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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE COMMISSION

'86 OCT 29 P3:26

In the Matter of )

SEQUOYAH FUELS CORPORATION )  
(Gore, Oklahoma Facility) )

)  
)  
) Docket No. 40-8027 - MLA  
) (EA 86-91)

OFFICE OF SECRETARY  
DOCKETING DIVISION  
WASHINGTON, D.C.

NRC STAFF'S ANSWER OPPOSING REQUEST  
FOR A HEARING BY NATIVE AMERICANS FOR  
A CLEAN ENVIRONMENT CLIENT COUNCIL

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October 28, 1986

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I. INTRODUCTION

On October 23, 1986, Native Americans for a Clean Environment Client Council (NACE or Petitioner) filed a Request for Hearing (Petition) on an Order Modifying License (Order) issued by the Director, Office of Inspection and Enforcement, on October 2, 1986. The Order required the licensee Sequoyah Fuels Corporation to implement certain corrective actions at its facility in Gore, Oklahoma. <sup>1/</sup> For the reasons provided below, the Staff submits that the Petitioner's request for a hearing should be denied.

II. DISCUSSION

The Petitioner makes several arguments in support of its assertion that it has been adversely affected by the Order and is therefore entitled to a

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<sup>1/</sup> As NACE admits, its request for a hearing was filed one day after the 20 days specified in the Order, Petition at 6. Given that the delay has been only one day and that the Commission still has under consideration a request for a hearing on the Order filed by Environmental Action of Tulsa et al, the Staff does not object to consideration of this untimely hearing request.

hearing. The Petitioner incorporates by reference the arguments which were made by Environmental Action of Tulsa and others in a request for a hearing on the Order submitted to the Commission on October 16, 1986. See "Request for a Formal Adjudicatory Hearing on Order Modifying License." Petition at 1-2. For the reasons set forth in the Staff's response to that request, "NRC Staff's Answer Opposing Request for a Hearing By Environmental Action of Tulsa Et Al", October 21, 1986, (Staff's Brief), the Staff submits that those arguments do not establish that NACE has been adversely affected by the Order. 2/

The Petitioner raises several additional arguments in support of its claim that it has been adversely affected by the Order. Petitioner argues that the independent oversight organization "will have principal control over the operation of the facility." Petition at 2. Petitioner further argues that the power vested in the independent oversight organization removes from Sequoyah Fuels Corporation control of its own assets, thus removing a vital part of the motivation for safety at the plant. Id. at 3. There is simply no merit to these arguments. Control over operation of the facility and of the licensee's assets has not been transferred to the independent oversight

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2/ In raising the same argument as that raised by Environmental Action of Tulsa that the independent oversight organization required by the Order has become the operator of the facility, NACE argues that this has occurred without any proof of, or hearings on, the structure of the organization to assure that it meets the requirements of 10 C.F.R. Part 50, Appendix B. Petition at 2. The reference to this regulation is entirely misplaced, as Sequoyah Fuels Corporation is neither a production nor a utilization facility.

organization. As fully explained in the Staff's Brief, the function performed by this oversight organization is an inspection function which has been imposed in addition to the efforts which must be undertaken by the licensee in order to enhance safety at the facility. See Staff's Brief at 5.

The Petitioner also argues that it is "possible that the Order exacerbates the problems" that caused the January 4, 1986 accident at the Sequoyah Fuels facility. Petition at 3. This argument is nothing more than pure speculation on the Petitioner's part, and the Petitioner has provided no basis for this claim. As explained in the Staff's Brief, the sole purpose and result of the Order was to make the facility safer than the facility would be if the Order had not been issued. The Order removes flexibility of the licensee, imposes additional safeguards, provides for additional procedures, and provides for additional audits and monitoring. As such, the Order cannot be read as making the plant less safe. Staff's Brief at 3, 6. Petitioner's speculation, which in fact is erroneous, cannot establish that it is adversely affected by the Order and, consequently, does not provide a basis for a hearing.

The Petitioner argues that the Order has been used as a substantial justification for denying the relief requested by NACE and others pursuant to 10 C.F.R. §2.206. Petition at 3-4. The Petitioner claims that were the Order revoked, the relief sought in the Petitioner's section 2.206 request would likely have been granted or the record justifying the denial would have included all materials underlying issuance of the Order. Id. This argument is an inappropriate attempt by the Petitioner to link the Order and the denial of its section 2.206 request. Clearly, the sufficiency of the basis for a section 2.206 denial must stand or fall on its own merits, as must the Order.

As explained in the Staff's Brief, the Order has confined the scope of the proceeding to whether the Order should be sustained (i.e., whether there is a necessity for the conditions imposed by the Order). Staff's Brief at 7. The Petitioner may not impermissibly expand the scope of the proceeding as it here attempts to do. Bellotti v. NRC, 725 F.2d 1380 (D. C. Cir. 1983).

Finally, the Petitioner argues that the existence of the Order provides the substantial basis for the Commission's decision to allow restart. But for this Order, in the Petitioner's view, restart would not be permitted. Petition at 4. It is clear from the Petition that Petitioner's real quarrel is with the restart of the Sequoyah Fuels facility, not with the Order, which makes the facility more safe. As stated above, the issue in this proceeding is whether this Order should be sustained, not whether restart should be authorized. The Petitioner here seeks to expand the scope of this proceeding to litigate the issue of whether restart should be authorized, and this it may not do. Bellotti, supra, 725 F.2d at 1380.

In sum, the Petitioner has failed to show that it will be adversely affected by the proceeding which the Order properly defined. Petitioner, therefore, has no standing to contest the Order. 3/

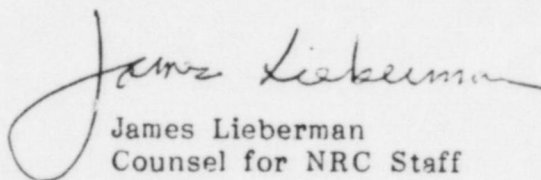
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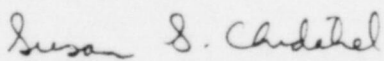
3/ The Petitioner requests that, should the Commission deny its request for a hearing, it be provided a further opportunity for developing specific contentions which will illustrate why the Order should not be sustained, following full disclosure in the Public Document Room in Washington, D. C., and Oklahoma of all information generated, examined and/or relied upon in issuing the Order. Petition at 5-6. As the Petitioner has no standing, there is no basis for granting it a further opportunity to challenge the Order. Regarding the Petitioner's request for additional information, the Staff notes that the various inspection reports and the Safety Evaluation Report associated with this matter are publicly available.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that it has been adversely affected by the Director's Order Modifying License. The Petitioner's request for a formal adjudicatory hearing on the Order Modifying License, therefore, should be denied.

Respectfully submitted,

  
James Lieberman  
Counsel for NRC Staff

  
Susan S. Chidake  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 28th day of October, 1986.

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S ANSWER OPPOSING REQUEST FOR A HEARING BY NATIVE AMERICANS FOR A CLEAN ENVIRONMENT CLIENT COUNCIL" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated, by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 28th day of October, 1986.

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Dated at Bethesda, Maryland  
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