DOCKET NUMBER
BYPRODUCTS 40-8027-EA

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

November 18, 1993

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USNRC

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OFFICE OF SECRETARY
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OFFICE OF THE
SECRETARY

MEMORANDUM FOR: B. Paul Cotter, Jr.
Chief Administrative Judge
Atomic Safety and Licensing Board Panel

FROM: Samuel J. Chilk, Secretary

SUBJECT: REQUESTS FOR HEARING SUBMITTED BY GENERAL ATOMICS AND THE SEQUOYAH FUELS CORPORATION

Attached are requests for hearing dated November 2, 1993 and submitted by General Atomics and Sequoyah Fuels Corporation (Docket No. 40-8027) in response to an Order of the NRC Staff addressing responsibility for plant decommissioning funding. The Order was published in the Federal Register at 58 Fed. Reg. 55087 (October 25, 1993). (Copy Attached)

The request for hearing is being referred to you for appropriate action in accordance with 10 C.F.R. Sec. 2.772(j).

Attachments: as stated

cc w/o attachments:
Commission Legal Assistants
OGC
CAA
EDO
NMSS
Maurice Axelrad, Esquire

SECY-037

D503

14478

NEWMAN & HOLTZINGER, P.C.
ATTORNEYS AT LAW
1615 L STREET, N.W.
WASHINGTON, D.C. 20036-5610
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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

November 3, 1993

**BY FEDERAL EXPRESS**

Secretary of the Commission
U.S. Nuclear Regulatory Commission
ATTN: Chief, Docketing and Services Section
(Mail Stop 16 G15, SECY)
One White Flint North
11555 Rockville Pike
Rockville, MD 20852

RE: NRC Order to Sequoyah Fuels Corporation dated October 15, 1993 (Docket No. 40-8027, License No. SUB-1010)

Dear Sir:

Enclosed for filing in connection with the above-captioned order is an original and duplicate original of "Sequoyah Fuels Corporation's Answer and Request for Hearing." Please date-stamp the duplicate original and return it to me in the enclosed self-addressed envelope.

Very truly yours,

Maurice Axelrad

Maurice Axelrad

cc: Assistant General Counsel for
Hearings and Enforcement
Director, Office of Nuclear
Material Safety and Safeguards
Regional Administrator, NRC Region IV

November 2, 1992

UNITED STATES
NUCLEAR REGULATORY COMMISSION



| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | Docket No. 40-8027 |
| SEQUOYAH FUELS CORPORATION | ) | License No. SUB-1010 |
| | ) | |
| (NRC Order dated October 15, 1993) | ) | |

**SEQUOYAH FUELS CORPORATION'S**
**ANSWER AND REQUEST FOR HEARING**

Sequoyah Fuels Corporation ("SFC") hereby answers an order issued by the Nuclear Regulatory Commission ("NRC") to SFC on October 15, 1993 (hereafter "Order"), requests that the Order be withdrawn, or in the alternative, requests a hearing on that Order.

## I. BACKGROUND

On December 29, 1992, the NRC issued a "Demand for Information" ("DFI"), which was served upon both SFC and General Atomics ("GA"), a third tier parent company of SFC. SFC is the sole licensee named in NRC License No. SUB-1010 (Docket No. 40-8027) (hereafter, "SFC License") and the owner of the NRC-licensed facilities at Gore, Oklahoma (hereafter, "SFC Facility"). On February 16, 1993, SFC and GA responded separately to the DFI. SFC simultaneously filed a Notification Pursuant to 10 CFR § 40.42(b) that it intended to terminate activities involving materials authorized under License No.

SUB-1010 effective July 31, 1993 or earlier and submitted a Preliminary Plan for Completion of Decommissioning (PPCD). On July 7, 1993 SFC informed the NRC that activities at the Sequoyah facilities (other than activities related to decommissioning) had been completed on July 6, 1993.

In its letter transmitting the PPCD on February 16, 1993, SFC offered to provide proprietary commercial and financial information to the NRC on a confidential basis. SFC had subsequent discussions with the NRC Staff regarding this information, and on April 7, 1993, SFC provided such information voluntarily to the NRC. On July 2, 1993, NRC issued a supplemental Demand for Information requesting additional documents and information. SFC provided this information to the NRC on July 21, 1993.

NRC has now issued an Order to both GA and SFC regarding "Site Decontamination and Decommissioning Funding" for the SFC Facility. SFC and GA are responding to the Order separately. Much of the Order, in particular Section V of the Order, is directed to the question of whether GA is responsible for satisfying NRC financial assurance requirements for the decommissioning of the SFC Facility. Allegations, charges or other statements in the Order relating to that question are being answered by GA. Therefore, this Answer will focus on other matters at issue in the Order regarding SFC.

## II. ADMISSIONS AND DENIALS

**General Admissions and Denials**

1. Except for the specific admissions stated herein, SFC denies each and every other allegation, charge, and implication of the Order without regard to whether such allegation, charge or implication is specifically denied herein.

2. The fact that SFC does not specifically admit or deny statements in the Order does not constitute any admission of any statements which mention or affect SFC. Rather, SFC has reviewed the GA Answer and supports, adopts and relies upon the GA Answer with regard to those other legal matters at issue in the Order which may be related to or have any legal consequence for SFC.

**Section I:**

3. SFC admits that it is the holder of Source Material License No. SUB-1010 issued by the NRC pursuant to 10 CFR Part 40.

4. SFC denies that it is a wholly-owned subsidiary of GA to the extent that statement implies direct ownership. SFC admits that it is a wholly-owned subsidiary of Sequoyah Fuels International Corporation ("SFIC"), which is a wholly-owned subsidiary of Sequoyah Holding Corporation ("SHC"), and that SHC is a wholly-owned subsidiary of GA.

5. SFC admits that the SFC License formerly authorized the possession and use of source material in the conversion of uranium oxide ($U_3O_8$) or "yellowcake" to uranium hexafluoride ($UF_6$) and conversion of depleted $UF_6$ to depleted uranium tetrafluoride

($DUF_4$); that the SFC License was issued on February 20, 1970 by the Atomic Energy Commission (now the NRC); that on March 25, 1987, the NRC granted Amendment 8, which authorized SFC to convert $DUF_6$ to $DUF_4$; that the SFC License was due to expire on September 30, 1990; that on August 29, 1990, SFC submitted an application to the NRC to renew the SFC License, which remained in effect pursuant to the provisions of 10 CFR § 40.43; and that the application remains pending before a Presiding Officer, who is considering SFC's motion to withdraw the application.

**Section II:**

6. SFC denies that it "operates" the SFC Facility. SFC admits that it owns the SFC Facility and is in the process of decommissioning the SFC Facility and remediating site contamination.

7. SFC admits that the Commission's regulations in 10 CFR § 40.36 require licensees to have in place certain financial assurance for decommissioning under certain specified circumstances. SFC denies any implication that it has failed to comply with any applicable provision of 10 CFR § 40.36. SFC denies that 10 CFR § 40.36 requires applicants to "have in place a funding assurance mechanism." (Order at 2).

8. SFC admits that at the time of termination of all activities under a license, if a licensee is required to submit a decommissioning plan, 10 CFR § 40.42(c)(2)(iii)(D) provides that the plan will include a detailed cost estimate for decommissioning and a plan for assuring the availability of

adequate funds for the completion of decommissioning. SFC denies any implication that SFC has not complied with any applicable provision of 10 CFR § 40.42.

9. SFC admits that it included a decommissioning funding plan ("1990 DFP") intended to satisfy the requirements of 10 CFR § 40.36 when it submitted its August 29, 1990 application to renew the SFC License.

10. SFC admits that in 1990 contamination was discovered in soils and water near the Main Process Building and Solvent Extraction Building and that the Commission issued an order on October 3, 1991. SFC denies any implication that the Commission's order dated October 3, 1991 resulted from the discovery of contamination at the SFC Facility or was intended to remedy the contamination. Rather, SFC notes that the October 3, 1991 Order resulted from NRC concerns related to management and programmatic issues.

11. SFC admits that at a Commission meeting held on March 17, 1992, SFC stated its expectation that it would fund the remediation of contamination at the SFC Facility through cash flow from operations at the SFC Facility.

12. SFC admits that by letter dated June 24, 1992, it transmitted a draft agreement to the Commission which indicated that the draft agreement would be executed upon approval of the boards of directors of SFC and GA. SFC notes that the SFC Board of Directors never voted to approve the draft agreement. SFC admits that it has never executed the draft agreement with GA.

