person, state fully and in detail how it is contended that he or she so relied;

(c) for each such Commissioner or other person, state and describe the role he or she had in authorizing restart of the SFC Facility on April 16, 1992; and

(d) identify all orders, memoranda, minutes, correspondence or other documents which memorialize or relate to (i) the authorization of restart of the SFC Facility on April 16, 1992, and (ii) the Commission's alleged reliance on the alleged financial commitments of General Atomics in authorizing restart of the SFC Facility on April 16, 1992.

INTERROGATORY NO. 3

On page 4 of the October 15 Order there is a reference to "serious questions" which were raised "as to whether SFC would have the financial resources to accomplish site remediation and decommissioning."

(a) Identify all persons whom you contend had such "serious questions," and,

(b) for each such person so identified, state fully and in detail what his or her "serious questions" were.

INTERROGATORY NO. 4

On page 4 of the October 15 Order it is stated that the Commission held a public meeting on December 21, 1992 "for these reasons," referring to certain matters contained in the preceding sentence in the October 15 Order. Identify each and every

Commissioner or other person who made the decision to hold the public meeting on December 21, 1992 for the reasons advanced, or for any other reasons.

INTERROGATORY NO. 5

On page 12 of the October 15 Order it is alleged that after the October 3, 1991 Order suspending operations, "the Commission was concerned about funding for the required cleanup of the Facility site."

(a) Identify each Commissioner or other person at the Commission who had such a concern, and

(b) for each such Commissioner or other person state fully and in detail what his or her specific concern was.

INTERROGATORY NO. 6

On page 12 of the October 15 Order it is alleged that "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."

(a) State the date and location of the public meeting referred to,

(b) identify any and all tapes, transcripts, minutes or other documents memorializing or summarizing such public meeting, and

(c) describe each and every such "commitment" made by Mr. J. Neal Blue on behalf of General Atomics at such public meeting.

INTERROGATORY NO. 7

On page 17 of the October 15 Order it is alleged that "as a result of Mr. Blue's statement 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 the necessary decontamination and decommissioning of the Facility and site."

(a) Identify every Commissioner or other person constituting "the Commission" whom you contend determined that the Commission did not have an adequate basis to conclude that funding would in fact be available;

(b) for each such Commissioner or other person, state fully and in detail the factual basis upon which he or she made such determination and the criteria employed to determine whether the Commission had an "adequate basis" for such a conclusion;

(c) explain how such determination by "the Commission" was communicated to "the NRC Staff" as a result of which "the NRC Staff issued a Demand for Information to SFC and GA concerning the matter" on December 29, 1992, as alleged; and

(d) identify all documents by which such determination was communicated to the NRC Staff.

INTERROGATORY NO. 8

On page 19 of the October 15 Order it is alleged that "the Commission has relied" on General Atomics' alleged "representations of financial guarantees described [earlier in the October 15 Order]" and/or "GA's actions in control over the day-to-day operations and business of SFC."

(a) Identify each and every Commissioner or other person whom you contend constitutes "the Commission" who so relied;

(b) state fully and in detail what the Commission did or did not do as a result of such reliance; and

(c) identify all documents which memorialize or relate to such reliance.

INTERROGATORY NO. 9

On page 20 of the October 15 Order it is alleged that "Mr. Blue's commitments of March 17 and March 19 were relied upon by the Commission in authorizing restart," and that "the Commission reasonably took Mr. Blue at his word." There is also a reference to "the Commission's decision not to delay the SFC Facility restart to await legal documents formalizing Mr. Blue's commitments."

(a) Identify the legal documents referred to;

(b) Identify each and every Commissioner or other person whom you contend constitutes the Commission who "relied upon" such commitments, "reasonably took Mr. Blue at his word," and decided "not to delay the SFC Facility restart to await legal documents formalizing Mr. Blue's commitments"; and

(c) Identify all documents which memorialize or relate to such reliance, decision not to delay restart, and taking Mr. Blue at his word.

INTERROGATORY NO. 10

On page 21 of the October 15 Order it is alleged that "the Commission relied" on "Mr. Blue's representations of financial assurance," and on "the degree of GA's control over the business of SFC."

