

February 14, 2006

Marcia E. Moncrieffe (6RC-EW)  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202

Dear Ms. Moncrieffe:

I understand that you have had several discussions with Marisa Higgins of my staff regarding the Sequoyah Fuels Corporation's (Sequoyah) site in Gore, Oklahoma, for which the Environmental Protection Agency (EPA) currently has an active administrative order on consent (AOC). The purpose of this letter is to provide you with some background information regarding the Nuclear Regulatory Commission's (NRC) role in regulating radioactive material at the Sequoyah site in the past and the regulatory framework for decommissioning the site.

Sequoyah operated a uranium processing facility between 1970 and 1993, in Gore, Oklahoma, which the NRC licensed under NRC Source Materials License No. SUB-1010. The facility produced uranium hexafluoride and converted depleted uranium hexafluoride to uranium tetrafluoride. In 1993, Sequoyah notified the NRC of its intent to shut down and decommission the facility. In 2001, Sequoyah requested that the NRC determine if waste material from the solvent extraction process could be classified as 11e.(2) byproduct material, as defined in the Atomic Energy Act of 1954, as amended (AEA), which would permit the site to be decommissioned under 10 CFR Part 40, Appendix A, rather than 10 CFR Part 20, Subpart E.

The Commission concluded that most of the waste at the Sequoyah site could properly be classified as 11e.(2) byproduct material on July 25, 2002. See SRM-SECY-02-0095, "Applicability of Section 11e.(2) of the Atomic Energy Act to Material at the Sequoyah Fuels Corporation Uranium Conversion Facility." A hearing before the Atomic Safety Licensing Board was held on the amendment to Sequoyah's NRC license which allowed possession of 11e.(2) byproduct material. See *Sequoyah Fuels Corp.*, CLI-03-06, 57 NRC 547 (2003). The Commission affirmed this classification in two appellate decisions. See *Sequoyah Fuels Corporation*, CLI-03-15, 58 NRC 349 (2003); CLI-04-01, 59 NRC 1 (2004). Sequoyah's NRC license, therefore, enables possession of 11e.(2) material and decommissioning under 10 CFR Part 40, Appendix A.

Decommissioning under 10 CFR Part 40, Appendix A of the NRC's regulations follows a process developed pursuant to the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, which amended the AEA. Pursuant to UMTRCA, the EPA was instructed to promulgate standards of general applicability for the protection of health, safety, and the environment from radiological and nonradiological hazards associated with residual radioactive materials from uranium milling operations. The regulations for nonradiological hazards were to be consistent, to the maximum extent practicable, with the Solid Waste Disposal Act (SWDA). The NRC was instructed to manage any 11e.(2) byproduct material in such a manner as to conform with the standards promulgated by the EPA. See AEA § 84.a(2). EPA's standards, which reference

Resource Conservation and Recovery Act (RCRA) regulations, were promulgated in 1983. The NRC adopted standards conforming to the EPA's standards in 10 C.F.R. Part 40, Appendix A. The NRC's decommissioning standards under 10 CFR Part 40, Appendix A therefore conform to EPA regulations.

The NRC is currently regulating the decommissioning activities at Sequoyah's Gore, Oklahoma site to ensure compliance with Part 40, Appendix A regulations. After requesting additional information, and with several conditions, the NRC staff approved Sequoyah's groundwater monitoring plan in August 2005. See ADAMS Accession No. ML0522801390. The NRC staff is currently reviewing additional information submitted by Sequoyah regarding their proposed reclamation plan, originally submitted in January 2003. In September 2005, the NRC staff issued a draft safety evaluation report for that plan. See ADAMS Accession No. ML052550291. Sequoyah also submitted a ground water corrective action plan to the NRC in 2003, and has supplemented the plan with additional information as requested by the NRC staff. See e.g., ADAMS Accession Nos. ML031710029, ML0507600880, ML0535601580. The NRC staff is currently reviewing this information and will develop and issue a technical evaluation report on the plan. The NRC staff has kept the EPA involved in its review process by sending copies of all documents, inviting EPA to participate in site visits (EPA participated in an NRC site visit and public meeting on March 16, 2004), and through telephone discussions.

Because the NRC is regulating the Sequoyah site to ensure compliance with 10 CFR Part 40, Appendix A, and because Sequoyah's financial resources are limited,<sup>1</sup> the NRC does not oppose the request made from Sequoyah's counsel, submitted to the EPA on December 28, 2004, to close the EPA's AOC for the Sequoyah site. See ADAMS Accession No. ML050350292. The NRC is certainly amenable to providing the EPA with any additional information it needs, to assure the EPA that the decommissioning process will be carried out in accordance with 10 CFR Part 40, Appendix A. The NRC believes that the eradication of dual regulation at the Sequoyah site would be the most efficient use of government resources and would also permit Sequoyah's limited decommissioning funds to be spent in an efficient manner.

If you have any questions, please contact Marisa Higgins, at 301-415-4060.

Sincerely,

Stuart A. Treby /ra/  
Assistant General Counsel for  
Rulemaking and Fuel Cycle

cc:  
William Andrews

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<sup>1</sup> See *Sequoyah Fuels Corp. and General Atomics*, CLI-97-13, 46 NRC 195 (1997) (affirming settlement agreements between the NRC and Sequoyah and the NRC and General Atomics (LBP-95-18, 42 NRC 150 (1995) and LBP-96-24, 44 NRC 249 (1996)) which limited the amount of decommissioning funds available for the Gore, Oklahoma site).

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