13. SFC admits that by a letter of November 23, 1992, it informed the Commission of its intention to clean out the $UF_6$ facility and put it in standby mode and to restart the $DUF_4$ facility in order to fulfill an existing contract. SFC also admits that it explained that the unexecuted draft agreement between SFC and GA was no longer applicable because it only applied to a situation in which the SFC Facility would continue full-scale operations under a renewed license. SFC denies that the November 23, 1992 letter informed the Commission that it intended to cease permanently all conversion operations by the summer of 1993. However, SFC states that it so informed the Commission on February 16, 1993.

14. SFC admits that the Commission held a public meeting on December 21, 1992, with management personnel from SFC and GA who provided information regarding plans for the SFC Facility and plans for the decontamination and decommissioning ("D&D") of the SFC Facility and site, including the issue of financial assurance for decommissioning funding.

15. SFC admits that an affiliate of GA, namely, General Atomics Energy Services, Inc. ("GAES") (a wholly-owned subsidiary of GA's parent company, General Atomics Technologies Corporation ("GATC")) entered into a joint venture ("ConverDyn") with Allied-Signal Energy Services, Inc. ("ASES"), a wholly-owned subsidiary of Allied-Signal, Inc. ("ASI"). ConverDyn is now owned by GAES, ASES, and General Atomics Energy Services Limited Partnership. SFC denies that ConverDyn was formed to satisfy

outstanding business commitments of SFC. SFC admits that GA assisted SFC in obtaining favorable contractual arrangements with ConverDyn, which are helping SFC satisfy its business commitments and D&D obligations.

16. SFC admits that the 1990 DFP does not currently satisfy 10 CFR § 40.36 and 10 CFR § 40.42, but denies the implication that it was intended to do so. SFC admits that its September 30, 1992 revision to its license renewal application contains the language quoted in the Order at page 5 and that SFC did not submit a revised DFP. SFC denies that it had any obligation to provide a revised and updated DFP in light of its announcement of its intention to terminate its licensed activities (other than activities related to decommissioning) and to withdraw its license renewal application.

17. SFC admits that the mechanisms for assurance of funding for decommissioning contained in 10 CFR § 40.36 are important for assuring fulfillment of health and safety requirements, to the extent that they are applicable to a given licensee. However, SFC denies that it ever had any obligation to provide financial assurance for decommissioning pursuant to 10 CFR § 40.36 (other than the applicable provisions of 10 CFR § 40.36(c)(2)), except as a condition of license renewal. SFC also denies that the provisions of 10 CFR § 40.36 are applicable to a licensee like SFC, which has filed the notice required by 10 CFR § 40.42(b) and thereby has become subject instead to the requirements of 10 CFR § 40.42(c)(2)(iii)(D).

18. SFC admits that the NRC Staff issued a Demand for Information on December 29, 1992 to SFC and GA ("DFI"), and that it contained the language quoted in the Order at page 6. However, SFC denies that NRC's stated reasons provided justification for issuance of the DFI. SFC admits that it has an obligation to provide funding for the ultimate decommissioning of the SFC Facility and to submit information requested by the NRC.

**Section III:**

19. SFC admits that GA and SFC responded separately to the DFI on February 16, 1993, and that SFC also simultaneously filed a Notification Pursuant to 10 CFR § 40.42(b) that it intended to terminate activities involving materials authorized under the SFC License (other than activities related to decommissioning) effective July 31, 1993 or earlier. SFC also admits that SFC's notification included a Preliminary Plan for Completion of Decommissioning ("PPCD"), which contained a plan and schedule for D&D of the SFC Facility and a preliminary cost estimate of $21.2 million (not $21.1) for the direct costs of completing the activities relating to decommissioning, including a contingency of 10%.

20. SFC admits that it provided the NRC with initial estimates of expenditures and revenues, including GAES's initial estimates of revenues from the ConverDyn agreements, which provided reasonable assurance that adequate funds would be available for decommissioning; that it offered to provide further information concerning the bases for the estimates of revenues

from the ConverDyn agreements in a confidential proprietary submittal; and that it provided further information to the NRC Staff on April 7, 1993 and July 21, 1993.

21. SFC denies any implication that it failed in any way to comply with the requirements of 10 CFR § 40.42(c)(2)(iii)(D) to provide a plan for assuring the availability of adequate funds for completion of decommissioning, and SFC notes that if its plan did not satisfy the requirements of 10 CFR § 40.42, SFC could and would request an exemption under 10 CFR § 40.14(a).

22. SFC admits that its submittal did not satisfy 10 CFR § 40.36 requirements (other than the applicable provisions of 10 CFR § 40.36(c)(2)), but SFC denies that it was legally required to provide financial assurance for decommissioning in a manner described in 10 CFR § 40.36. SFC denies that 10 CFR § 40.36(e) has any applicability to a plan for assuring the availability of adequate funds for completion of decommissioning filed upon notification of termination of activities under 10 CFR § 40.42. SFC further denies that Section IV.B of the DFI could or did impose any legal requirement upon SFC that it provide a plan for financial assurance in compliance with 10 CFR § 40.36(e). SFC notes that if it were required to satisfy 10 CFR § 40.36, it could and would request an exemption under 10 CFR § 40.14(a).

**Section IV:**

23. SFC admits that it offered to provide, on a confidential basis, further information relevant to its plan for assuring the availability of adequate funds for completion of

decommissioning; that SFC provided further information to the NRC Staff on April 7, 1993; that the NRC Staff requested further information in a July 2, 1993 Supplemental DFI; and that SFC provided answers to questions and additional documents in a response dated July 21, 1993.

24. SFC admits that it has entered into contractual arrangements with ConverDyn under which ConverDyn is providing the services necessary for SFC to meet its contractual obligations to supply $UF_6$ conversion services and SFC is given rights to certain payments from ConverDyn, defined by a system of payment priorities which are calculated pursuant to certain guidelines established by the partnership documents.

25. SFC admits that GAES's initial projections indicate that SFC will receive approximately $72 million in fees from the ConverDyn arrangements through the year 2003, and SFC's initial projections indicate SFC will receive approximately $17 million from other sources; that SFC's initial estimates indicate that it will incur direct costs for decommissioning activities of roughly $21.2 million; and that SFC's initial estimates indicate that it will incur other costs of approximately $65 million through the year 2003.

26. SFC admits that its arrangements with ConverDyn are bona fide business arrangements; that estimates of SFC's income from its arrangements with ConverDyn are not certain because they are based upon assumptions; and that the arrangements are expected to be capable of producing a substantial portion of the

funds that SFC estimates will be needed for the SFC Facility decommissioning.

27. SFC denies that there are a number of important shortcomings in the proposed arrangement; denies that the GAES estimates of SFC revenues from ConverDyn are "based upon some speculative assumptions"; denies that GAES's initial estimates of the projected revenues are "based on inherently speculative assumptions about anticipated market conditions"; denies that there is significant uncertainty that the projected revenues will in fact materialize; denies that the assumptions regarding a decline in ConverDyn's fixed costs after 1994 are an "unsubstantiated assertion"; and denies that GAES's estimates of revenue projected from ConverDyn are in fact based upon a steady decline in ConverDyn's fixed costs. SFC admits that GAES's revenue projections assume a decline in fixed costs each year until 1997 and notes that these declines are based upon anticipated productivity improvements. SFC admits that GAES's revenue projections assume that ASI's Metropolis facility will operate at a 100% "effective" capacity utilization rate (which allows for maintenance and other down time), but these projections do not assume that ASI's Metropolis facility will operate at a 100% "name-plate" capacity utilization rate.

28. SFC admits that there is uncertainty concerning SFC's proposed decommissioning costs; that a definitive decommissioning plan has not been submitted; that SFC's cost estimates are based on a range of acceptable decommissioning alternatives; and that

the NRC may require more costly decommissioning alternatives. SFC notes that NRC may also permit less costly alternatives, and in any event, SFC denies the implication that the $89 million in expected revenues are unlikely to be sufficient.

29. SFC denies the allegation that its funding plan does not provide the level of assurance required by NRC regulations. SFC also denies that the ConverDyn arrangements must be supplemented by funding assurances from GA in order to satisfy the Commission's requirements.

30. SFC denies any implication that its funding plan does not constitute a satisfactory plan for assuring the availability of adequate funds for completion of decommissioning. SFC denies that the funding plan based upon the ConverDyn arrangements fails to satisfy the requirements of 10 CFR § 40.42, and SFC denies that any "supplemental conditions" are necessary to satisfy the applicable NRC financial assurance requirements.