(a) Identify each and every Commissioner or other person whom you contend constitutes "the Commission" who so relied;

(b) State fully and in detail what the Commission did or did not do as a result of such reliance; and

(c) Identify all documents which memorialize or relate to such reliance.

INTERROGATORY NO. 11

On page 21 of the October 15, 1993 Order it is alleged that "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."

(a) When did the NRC Staff first reach the "conclusion that the degree of General Atomics' control over the business of SFC and Mr. Blue's representations of financial assurance, on

which the Commission relied, make General Atomics responsible, along with SFC, for satisfying NRC financial assurance requirements" which it subsequently found there was no basis to change?

(b) Did the NRC Staff communicate the fact that it had reached such conclusion to General Atomics or SFC?

(c) If so, when, how and to whom?

(d) Did the NRC Staff communicate the fact that it had reached such conclusion to the Commissioners?

(e) If so, when, how and to whom?

(f) Identify all documents which memorialize or relate to (i) the NRC Staff's initial conclusion, (ii) the NRC's subsequent finding that there was no basis to change its initial conclusion, and (iii) any communications of such initial conclusion and subsequent finding to General Atomics, SFC or the Commissioners.

INTERROGATORY NO. 12

Did any of the Commissioners review, contribute to or discuss the October 15 Order or earlier drafts thereof before it was filed? If so,

(a) identify each Commissioner who so reviewed, contributed to or discussed the Order, and,

(b) for each such Commissioner, state fully and in detail (i) how he or she so reviewed, contributed to or discussed the Order, and (ii) with whom such review was made, to whom such contribution was made, or with whom such discussion was had.

INTERROGATORY NO. 13

Part II of the Attachment to the Atomic Safety and Licensing Board's January 13, 1994 "MEMORANDUM (Posing Matters for Consideration at Prehearing Conference)" states as follows:

II. Theory of the Case

The terms of the October 15, 1993 order, appear to make General Atomics (GA) a "guarantor" for remediation and decommissioning funding for the Gore, Oklahoma facility. The order does not delineate the specific legal theory under which the agency has the authority to place this non-civil penalty financial liability upon GA. In considering the matter expansively without the benefit of the participants' views and without foreclosing the ability to present additional theories, several possibilities present themselves that, singly or in combination, might be a basis for the order.

1. GA is liable because it is a de facto licensee.
2. GA is liable as a "person otherwise subject to the jurisdiction of the Commission" in accordance with 10 C.F.R. § 2.202 and 10 C.F.R. Part 2, app. C, § X. See also 56 Fed. Reg. 40,664 (1991).
3. GA is liable based upon a contractual obligation or legal duty it has to Sequoyah Fuels Corporation or to the agency, which may flow from, among other things, the Commission's purported reliance upon representations made by GA.

With respect to the October 15 Order:

(a) State all facts (other than those stated on pages 14-15) which form the basis or tend to support the allegations in the Order that General Atomics has had and now has *de facto* control over the day-to-day business of the Licensee.

(b) State all applications of law to fact on the basis of which it is contended that General Atomics is liable because it is a *de facto* licensee.

(c) State all facts and applications of law to fact on the basis of which you contend that General Atomics is liable as a person otherwise subject to the jurisdiction of the Commission.

INTERROGATORY NO. 14

Does the NRC Staff contend that General Atomics has a contractual obligation to the Licensee which forms the basis of the claims asserted against General Atomics in the October 15 Order? If so, state all facts and applications of law to fact upon which you base such contention, including, but not limited to, the date on which General Atomics made such contractual obligation, the precise terms of such contractual obligation, the consideration for such contractual obligation, all documents comprising such contractual obligation, and the identification of all persons knowledgeable of such contractual obligation.

INTERROGATORY NO. 15

Does the NRC Staff contend that General Atomics has a contractual obligation to the NRC which forms the basis of the claims asserted against General Atomics in the October 15 Order? If so, state all facts and applications of law to fact upon you base such contention, including, but not limited to, the date on which General Atomics made such contractual obligation, the precise terms of such contractual obligation, the consideration

for such contractual obligation, all documents comprising such contractual obligation, and the identification of all persons knowledgeable of such contractual obligation.

