

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS

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Nils J. Diaz, Chairman
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

In the Matter of)
)
SEQUOYAH FUELS CORPORATION) Docket No. 40-8027-MLA-5
)
(Gore, Oklahoma Site))
)

CLI-04-01

MEMORANDUM AND ORDER

The State of Oklahoma appeals the denial of its request for a hearing in this materials license amendment proceeding. We affirm.

I. BACKGROUND

Sequoah Fuels Corporation (“SFC”) produced uranium hexafluoride from yellowcake at its facility in Gore, Oklahoma, from 1970 until 1993 and, for a portion of this time, converted depleted uranium hexafluoride to uranium tetrafluoride. The operations produced radioactive waste. Since it ceased operations at the Gore site, SFC has been exploring decommissioning possibilities. To facilitate decommissioning of the site, the NRC Staff recommended to the Commission that SFC’s front-end wastes, generated during the yellowcake solvent extraction process, be classified as byproduct material under section 11e(2) of the Atomic Energy Act.¹

¹“The term ‘byproduct material’ means . . . (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.” 42 U.S.C. § 2014(e)(2). The Staff made its recommendation in SECY-02-0095, “Applicability of Section 11e.(2) of the Atomic Energy Act to Material at the Sequoyah Fuels Corporation Uranium Conversion Facility” (June 4, 2002).

The Commission approved the NRC Staff's reclassification recommendation.² Thereafter, SFC requested a materials license amendment to possess 11e(2) byproduct material. The State of Oklahoma, among others, submitted a hearing request after notice³ of SFC's license amendment request.

The Presiding Officer initially sought guidance from the Commission. He reasoned that the viability of Oklahoma's claim rested on whether the Commission's SRM, an internal decision, precluded Oklahoma from asserting that the SFC waste does not qualify as section 11e(2) byproduct material.⁴ Because Oklahoma's position challenged the Commission's SRM, the Presiding Officer asked us to decide whether Oklahoma could raise the 11e(2) issue in this adjudication.⁵ We agreed to examine the classification issue afresh in an adjudicatory setting and requested briefs from the parties.⁶ We recently decided that SFC's front-end waste may be considered byproduct material under section 11e(2) of the AEA and remanded this matter to the Presiding Officer for action consistent with our decision.⁷

On remand, the Presiding Officer denied Oklahoma's hearing request and terminated the proceeding.⁸ Oklahoma appeals that decision.

²See Staff Requirements Memorandum responding to SECY-02-0095 (July 25, 2002) ("SRM").

³See 67 Fed. Reg. 69,048 (Nov. 14, 2002).

⁴See LBP-03-7, 57 NRC 287, 288 (2003).

⁵See *id.* at 291-92.

⁶See CLI-03-06, 57 NRC 547 (2003).

⁷See CLI-03-15, 58 NRC __ (Nov. 13, 2003).

⁸See LBP-03-25, 58 NRC __ (Nov. 21, 2003).

II. DISCUSSION

The license amendment application is to “authorize SFC to possess 11e(2) byproduct material in any physical or chemical form generated by the past operations authorized under [SFC’s source materials license] SUB-1010, and to continue to conduct activities with such materials to the same extent as currently authorized by the license for source material.”⁹ Because of the “limited scope of the proposed license amendment,” the Presiding Officer found it apparent that Oklahoma could not make a showing of an actual or threatened injury as required to demonstrate standing in this proceeding.¹⁰ The Presiding Officer noted that the “license amendment application at bar . . . does little more than to permit the possession of the Gore waste under a classification that the Commission has decided is legally acceptable.”¹¹

Oklahoma’s viewpoint, and the gravamen of its appeal, is that the license amendment application at issue is in reality a request for a new specific license under 10 C.F.R. § 40.31. Effectively, says Oklahoma, the license amendment grants SFC a license for uranium recovery

⁹Letter from John H. Ellis to Larry W. Camper, Enclosure 1, “Application for Possession of Byproduct Material” at 1 (Sept. 30, 2002).

¹⁰See LBP-03-25, 58 NRC at __, slip op. at 2. Standing in an NRC adjudicatory proceeding requires that the hearing requestor allege genuine harm:

(1) an actual or threatened, concrete and particularized injury, that (2) is fairly traceable to the challenged action, (3) falls among the general interests protected by the Atomic Energy Act . . . and (4) is likely to be redressed by a favorable decision.

International Uranium (USA) Corp. (White Mesa Uranium Mill), CLI-01-18, 54 NRC 27, 30 (2001), *citing Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 13 (2001). See also 10 C.F.R. § 2.1205(h).

¹¹LBP-03-25, 58 NRC at __, slip op. at 3. The Presiding Officer noted that the license amendment application “also seeks the deletion, revision or addition of several license conditions said to conform the license to current NRC practices with respect to section 11e.(2) byproduct material licenses. It does not appear, however, that any of those changes would authorize any new activities. Nor does it appear that any of them might possibly pose a concrete threat of injury to [a hearing requestor].” *Id.* at __, slip op. at 2.

without requiring SFC to demonstrate compliance with regulations applicable to issuance of such licenses; *e.g.*, preparation of a Safety Evaluation Report and an Environmental Assessment. Oklahoma argues that it has standing to raise issues related to SFC's and the Staff's compliance with the governing statutes and regulations.

The NRC Staff asserts that Oklahoma lacks standing in this proceeding, for there is no actual or imminent injury-in-fact associated with the amendment. The amendment, the Staff says, will result in no increase in radiological exposure or risk. According to the Staff, future licensing actions will address substantive issues, such as the stability and sufficiency of the prospective onsite disposal cell. Indeed, after the Staff approved the license amendment at issue in this proceeding, SFC applied for three other decommissioning-related license amendments -- seeking approval of its reclamation plan, its ground water corrective action plan, and its ground water monitoring plan.¹²

SFC acknowledges that its source materials license has expired but points out that 10 C.F.R. § 40.42(c) gives SFC continuing authority over the materials so long as it limits its actions to those related to decommissioning. In the current license amendment request, seeking the 11e(2) classification, SFC maintains that it does not seek authorization to conduct any activities not already authorized.

The Commission agrees with the Staff and the Presiding Officer that this license amendment threatens no injury to Oklahoma, or, for that matter, to any other person or entity. It simply authorizes *no new activity*. The appropriate vehicle for SFC's reclassification request is 10 C.F.R. § 40.44, which governs amendment of materials licenses, not § 40.31, as Oklahoma insists. SFC has not asked for a license to engage in a uranium recovery enterprise;

¹²See Docket Numbers 40-8027-MLA-6, 40-8027-MLA-7, and 40-8027-MLA-8, respectively. Oklahoma filed hearing requests in all three of these license amendment proceedings.

rather, it has taken a step toward decommissioning after earlier cessation of nuclear fuel cycle activities at its Oklahoma site.

The Commission also finds no merit in Oklahoma's other points on appeal. Accordingly, we affirm the Presiding Officer's decision to terminate this proceeding.

III. CONCLUSION

We *affirm* the Presiding Officer's order denying Oklahoma's hearing request. We specifically approve both the Presiding Officer's reasoning and his result.

IT IS SO ORDERED.

For the Commission

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 8th day of January, 2004.