31. SFC denies any implication that, upon termination of its activities, it was/is required to provide financial assurance for decommissioning in a manner described in 10 CFR § 40.36. SFC denies that 10 CFR § 40.36(e) has any applicability to the SFC Facility following SFC's notification of termination of activities under 10 CFR § 40.42.

32. SFC denies that the ConverDyn arrangements are SFC's only source of income and denies the Order's assertion that "SFC does not appear to be able to satisfy the Commission's financial assurance standards."

**Section V:**

33. SFC denies that GA now has or ever had de facto control over the day-to-day business of SFC; denies that the facts listed in the Order, individually or collectively, are indicative of GA control over the day-to-day business of SFC; and notes that there are numerous indicia of SFC control over its own activities which clearly demonstrate the lack of GA control over the day-to-day business of SFC.

34. SFC denies that the Commission relied on GA financial commitments in authorizing restart of the SFC Facility on April 16, 1992.

35. SFC admits that it transmitted a draft agreement to the Commission in a June 24, 1992 letter which indicated that the draft agreement would be executed upon approval of the boards of directors of SFC and GA. SFC admits that SFC and GA have never executed the draft agreement and notes that the SFC Board of Directors never voted to approve the draft agreement.

36. SFC denies the allegation that "GA has directed SFC regarding satisfying requirements for site remediation and decommissioning."

37. SFC denies that GA has structured the business activities of SFC by entering into a joint venture with Allied Signal Corporation (sic). SFC admits that GA assisted SFC in obtaining favorable contractual arrangements with ConverDyn, which are helping SFC satisfy its business commitments and D&D obligations.

38. SFC admits that on November 23, 1992, it informed the Commission that it intended to continue with only short term limited operations at the SFC Facility and that an unexecuted draft agreement with GA was "no longer applicable," because it only had effect in the context of the previously contemplated ten year license renewal of the SFC License. SFC denies that the draft agreement would have constituted a decommissioning "funding guarantee."

39. SFC admits that following SFC's announcement of November 23, 1992 the NRC had questions regarding whether SFC would have the financial resources for D&D, and SFC admits that the Commission held a public meeting on December 21, 1992 in order to obtain further information from GA and SFC management.

40. SFC denies that the ConverDyn arrangements are insufficient to satisfy NRC requirements. SFC denies the allegation that GA controls the day-to-day operations and business of SFC.

**Section VI:**

41. SFC admits that it entered into a consent order with the Environmental Protection Agency. SFC otherwise denies the allegations, charges, and implications of the Order which are restated in Section VI. SFC further denies that there is adequate basis for the finding that NRC must now take further steps to assure the availability of adequate funding for decommissioning, and SFC points out that SFC's efforts have been adequately funded in 1993.

**Section VII:**

42. SFC denies that there is adequate basis and/or legal authority for the NRC to impose upon SFC the conditions contained in Section VII. SFC denies that any of these conditions are necessary or appropriate.

## III. MATTERS OF FACT AND LAW UPON WHICH SFC RELIES, AND REASONS WHY THE ORDER SHOULD NOT HAVE BEEN ISSUED

In addition to the issues of fact and law raised above, SFC intends to present factual information and legal arguments in support of the following:

1. SFC has submitted in the PPCD a plan for assuring the availability of adequate funds for completion of decommissioning of the Facility that satisfies the requirements of 10 CFR § 40.42(c)(2)(iii)(D). If SFC's plan did not satisfy such requirements, SFC would be entitled to an exemption from such requirements under 10 CFR § 40.14(a).

2. SFC satisfies the requirements of 10 CFR § 40.36 that are applicable to its current license and has at all times been in compliance with the applicable provisions of 10 CFR § 40.36. SFC would have had to satisfy additional requirements of 10 CFR § 40.36 only at the time of renewal of its license. Since SFC is not seeking renewal of its license, such additional requirements are not and will not be applicable. Even if such requirements were applicable, SFC would be entitled to an exemption from such requirements under 10 CFR § 40.14(a).

3. The NRC has no authority to impose upon SFC financial assurance requirements beyond requiring the submittal of a plan

in accordance with 10 CFR § 40.42(c)(2)(iii)(D). Issuance of Section IV.B of the DFI could not, and did not, impose any legal requirement that SFC provide a plan for financial assurance in compliance with 10 CFR § 40.36(e).

4. The issuance of an order to SFC requiring actions beyond the plan submitted by SFC in the PPCD is inappropriate in this case, lacks adequate factual basis, lacks adequate legal basis, and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

5. The issuance of an order to SFC without prior discussion with SFC as to possible mechanisms that could be used to provide additional assurance that SFC's net assets and revenues will be devoted to the completion of decommissioning, as offered in SFC's letter of February 16, 1993, is inappropriate in this case, lacks adequate factual basis, lacks adequate legal basis, and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

6. The issuance of an order to SFC that imposes a funding plan without providing flexibility for future developments is inappropriate in this case, lacks adequate factual basis, lacks adequate legal basis, and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

7. The Order should be withdrawn because it lacks adequate factual basis, lacks adequate legal basis, is inconsistent with NRC practice regarding decommissioning and regarding treatment of its licensees and their parent companies, and is arbitrary,

capricious, an abuse of discretion, and otherwise not in accordance with law.

8. SFC adopts and incorporates its February 16, 1993 response to the DFI, as if fully restated herein. SFC also reserves the right to raise additional matters of fact and law and to raise additional affirmative defenses, as the law may permit, in the requested hearing or in a court of proper jurisdiction.

## IV. CONCLUSION

FOR THE FOREGOING REASONS, the reasons contained in its February 16, 1993 response to the NRC's Demand for Information dated December 29, 1992, and other reasons that SFC may raise in subsequent proceedings, the Order should not have been issued, and SFC respectfully requests that the NRC Order issued to SFC on October 15, 1993 be rescinded, or in the alternative, requests a hearing on the Order.

Respectfully Submitted,

Maurice Axelrad

Maurice Axelrad
Michael F. Healy
John E. Matthews
NEWMAN & HOLTZINGER, P.C.
1615 L Street, N.W., Suite 1000
Washington, DC 20036
(202) 955-6600

ATTORNEYS FOR
SEQUOYAH FUELS CORPORATION

November 2, 1993

ORIGINAL

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MAURICE AXELRAD
(202) 955-6626

November 4, 1993

VIA MESSENGER

Secretary of the Commission
U.S. Nuclear Regulatory Commission
ATTN: Chief, Docketing and Services Section
(Mail Stop 16 G15, SECY)
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

Re: NRC Order to Sequoyah Fuels Corporation
Dated October 15, 1993 (Docket No. 40-8027,
License No. SUB-1010)

Dear Sir:

Enclosed for filing in connection with the above-captioned order is the original "Affidavit of John H. Ellis," which was inadvertently omitted from "Sequoyah Fuels Corporation's Answer and Request for Hearing" transmitted yesterday.

Enclosed also is a replacement first page for the Answer, which was misdated "November 2, 1992" rather than November 2, 1993."

Very truly yours,

Maurice Axelrad

/tg
Enclosures: As Stated

cc: Assistant General Counsel for
Hearings and Enforcement
Director, Office of Nuclear
Material Safety and Safeguards
Regional Administrator, NRC Region IV

November 2, 1993

SEQUOYAH FUELS CORPORATION
Docket No. 40-8027
License No. SUB-1010

**AFFIDAVIT OF JOHN H. ELLIS**

JOHN H. ELLIS, being duly sworn, hereby deposes, says and affirms that he is President of Sequoyah Fuels Corporation; that he has read and is familiar with the contents of "Sequoyah Fuels Corporation's Answer and Request for Hearing" submitted in response to an Order of the Nuclear Regulatory Commission dated October 15, 1993; and that the facts set forth therein are true and correct to the best of his knowledge, information, and belief.

John H. Ellis
President

**ACKNOWLEDGEMENT**

STATE OF OKLAHOMA )
)
COUNTY OF SEQUOYAH )

SUBSCRIBED AND SWORN BEFORE ME, a Notary Public in and for the State of Oklahoma on this 2nd day of November, 1993.

Notary Public

SEAL
Commission expires:
December 1, 1996

November 2, 1993

**UNITED STATES**
**NUCLEAR REGULATORY COMMISSION**

| | | |
|---|---|---|
| **In the Matter of** | ) | |
| | ) | |
| | ) | **Docket No. 40-8027** |
| **SEQUOYAH FUELS CORPORATION** | ) | **License No. SUB-1010** |
| | ) | |
| **(NRC Order dated October 15, 1993)** | ) | |
| | ) | |

**SEQUOYAH FUELS CORPORATION'S**
**ANSWER AND REQUEST FOR HEARING**

Sequoyah Fuels Corporation ("SFC") hereby answers an order issued by the Nuclear Regulatory Commission ("NRC") to SFC on October 15, 1993 (hereafter "Order"), requests that the Order be withdrawn, or in the alternative, requests a hearing on that Order.