INTERROGATORY NO. 16

Do you contend that General Atomics owes a legal duty (other than a contractual obligation) to the Licensee which forms the basis of the claims asserted against General Atomics in the October 15 Order? If so, state all facts and applications of law to fact from which such legal duty arises, precisely what it is that General Atomics has a legal duty to do or not to do, when such legal duty arose, and the identification of all such persons who have knowledge of such legal duty.

INTERROGATORY NO. 17

Do you contend that General Atomics owes a legal duty (other than a contractual obligation) to the NRC which forms the basis of the claims asserted against General Atomics in the October 15 Order? If so, state all facts and applications of law to fact from which such legal duty arises, precisely what it is that General Atomics has a legal duty to do or not to do, when such legal duty arose, and the identification of all such persons who have knowledge of such legal duty.

INTERROGATORY NO. 18

With respect to the April 13, 1994 NRC Staff's Answer in Opposition to General Atomics' Motion for Summary Disposition or for an Order of Dismissal:

(a) State the facts upon which the NRC Staff bases its contention (page 6) that the following statement is untrue and in dispute: "General Atomics is not now and has never been a licensee of the NRC in connection with the Sequoyah Facility;"

(b) State the facts upon which the NRC Staff bases its contention (page 7) that the following statement is untrue and in dispute: "General Atomics is not engaged in licensed activities and it does not possess licensed or other NRC regulated materials in connection with the Sequoyah Facility."

(c) State the factual basis for the assertion (page 8) that General Atomics "has engaged in conduct affecting activities over which the NRC has subject matter jurisdiction"?

(d) Identify the specific activities referred to in the allegation (page 8) that General Atomics "has engaged in activities over which the NRC has subject matter jurisdiction"?

(e) State the facts upon which the assertion is made (page 8) that General Atomics "possesses source material and/or byproduct material in connection with the SFC facility."

(f) Identify the SFC facility which it is contended that General Atomics owns or owned (see page 14 which refers to "GA's ownership of the facility") and state the inclusive dates of General Atomics' ownership of it.

(g) State the name, title and address of all "staff witnesses supporting the Staff's positions on each matter in controversy" which "the Staff fully intends to make available" as stated in Footnote 20 (page 33). For each such witness state the "matter in controversy" as to which such witness supports or otherwise has any information or knowledge concerning the Staff's position.

INTERROGATORY NO. 19

At the January 19, 1994 Prehearing Conference NRC Staff counsel stated, in pertinent part, that the "Staff's theory is more akin to ... the common law, corporations/contract, sometimes tort action involving parent-subsubsidiary relationships where a claimant attempts to pierce the corporate veil between the subsidiary and the parent to reach the parent...." (Pre-Hearing Conference, January 19, 1994, Official Transcript of Proceedings, p. 107).

(a) Do you contend that the common law of some state or states supports the relief you seek in this proceeding? If so, state what common law and identify the state or states whose common law affords the basis for your contention.

(b) Do you contend that there is some federal common law that supports the relief you seek in this proceeding? If so, state what federal common law so affords the basis for your contention.

(c) Do you contend that the law of torts supports the relief sought by you in this proceeding? If so, what branch of

the law of torts, and what tort, is your theory akin to, which would form the basis for the relief sought by you herein?

(d) Do you contend that the law of corporations supports the relief you seek in this proceeding? If so, which state's corporations law, and what principles, concepts or doctrines of corporation law do you rely upon?

INTERROGATORY NO. 20

On pages 33-34 of the April 13, 1994 NRC Staff's Answer In Opposition to General Atomics' Motion For Summary Disposition Or For An Order Of Dismissal the following paragraph appears:

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

(Footnote deleted).

(a) Without regard to what facts the Staff or anyone else may deem material concerning "reliance," does the Staff seek to impose liability on General Atomics in this proceeding upon a common law implied or quasi-contract law theory?