## I. BACKGROUND

On December 29, 1992, the NRC issued a "Demand for Information" ("DFI"), which was served upon both SFC and General Atomics ("GA"), a third tier parent company of SFC. SFC is the sole licensee named in NRC License No. SUB-1010 (Docket No. 40-8027) (hereafter, "SFC License") and the owner of the NRC-licensed facilities at Gore, Oklahoma (hereafter, "SFC Facility"). On February 16, 1993, SFC and GA responded separately to the DFI. SFC simultaneously filed a Notification Pursuant to 10 CFR § 40.42(b) that it intended to terminate activities involving materials authorized under License No.

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November 3, 1993

**BY FEDERAL EXPRESS**

Secretary of the Commission
U.S. Nuclear Regulatory Commission
ATTN: Chief, Docketing and Services Section
(Mail Stop 16 G15, SECY)
One White Flint North
11555 Rockville Pike
Rockville, MD 20852

RE: NRC Order to General Atomics dated October 15, 1993
(Docket No. 40-8027, License No. SUB-1010)

Dear Sir:

Enclosed for filing in connection with the above-captioned order is an original and duplicate original of "General Atomics' Answer and Request for Hearing." Please date-stamp the duplicate original and return it to me in the enclosed self-addressed envelope.

Very truly yours,

Maurice Axelrad

Maurice Axelrad

cc: Assistant General Counsel for
Hearings and Enforcement
Director, Office of Nuclear
Material Safety and Safeguards
Regional Administrator, NRC Region IV

November 2, 1993



**UNITED STATES**
**NUCLEAR REGULATORY COMMISSION**

| | |
|---|---|
| **In the Matter of** | |
| **GENERAL ATOMICS** | **Docket No. 40-8027** |
| | **License No. SUB-1010** |
| **(NRC Order dated October 15, 1993)** | |

**GENERAL ATOMICS'**
**ANSWER AND REQUEST FOR HEARING**

General Atomics ("GA") hereby answers a Nuclear Regulatory Commission ("NRC") order issued to GA on October 15, 1993 (hereafter "Order") in the above-captioned docket and purportedly with respect to NRC Source Material License No. SUB-1010. GA requests that the Order be withdrawn, or in the alternative, requests a hearing on the Order.

GA specifically denies that the NRC has any jurisdiction over GA with regard to the matters set forth in the Order. GA denies that NRC has any authority to issue and/or to enforce orders directed to GA relating to NRC License No. SUB-1010 (hereafter, "SFC License"), which is held by the Sequoyah Fuels Corporation ("SFC"), a third tier subsidiary of GA. GA is not the holder of the SFC License and is not named as an NRC licensee with respect to the SFC License.

GA denies that the NRC has any authority to conduct further proceedings or to take further action directed to GA

regarding the matters set forth in the Order, other than to withdraw the Order. In the event that the NRC rejects GA's contention regarding NRC's authority over the matters asserted in the Order, GA requests a hearing on the Order without waiving that contention and without waiving its right to exercise other legal rights that it may have or to assert other defenses.

## I. BACKGROUND

On December 29, 1992, the NRC issued a "Demand for Information" ("DFI"), which was served upon both SFC and GA. GA is a third tier parent company of SFC, the holder of the SFC License and owner of the NRC licensed facilities at Gore, Oklahoma (hereafter, "SFC Facility"). GA is not the NRC's licensee in connection with the SFC Facility in Gore and is not otherwise subject to the NRC's jurisdiction in connection with the SFC Facility. Nevertheless, on February 16, 1993, GA voluntarily provided the NRC with information in order to correct certain misunderstandings reflected in the DFI regarding statements previously made by GA to the Commission and the nature of the GA/SFC relationship.

On October 15, 1993 NRC issued an Order addressed to both GA and SFC captioned "Gore, Oklahoma, Site Decontamination and Decommissioning Funding" for the SFC Facility. SFC and GA are responding to the Order separately. As previously stated, GA is not the NRC's licensee with regard to the SFC Facility. Nevertheless, NRC has issued the Order to GA erroneously based upon "its conclusion that [1.] the degree of GA's control over

the business of SFC and [2.] [GA's] representations of financial assurance, on which the Commission relied, make GA responsible, along with SFC, for satisfying NRC financial assurance requirements." (Order at 21). Therefore, this Answer will focus on this conclusion, and GA will specifically admit or deny only allegations, charges, or other statements relating to these two issues.

## II. ADMISSIONS AND DENIALS

### General Admissions and Denials

1. Except for the specific admissions stated herein, GA denies each and every other allegation, charge, and implication of the Order without regard to whether such allegation, charge or implication is specifically denied herein.

2. The fact that GA does not specifically admit or deny statements in the Order does not constitute any admission of any statements which mention or affect GA. Rather, GA has reviewed the SFC Answer and supports, adopts and relies upon the SFC Answer with regard to other legal matters at issue in the Order which may be related to or have any legal consequence for GA.

### Section I:

3. GA denies that SFC is a "wholly-owned subsidiary of GA," to the extent that statement implies direct ownership of SFC. GA admits that SFC is a wholly-owned subsidiary of Sequoyah Fuels International Corporation ("SFIC"), which is a wholly-owned subsidiary of Sequoyah Holding Corporation ("SHC"), and that SHC is a wholly-owned subsidiary of GA.

**Section II:**

4. GA admits that the Commission's regulations in 10 CFR § 40.36 require licensees to have in place certain financial assurance for decommissioning under certain specified circumstances. GA denies that it is a licensee with any obligation to do so in connection with the SFC Facility.

5. GA admits that at the time of termination of all activities under the SFC License, if a licensee is required to submit a decommissioning plan, 10 CFR § 40.42(c)(2)(iii)(D) provides that such plan will include a detailed cost estimate for decommissioning and a plan for assuring the availability of adequate funds for the completion of decommissioning. GA denies that it is a licensee with any obligation to do so in connection with the termination of activities at the SFC Facility.

6. GA denies that, through its Chairman, it ever provided or committed to provide without qualification a financial guarantee that SFC will satisfy its obligations; denies that SFC's March 20, 1992 letter to the NRC and/or its attachments confirmed any such commitment; denies that GA's letter to the NRC dated March 19, 1992, reiterated a commitment to fund site remediation if SFC was unable to do so; and denies that the Commission relied on GA financial commitments in authorizing restart of the SFC Facility on April 16, 1992.

7. GA denies that it agreed by letter dated June 24, 1992, to execute an agreement with SFC. GA admits that SFC and GA have never executed the draft agreement, but notes that the GA Board

of Directors never voted to approve the draft agreement. GA further denies that under the current circumstances GA would be obligated to assure funding for decommissioning the SFC Facility, even if the draft agreement had been executed.

8. GA admits that the Commission held a public meeting on December 21, 1992, with management personnel from SFC and GA who provided information regarding plans for the SFC Facility and plans for the decontamination and decommissioning ("D&D") of the SFC Facility and site, including the issue of financial assurance for decommissioning funding. GA also admits that its Chairman informed the Commission that any earlier GA statements regarding conditional commitments for decommissioning funding were no longer applicable under the circumstances presented by the premature shutdown of the SFC Facility, because such commitments on the part of GA would only have been applicable in connection with the expected renewal of the SFC license and continued operation of the SFC Facility.

9. GA denies that it entered into a joint venture with Allied Signal Corporation (sic). GA admits that an affiliate of GA, namely, General Atomics Energy Services, Inc. ("GAES") (a wholly-owned subsidiary of GA's parent company, General Atomics Technologies Corporation ("GATC")) entered into a joint venture ("ConverDyn") with Allied-Signal Energy Services ("ASES"), a wholly-owned subsidiary of Allied-Signal, Inc. ("ASI"). GA denies that ConverDyn was formed to satisfy outstanding business commitments of SFC. GA admits that it assisted SFC in obtaining

favorable contractual arrangements with ConverDyn, which are helping SFC satisfy its business commitments and D&D obligations. GA notes that GAES has transferred 98% of its interest in ConverDyn, i.e., 49% ownership of ConverDyn, to General Atomics Energy Services Limited Partnership ("GAES, L.P."). GAES is the general partner of GAES, L.P. and owns 10% of the partnership; GATC is a limited partner with 90% ownership.

10. GA denies that "[a]s a result of [GA's Chairman's] statements 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 necessary decontamination and decommissioning of the Facility and site." (Order at 5).

11. GA admits that the mechanisms for assurance of funding for decommissioning contained in 10 CFR § 40.36 are important for assuring fulfillment of health and safety requirements, to the extent that they are applicable to a given licensee. However, GA denies that the provisions of 10 CFR § 40.36 (other than the applicable provisions of 10 CFR § 40.36(c)(2)) have any continued applicability to SFC.

12. GA admits that the NRC Staff issued a Demand for Information on December 29, 1992 to SFC and GA ("DFI"), and that it contained the language quoted in the Order. However, GA denies that NRC's stated reasons provided justification for issuance of the DFI. GA admits that SFC has an obligation to provide a plan for assuring the availability of funds for the ultimate decommissioning of the SFC Facility and to submit

information requested by the NRC. GA denies that it has now or ever had any such obligation.

**Section III:**

13. GA denies that it has now or ever had any obligation to provide a plan for financial assurance for the decommissioning of the SFC Facility, and GA further denies that any such obligation has been or could be imposed by any action of the NRC.

14. GA admits that SFC and GA responded separately to the DFI on February 16, 1993.

15. GA denies that, upon termination of SFC's activities, SFC was legally required to provide financial assurance for decommissioning in a manner described in 10 CFR § 40.36. GA denies that 10 CFR § 40.36(e) has any applicability to a plan for assuring the availability of adequate funds for completion of decommissioning filed upon notification of termination of activities under 10 CFR § 40.42. GA further denies that Section IV.B of the DFI could or did impose any legal requirement upon SFC that it provide a plan for financial assurance in compliance with 10 CFR § 40.36(e).

16. GA admits that the "voluntary assistance" discussed in its letter of February 16, 1993 does not amount to a parent company guarantee, but GA denies that it has any legal obligation to provide voluntary assistance or a parent company guarantee.

17. GA denies that SFC in any way failed to comply with the requirements of 10 CFR § 40.42(c)(2)(iii)(D) to provide a plan

for assuring the availability of adequate funds for completion of decommissioning.

**Section IV:**

18. GA admits that ConverDyn is a partnership established by agreement between GAES (a wholly-owned subsidiary of GA's parent company, GATC) and ASES (a wholly-owned subsidiary of ASI). ConverDyn is currently owned by GAES, GAES, L.P., and ASES. GA denies that GAES is a subsidiary of General Atomics, but notes that GAES is a subsidiary of GATC and an affiliate of GA.

19. GA admits that SFC has entered into contractual arrangements with ConverDyn. GA admits that GAES's initial projections indicate that SFC will receive approximately $72 million in fees from the ConverDyn arrangements through the year 2003, and SFC's initial projections indicate SFC will receive approximately $17 million from other sources; that SFC's initial estimates indicate that it will incur direct costs for decommissioning activities of roughly $21.2 million; and that SFC's initial estimates indicate that it will incur other costs of approximately $65 million through the year 2003.

20. GA admits that ConverDyn is a bona fide business arrangement among the various parties.

21. GA denies the implication that the $89 million in revenues that SFC is expected to receive are unlikely to be sufficient to pay SFC's decommissioning costs.

22. GA denies that SFC's funding plan does not provide the level of assurance required by NRC regulations. GA also denies that the ConverDyn arrangements must be supplemented by funding assurances from GA in order to satisfy the Commission's requirements.

23. GA denies that it now has or ever had any obligation to provide a plan for financial assurance for the decommissioning of the SFC Facility and/or to accommodate any "supplemental conditions" imposed by a Commission Order. GA further denies that any such obligation has been or could be imposed by any action of the NRC.

24. GA denies any implication that the SFC plan does not constitute a satisfactory plan for assuring the availability of adequate funds for completion of decommissioning. GA denies that the SFC funding plan based upon the ConverDyn arrangements fails to satisfy the requirements of 10 CFR § 40.42, and GA denies that any "supplemental conditions" are necessary to satisfy these requirements.

25. GA denies any implication that, upon termination of SFC's activities, SFC was/is required to provide financial assurance for decommissioning in a manner described in 10 CFR § 40.36. GA denies that 10 CFR § 40.36(e) has any applicability to the SFC Facility following SFC's notification of termination of activities under 10 CFR § 40.42. Therefore, GA denies that any "supplemental conditions" are necessary to satisfy 10 CFR § 40.36 or any other NRC decommissioning funding requirements.

26. GA denies the Order's assertion that "SFC does not appear to be able to satisfy the Commission's financial assurance standards" (Order at 11-12) and, in any event, denies that the Commission has any authority to impose conditions upon a parent company based upon a licensee's inability to satisfy Commission requirements or based upon the facts presented in the Order.

**Section V:**

27. GA admits that it voluntarily agreed to assist SFC with its efforts to clean up the SFC Facility under certain conditions. The scope and extent of these commitments were reflected in GA's Chairman's statements to the Commission on March 17, 1992 and December 21, 1992; they are also described more fully in a March 19, 1992 letter from GA to the NRC, as quoted in the Order at pages 12-13, and in GA's February 16, 1993 response to the DFI. GA denies the implication that any of these conditional voluntary commitments are applicable under current circumstances or legally binding.

28. GA denies that, through its Chairman, it made any commitment to unconditionally guarantee that SFC will satisfy its obligations with regard to providing financial assurance of funding for decommissioning. GA denies that its Chairman's letter to the NRC dated March 19, 1992, confirmed any such unconditional commitment. GA admits that the March 19, 1992 letter contained limited and conditional voluntary commitments that during the anticipated ongoing operations GA would provide certain support to assist in remediation activities and that GA

would be "prepared to" provide a guarantee or financial support in connection with SFC's license renewal application, if necessary.

29. GA denies that the Commission relied on GA financial commitments in authorizing restart of the SFC Facility on April 16, 1992. In fact, the Commission's Staff Requirements Memorandum associated with the restart authorization directed that "if it is practicable and advisable to do so," the Staff should make the March 19, 1992 commitments "legally binding on General Atomics"; placed these commitments in a category of matters that were "gaps in the current license which should be remedied, but not as a precondition to restart"; and specified that any NRC Staff efforts to make the commitments in the March 19, 1992 letter "legally binding" were not "a precondition to restart." GA further denies that NRC Staff's stated bases for authorizing restart on April 16, 1992 included any reliance on GA financial commitments. Moreover, even if the Commission had relied in some way on GA's conditional voluntary commitments, GA denies the implication that such reliance would provide a legal basis for the issuance of the Order to GA.

30. GA denies any implication that it was in any way obligated to satisfy the Commission's decommissioning funding requirements under 10 CFR § 40.36, and also denies any implication that the March 19, 1992 conditional commitments "were in addition to, and not in lieu of" some other GA obligations for financial assurance.

31. GA denies that GA agreed by letter dated June 24, 1992, to execute an agreement with SFC.

32. GA admits that SFC and GA have never executed the draft agreement, but GA denies any implication that if the draft agreement had been executed, GA would be obligated to assure funding for decommissioning the SFC Facility under the current circumstances.

33. GA denies that it now has or ever had de facto control over the day-to-day business of SFC and denies that the facts listed in the Order, individually or collectively, are indicative of GA control over the day-to-day business of SFC.

34. GA denies that its stock ownership of SHC, which owns the stock of SFIC, which owns the stock of SFC, is indicative of control over the day-to-day business of SFC, and denies that there are any common directors of both GA and SFC. GA admits that three of the nine officers of SFC also hold positions with GA; admits that SFC's former Chairman, Dr. Richard Dean, was also an officer of GA during some of the time he held that position with SFC; and admits that Max Kemp, who is an officer of GA, serves a member of SFC's Board of Directors and temporarily served for a period of months as SFC's CEO (but never as SFC's Chief Operating Officer, a position which was then held by James J. Sheppard). GA denies that the existence of some common officers/directors with SFC demonstrates control by GA of the day-to-day business of SFC.

35. GA admits that its QA Director conducts periodic oversight and audits of SFC's QA program, but GA denies that such activities indicate that GA has control over the day-to-day business of SFC. GA denies that it controls the Nuclear Committee of the SFC Board of Directors and denies that the Nuclear Committee directs SFC activities. GA admits that a GA Quality Systems Manager and the Director, Manufacturing & Product Support in GA's Engineering Department were temporarily assigned to positions at SFC pursuant to SFC's request (reporting to SFC management and providing services paid for by SFC), and GA admits that the SFC License specifies certain activities by GA personnel. However, GA denies that such activities indicate GA control over the day-to-day business of SFC, and GA notes that there are numerous indicia of SFC control over its own activities which clearly demonstrate the lack of GA control over the day-to-day business of SFC.