(b) Without regard to what issues may be deemed "key to whether the Order should be sustained," does the NRC Staff intend

to introduce evidence at the hearing of this matter in support of its allegations concerning "reliance" by "the Commission" or "the NRC Staff"?

INTERROGATORY NO. 21

State the Docket Number of and identify the parties to all proceedings in which the NRC Staff has commenced an enforcement action against the parent company of an NRC licensee, where no deliberate misconduct by the parent is alleged, and in which the NRC Staff sought (or seeks) to have the parent company held jointly and severally liable for the decommissioning and remediation costs of property or facilities owned and/or operated by the licensee.

INTERROGATORY NO. 22

With respect to the December 31, 1992 Press Conference conducted by NRC Chairman Ivan Selin:

(a) State the factual basis of his statement (Transcript, page 5) that General Atomics has "a commitment and a responsibility that's independent of ConverDyne or anything else"?

(b) State the meaning of his statement (Transcript, page 6) that: "we think we've got a very good shot at General Atomics resources based on a whole set of actions that have opened up"?

(c) What was intended by the statement (Transcript, page 10) that: "It is true we have not applied to facilities,

non-reactor facilities, the same logic that we have applied to reactor facilities in terms of decommissioning funds"?

(d) What was the intent of the statement (Transcript, page 11) that: "Do I wish that the Commission 5 years ago had done different things with McGee and General Atomics at the time the deal went through, the answer is I don't know, but maybe"?

(e) Identify any other Commissioner who was present at the Press Conference.

INTERROGATORY NO. 23

With respect to the December 21, 1992 Public Meeting of the Commission:

If it is the position of the Commission that each member of the Commission, including the Chairman, can sit as a totally impartial adjudicator of the issues raised by (1) the October 15 Order and (2) the General Atomics' Motion for Summary Disposition and/or for an Order of Dismissal, state the factual basis of this position in light of the following statement (Transcript, page 65) of the Chairman:

"In my view, the Commission should direct Sequoyah Fuels and General Atomics promptly to provide a specific proposal to assure adequate funding for timely and satisfactory decontamination and decommissioning and if such a proposal is not soon forthcoming, to initiate appropriate legal steps to compel such measures."

Respectfully submitted,

By: 

Of Counsel

Stephen M. Duncan
Mays & Valentine
P. O. Box 149
Alexandria, Virginia 22313-0149
(703)519-8000

Bradfute W. Davenport, Jr.
Mays & Valentine
P. O. Box 1122
Richmond, Virginia 23208-1122
(804)697-1200

COUNSEL FOR GENERAL ATOMICS

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD '94 AUG 29 AID 07

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SEQUOYAH FUELS CORPORATION)
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(Gore, Oklahoma Site)
Decommissioning and Funding))

OFFICE OF SECRETARY
DOCKETING & SERVICE

Docket No. 40-8027-EA

August 24, 1994

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing General Atomics' First Set of Interrogatories to the NRC Staff and General Atomics' First Request for Production of Documents to the NRC Staff was served on August 24, 1994, upon the following persons by deposit in the United States mail, first class postage prepaid and properly addressed:

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attention: Docketing & Service Branch
(Original and two copies)

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

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

Administrative Judge G. Paul Bollwerk, III
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.
Susan L. Uttal, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Mr. Lance Hughes, Director
Native Americans for a Clean Environment
P.O. Box 1671
Tahlequah, Oklahoma 74465

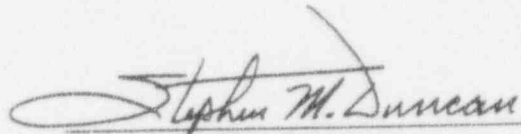
John H. Ellis, President
Sequoyah Fuels Corporation
P.O. Box 610
Gore, Oklahoma 74435

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

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

James Wilcoxon, Esq.
P.O. Box 357
Muskogee, Oklahoma 74402-0357

Dated this August 24, 1994.



Stephen M. Duncan

Mays & Valentine
110 South Union Street
Alexandria, Virginia 22314
(703) 519-8000

Counsel for General Atomics