36. GA denies the allegation that "GA has directed SFC regarding satisfying requirements for site remediation and decommissioning." (Order at 15). GA admits that it has made a voluntary "strong commitment" to SFC that SFC resources would remain available to SFC for site remediation and decommissioning.

37. GA denies that its Chairman made any representations which could reasonably be construed to be a commitment that GA would unconditionally guarantee the availability of unlimited financial resources for SFC site remediation and decommissioning.

38. GA denies that it has structured the business activities of SFC by entering into a joint venture with "Allied Signal Corporation." GA admits that it assisted SFC in obtaining favorable contractual arrangements with ConverDyn, which are helping SFC satisfy its business commitments and D&D obligations.

39. GA admits that on November 23, 1992, SFC informed the Commission that it intended to continue with only short term limited operations at the SFC Facility and that an unexecuted draft agreement with GA was "no longer applicable," because it only had effect in the context of the previously contemplated ten year license renewal of the SFC License. GA denies that the draft agreement would have constituted a decommissioning "funding guarantee." GA notes that the GA Board of Directors never voted to approve the draft agreement.

40. GA admits that following SFC's announcement of November 23, 1992 the NRC had questions regarding whether SFC would have the financial resources for D&D; that the Commission held a public meeting on December 21, 1992 in order to obtain further information from GA and SFC management; and that its Chairman addressed the Commission at this meeting. GA denies any implication that its Chairman's statements on December 21, 1992 were contrary to or inconsistent with his statements on March 17, 1992 or his March 19, 1992 letter. GA denies the allegation that its Chairman's December 21, 1992 statement (that GA's previous commitments were conditional) is "contrary to the record" and denies the allegation that its Chairman's previous statements

constitute "clear and unconditional financial assurance guarantees."

41. GA admits that its Chairman stated on December 21, 1992 that the SFC revenues from ConverDyn were expected to be sufficient to cover remediation and decommissioning costs, but GA denies that he assured the Commission that these revenues would be sufficient. GA denies the allegation that its Chairman's statements regarding the expected revenues from ConverDyn are in any way inconsistent with his statements that the financial status of SFC had significantly deteriorated. GA further denies that its Chairman stated that the deterioration of SFC's financial status made GA's financial assurance of D&D "no longer possible." Rather, GA's Chairman stated that these conditions had made "continued operation and the license renewal impossible and thus made the course of action outlined in my letter of the 19th of March impossible to implement." (12/21/92 Tr. at 44-45).

42. GA denies that it has ever acted to withdraw its conditional commitments to assist SFC in connection with its license renewal and the contemplated continued operations and denies that those commitments have any continued validity because they were based upon and contingent upon expectations (continued operations under the contemplated license renewal) which have been overtaken by intervening events. GA notes that on March 17, 1992, its Chairman indicated that GA was "committed to dealing with the residual" of SFC's D&D of the SFC Facility following, and implicitly conditioned upon, the expected license renewal and

contemplated many years of continued operation of the SFC Facility. Despite the absence of such license renewal and continued operations, GA has nevertheless dealt with this matter in good faith by assisting SFC in entering into favorable contracts with ConverDyn and by lending money to SFC. Without such assistance from GA, SFC could have found itself unable to fund its D&D obligations.

43. GA denies that its Chairman's characterization of GA's bank's reasons for not permitting GA to assume liabilities relating to the SFC Facility are inconsistent with the bank's stated reasons in letters which have been provided to the NRC and denies that its Chairman's statements to the Commission have been "internally inconsistent" or "contrary to the clear record."

44. GA denies that NRC Staff has accurately characterized the information that GA has previously submitted to the NRC in response to the DFI, and GA further denies the NRC's implications concerning GA liability for SFC's D&D funding as previously denied in paragraphs 14, 16-18, and 23-27 above.

45. GA admits that it submitted a letter of February 16, 1993 and admits, as explained in that letter, that GA has been consistent in its willingness, on a voluntary basis, to assist SFC in meeting its remediation objectives; that between October 1988 and October 1991, GA enabled SFC to retain funds necessary to commence clean-up activities at the site; and that the contracts between SFC and ConverDyn are illustrative of good-faith efforts made by GA to assist SFC in arranging the

resources necessary to meet its obligations. GA denies that the "ConverDyn arrangement" is insufficient to satisfy NRC requirements.

46. GA admits that its February 16, 1993 response to the DFI disputes any allegation that its Chairman's statements at the March 17, 1992 meeting and in his March 19, 1992 letter constituted an unconditional, open-ended commitment to provide financial guarantees by GA. GA also admits that this GA response correctly asserts that GA's Chairman only committed GA to provide stop-gap funding in connection with SFC's remediation programs during ongoing operations and to provide a guarantee or financial assistance to assure adequate funding for D&D in amounts limited to those which would be agreed to by SFC in connection with the ten-year renewal of the SFC License. GA denies the allegation that its Chairman's statements in the March 17, 1992 meeting with the Commission and in his March 19, 1992 letter, constituted "a guarantee of financial resources necessary for SFC site remediation and decommissioning."

47. GA admits that its Chairman has properly asserted that his commitments must be viewed in the context of GA's acquisition of SFC; that, in connection with this acquisition, NRC fully understood and accepted that GA explicitly refused to furnish any guarantee for D&D of the SFC Facility; and that the SFC License makes only SFC financially responsible for D&D. GA denies the allegation that GA controls the day-to-day operations and business of SFC; denies that GA made representations of financial

guarantees; and denies that GA is responsible to satisfy NRC financial assurance requirements.

48. GA admits that it asserted in its response to the DFI that the DFI incorrectly states that the Commission relied on GA financial commitments in authorizing restart of the SFC Facility. GA denies that NRC relied upon the GA Chairman's conditional commitments in authorizing restart; denies that the GA Chairman's statements could reasonably be construed in the manner described in Section V of the Order; denies that the Commission could have reasonably relied upon any such construction of its Chairman's statements; and denies that the Commission and/or SFC were in any way harmed by the Commission's approving restart of the SFC Facility in April 1992. To the contrary, SFC is in a far better position to fund its D&D efforts than it would have been had it not been permitted to restart.

49. GA admits that it disputes the DFI's conclusions that GA has de facto control over the day-to-day business of SFC and that this control makes GA and SFC jointly and severally liable for D&D of the SFC site. GA denies that it has relied upon "immaterial facts" in doing so; denies that the "indicia of control" relied upon by the DFI are significant; and denies the allegation that GA has failed to provide adequate basis to change the DFI's conclusion.

**Section VI:**

50. GA admits that SFC entered into a consent order with the Environmental Protection Agency. GA otherwise denies the

allegations, charges, and implications of the Order which are restated in Section VI. GA further denies that there is adequate basis for the finding that NRC must now take further steps to assure the availability of adequate funding for decommissioning, and GA points out that SFC's efforts have been adequately funded in 1993.

**Section VII:**

51. GA denies that there is adequate factual basis, legal basis, or legal authority for the NRC to impose upon GA any of the conditions contained in Section VII.

## III. MATTERS OF FACT AND LAW UPON WHICH GA RELIES, AND REASONS WHY THE ORDER SHOULD NOT HAVE BEEN ISSUED

In addition to the issues of fact and law raised above, GA intends to present factual information and legal arguments in support of the following:

1. GA is not in any way responsible for the obligations of SFC, and the NRC does not have the statutory authority to impose such responsibility upon GA. Nor does the NRC have the authority to determine whether or not such responsibility could be properly imposed upon GA. Even if NRC did have such authority, there is no adequate basis for NRC to do so.

2. GA is not now, nor has it ever been, the NRC's licensee for the SFC Facility. GA is not now conducting, nor has it ever conducted, licensed activities in connection with the SFC License. Therefore, GA is not subject to the jurisdiction of the NRC with regard to the matters raised in the Order.

3. GA does not now, nor has it ever, exercised day-to-day operational control over SFC. There is therefore no basis for liability to be imposed upon GA to meet the obligations of SFC.

4. GA has never made unconditional commitments and never provided any financial guarantees to SFC or to the NRC that would result in a legal obligation to fund SFC's remediation efforts and to guarantee that SFC will be able to provide financial assurance for the decommissioning of the SFC Facility.

5. In authorizing restart of the SFC Facility, the Commission did not in fact rely upon financial guarantee commitments with regard to SFC that were allegedly made by GA.

6. The Commission could not have reasonably interpreted the statements with regard to SFC that were made by GA in the manner described in the Order, and therefore, the Commission could not have reasonably relied upon such statements in authorizing restart of the SFC Facility. Even if the Commission had relied upon such statements for the purpose of restart, such reliance would provide neither authority nor justification for issuance of the Order to GA.

7. Assuming arguendo that the Commission relied upon "commitments" made by GA as described in the Order and assuming arguendo that there is adequate basis for NRC to pursue its claim that GA has exercised day-to-day operational control over SFC, the NRC does not have the statutory authority to issue an Order to enforce such commitments or to determine whether GA has exercised day-to-day operational control over SFC. To the

contrary, NRC must bring an action in a court with appropriate jurisdiction to establish and enforce such commitments.

8. Assuming arguendo that the Commission relied upon "commitments" by GA as described in the Order and assuming arguendo that there is adequate basis for NRC to pursue its claim that GA has exercised day-to-day operational control over SFC, the nature of NRC's claim against GA is an action at common law to impose liability upon GA based upon a contention that GA assumed a quasi-contractual obligation to guarantee decommissioning funding. Therefore, GA has a right to a jury trial under the Seventh Amendment of the Constitution of the United States of America, and further, GA has the right to defend against the NRC's claim before a court duly constituted under Article III of the Constitution. GA also has other Constitutional rights to due process which would be violated by NRC's determining its own claim against GA.

9. Assuming arguendo that the Commission relied upon "commitments" made by GA as described in the Order, neither the Commission nor SFC has been in any way harmed by such reliance, because SFC is in a far better position to fund its D&D efforts than it would have been had it not been permitted to restart.

10. Assuming arguendo that GA's conditional commitment to "deal with" SFC's potential need for D&D funding is applicable under the present circumstances, GA has fulfilled that commitment by assisting SFC in entering into favorable contracts with

ConverDyn which are expected to result in more than $70 million being available for SFC's D&D efforts.

11. Assuming arguendo that NRC has jurisdiction to determine the issues raised in the Order, the Order should be withdrawn because it lacks adequate factual basis, lacks adequate legal basis, is inconsistent with NRC practice regarding decommissioning and regarding treatment of its licensees and their parent companies, and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

12. SFC satisfies the requirements of 10 CFR § 40.36 that are applicable to its current license. SFC would have to satisfy additional requirements of 10 CFR § 40.36 only at the time of renewal of its license. Since SFC is not seeking renewal of its license, such additional requirements are not and will not be applicable. Even if such requirements were applicable, SFC would be entitled to an exemption from such requirements under 10 CFR § 40.14(a).

13. The NRC has no authority to impose upon SFC financial assurance requirements beyond requiring the submittal of a plan in accordance with 10 CFR § 40.42(c)(2)(iii)(D). Issuance of Section IV.B of the DFI could not, and did not, impose any legal requirement that SFC provide a plan for financial assurance in compliance with 10 CFR § 40.36(e).

14. SFC has submitted a D&D funding plan which provides the level of assurance required by the Commission.

15. NRC does not have the authority to impose conditions upon a parent company based upon a licensee's perceived inability to satisfy Commission requirements.

16. GA adopts and incorporates its February 16, 1993 response to the DFI, as if fully restated herein. GA also reserves the right to raise additional matters of fact and law and to raise additional affirmative defenses, as the law may permit, in the requested hearing or in a court of proper jurisdiction.

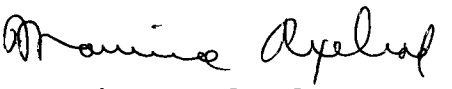
## IV. CONCLUSION

GA has at all times acted consistently and in good faith to assist SFC in fulfilling its responsibilities regarding the SFC Facility, and as a result, there has been substantial positive progress made toward accomplishing D&D of the SFC Facility. These voluntary efforts by GA do not create an affirmative obligation on the part of GA to unconditionally guarantee the availability of funds for SFC's D&D efforts. Rather, they are indicative of GA's consistent willingness, as a good corporate citizen, to assist SFC in its efforts to meet its own independent obligations.

FOR THE REASONS CONTAINED IN THE FOREGOING SECTIONS OF THIS ANSWER, the reasons contained in its February 16, 1993 response to the NRC's Demand for Information dated December 29, 1992, and other reasons that GA may raise in subsequent proceedings, the Order should not have been issued, and GA respectfully requests that the NRC Order issued to GA on October

15, 1993 be rescinded, or in the alternative, requests a hearing on the Order.

Respectfully Submitted,



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ATTORNEYS FOR
GENERAL ATOMICS

November 2, 1993

ORIGINAL

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MAURICE AXELRAD
(202) 955-6626

November 4, 1993

VIA MESSENGER

Secretary of the Commission
U.S. Nuclear Regulatory Commission
ATTN: Chief, Docketing and Services Section
(Mail Stop 16 G15, SECY)
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

Re: NRC Order to General Atomics
Dated October 15, 1993 (Docket No. 40-8027,
License No. SUB-1010)

Dear Sir:

Enclosed for filing in connection with the above-captioned order is the original "Affidavit of John E. Jones," which was inadvertently omitted from "General Atomics' Answer and Request for Hearing" transmitted yesterday.

Very truly yours,

Maurice Axelrad

Maurice Axelrad

/tg

Enclosure: As Stated

cc: Assistant General Counsel for
Hearings and Enforcement
Director, Office of Nuclear
Material Safety and Safeguards
Regional Administrator, NRC Region IV

November 2, 1993

## AFFIDAVIT OF JOHN E. JONES

JOHN E. JONES, being duly sworn, hereby deposes, says and affirms that he is a Sr. Vice President of General Atomics; that he has read and is familiar with the contents of "General Atomics' Answer and Request for Hearing" submitted in response to an Order of the Nuclear Regulatory Commission dated October 15, 1993; and that the facts set forth therein are true and correct to the best of his knowledge, information, and belief.

John E. Jones

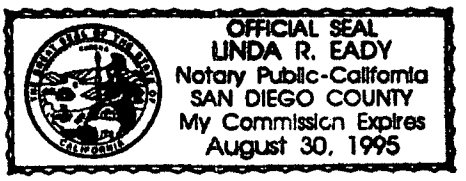
## ACKNOWLEDGEMENT

STATE OF CALIFORNIA )
) SS
COUNTY OF SAN DIEGO )

SUBSCRIBED AND SWORN BEFORE ME, a Notary Public in and for the State of California, on this 2nd day of November, 1993.

Linda R. Eady
Notary Public

SEAL




Commission Expires: August 30, 1995

*Environmental Impacts of the Proposed Action*

A slight change in the environmental impact can be expected for an increase in plant power level, but the effects were found to be minimal and did not alter the findings stated in NUREG–0878, "Final Environmental Statement Related to the Operation of Wolf Creek Generating Station, Unit No. 1" (FES).

The proposed core uprating is projected to increase the rejected heat by approximately 4.5 percent. However, the expected thermal discharges from the circulating and service water systems remain bounded by the values evaluated in the FES. Thus, the 4.5 percent increase in rejected heat has been evaluated and determined to not significantly impact on the quality of the human environment.

The licensing basis analyses related to radiological source terms were originally performed assuming a core power of 3565 MWt which corresponds to the proposed rerate conditions. The NRC review of these calculations was documented in NUREG–0881, "Safety Evaluation Report Related to the Operation of Wolf Creek Generating Station, Unit No. 1." Additional assessments by the licensee related to the rerated conditions (power level and reactor coolant temperature) and other changes related to plant operation (Amendment 61 to Facility Operating License NPF–42) determined there would be no significant increase in the potential radioactive releases resulting from plant operation or design basis reactor accidents. In addition, no significant increases in individual or cumulative occupational radiation exposure would result from the proposed changes in operating conditions. Also, the proposed increase in the NSSS power involves no significant change in the amount of any nonradiological effluents that may be released offsite compared to those evaluated and approved in the FES.

*Alternatives to the Proposed Action*

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed changes, any alternatives with equal or greater impacts need not be evaluated. The principal alternative to the proposed action would be to deny the requested amendment. Denial would not significantly reduce the environmental impact of plant operation and would restrict operation of the Wolf Creek Generating Station, Unit 1, to the currently licensed power level, thereby reducing operational flexibility.

*Alternate Use of Resources*

This action does not involve the use of resources not considered previously in the FES for Wolf Creek Generating Station, Unit 1.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and consulted with the Kansas State official. The State official had no comments regarding the NRC's proposed action.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed amendment. Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For additional details with respect to this action, see the application for amendment dated January 5, 1993, and supplemental letter dated October 1, 1993. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Rooms, Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and the Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 15th day of October 1993.

For the Nuclear Regulatory Commission.

**Suzanne C. Black,**

*Director, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 93–26179 Filed 10–22–93; 8:45 am]

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**[Docket No. 40–8027; License No. SUB–1010]**

**Order**

In the Matter of Sequoyah Fuels Corporation General Atomics (Gore, Oklahoma, Site Decontamination and Decommissioning Funding).

I

Sequoyah Fuels Corporation (SFC or Licensee) is the holder of Source Material License No. SUB–1010 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 40. SFC is a wholly-owned subsidiary of General Atomics (GA). The License authorizes SFC to possess and use source material in the production of uranium hexafluoride ($UF_6$) and depleted uranium tetrafluroide ($DUF_4$) in accordance with the terms and conditions of the License. The License for $UF_6$ production was originally issued on February 20, 1970, by the Atomic Energy Commission (now the NRC). On March 25, 1987, the NRC granted Amendment 8, which authorized SFC to convert $DUF_6$ to $DUF_4$. The License was due to expire on September 30, 1990; on August 29, 1990, SFC submitted an application to the NRC to renew the License, so that pursuant to 10 CFR 40.43, the License currently remains in effect and has not expired. That application is currently pending in a proceeding before an Atomic Safety and Licensing Board.

II

SFC operates the Sequoyah Fuels Facility (the Facility), which is located near the intersection of Interstate 40 and Oklahoma State Highway 10 near Gore, Oklahoma. The Facility, soil, and groundwater on the site are contaminated with uranium that will require remediation in order for the site to be released for unrestricted use. The Commission's regulations in 10 CFR part 40 require licensees to provide financial assurance for decommissioning. They require applicants for and holders of licenses specified therein to have in place a funding assurance mechanism which satisfies 10 CFR 40.36. They also require, at the time of termination of all activities involving materials authorized under the license, an updated detailed cost estimate for decommissioning and a plan for assuring the availability of adequate funds for the completion of decommissioning. 10 CFR 40.42(c)(2)(iii)(D). In its August 29, 1990 application to renew the License, SFC included a decommissioning funding plan (1990 DFP) intended to satisfy the requirements of 10 CFR 40.36.

During 1991, extensive contamination was discovered near the Main Process Building and the Solvent Extraction Building and on October 3, 1991, the Commission issued an Order to suspend licensed activities at the Facility. At a public meeting with the Commission on March 17, 1992, at which the Commission was considering restart of Facility operations, SFC stated its expectation that it would fund the remediation of the contamination at the site through cash flows from operations at the Facility. This was supported by commitments made by GA, through its chairman, Mr. J. Neal Blue, to supply funding in order to guarantee that SFC will satisfy its obligations to provide financial assurance of funding for decommissioning. These commitments were confirmed by SFC's letter, with

attachments, of March 20, 1992 and by GA's letter to NRC Chairman Selin dated March 19, 1992, which reiterated GA's commitment to fund site remediation should SFC fail to do so. These commitments are discussed in greater detail in Section V, below. The Commission relied on the GA financial commitments in authorizing restart of the SFC Facility on April 16, 1992. In response to the May 6, 1992, NRC request to formalize those commitments, GA agreed by letter dated June 24, 1992, to execute an agreement with SFC and submitted a draft agreement to the NRC which was to be presented to the boards of directors of SFC and GA for approval. SFC and GA, however, have not executed that agreement.

However, by letter dated November 23, 1992, SFC informed the Commission that it intended to "clean out" the $UF_6$ facility and put it in a "standby" mode, that SFC intended to restart the $DUF_4$ facility in order to fulfill one existing contract, and that the unexecuted agreement between SFC and GA was "no longer applicable." Because of SFC's decision to continue with only short term limited operations at the Facility, GA and SFC asserted that those operations are expected to generate cash flow greatly reduced from that expected at the time of the March 17, 1992, public meeting. The November 23, 1992, letter indicated SFC's intent to cease permanently all production operations by the summer of 1993.

Additionally, the lack of financial and other information provided regarding SFC's plans raised serious questions as to whether SFC would have the financial resources to accomplish site remediation and decommissioning. For these reasons, the Commission held a public meeting on December 21, 1992, with the management of SFC and GA to obtain information concerning the plans for the Sequoyah Fuels Facility, particularly concerning assurance of financial resources needed to decontaminate and decommission the Facility and site. At the December 21, 1992, meeting, Mr. Blue again addressed the Commission regarding GA's support for the decommissioning of the Facility and site, but at this meeting Mr. Blue stated that GA could no longer provide financial assurance because the earlier commitment to do so was premised on license renewal and long term operation of the Facility. However, GA and SFC indicated that GA had restructured the business activities of SFC by entering into a joint venture with Allied Signal Corporation, creating a partnership, ConverDyn, to satisfy outstanding business commitments of SFC. GA and SEC asserted that funds for cleanup of the Facility would be provided through anticipated revenues generated by ConverDyn.

Because the 1990 DFP did not consider the extensive additional contamination discovered during 1991, it is inadequate to satisfy 10 CFR 40.36 and the funding plan requirement of 10 CFR 40.42. SFC's Revision 1 to its application to renew the License, submitted on September 30, 1992, stated that:

> [t]he revised and updated [Decommissioning Funding] Plan will be submitted by November 30, 1992 and will identify the decommissioning activities that will be performed after the 10-year license renewal term, and will summarize how they will be accomplished. While the estimated costs associated with these activities have not yet been fully quantified, they will be higher than the cost estimate previously submitted on August 29, 1990. (Revision 1 at 6–1)

SFC did not submit the revised DFP.

As a result of Mr. Blue's statements 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 necessary decontamination and decommissioning of the Facility and site.

The specific mechanisms for assurance of funding for decommissioning contained in 10 CFR 40.36 are important health and safety requirements of the Commission for providing adequate protection of the public health and safety. SFC and GA cannot escape the requirement to provide a description of the method of assuring funds for decommissioning pursuant to 10 CFR 40.36(d) and (e) by announcing termination of SFC's operations. In view of SFC's failure to submit a revised DFP, its stated intention to discontinue operations at the Facility, as described above, and the lack of an adequate basis to conclude that funding would in fact be available as needed to carry out necessary decontamination and decommissioning of the Facility and site, the NRC Staff issued a Demand for Information on December 29, 1992, to SFC and to GA. Further information was needed to determine whether NRC action was necessary to assure that SFC and GA would be able to satisfy their obligations to provide funding for the ultimate decommissioning of the Facility and whether the health and safety of the public would be protected. GA and SFC were required to submit the following information:

A. On or before February 16, 1993, a plan, including schedule, for decontaminating and decommissioning the SFC Facility, including the soil, buildings, and groundwater, for release for unrestricted use in accordance with the criteria set forth in Appendices A, B, and C (APPENDIX A: Options 1 or 2 of Branch Technical Position (BTP), "Disposal or Onsite Storage of Thorium or Uranium Wastes From Past Operations," 46 FR 52061 (Oct. 23, 1981); APPENDIX B: "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, or Special Nuclear Material" (August 1987); APPENDIX C: Proposed National Drinking Water Regulations, 40 CFR part 141, 56 FR 33050–51, 33066–69, 33126 (July 18, 1991)); and

B. On or before February 16, 1993, a decommissioning funding plan that contains a cost estimate for decommissioning the SFC Facility to the criteria identified in section IV.A above and a description of the method of assuring funds for decommissioning satisfying the requirements of 10 CFR 40.36 and the guidelines in Reg. Guide 3.66 * * *.

III

On February 16, 1993, SFC and GA responded separately to the Demand for Information. SFC supplied a Preliminary Plan for Completion of Decommissioning (PPCD), which included a plan and schedule for decontaminating and decommissioning the SFC site, and a preliminary cost estimate of $21.1 million for activities directly related to decommissioning. The PPCD described the source of funds for decommissioning as the revenues from the ConverDyn arrangement. SFC described its plans as fitting "more closely the situation contemplated by 10 CFR 40.42", because of SFC's plans to terminate operations by July 31, 1992, and as providing a notification of termination of activities pursuant to 10 CFR 40.42, with information relevant to financial assurance as specified in 10 CFR 40.42(c)(2)(iii)(D). (Response of the Sequoyah Fuels Corporation to the Demand For Information Dated December 29, 1992, p. 4). By a separate letter dated February 16, 1993, SFC provided current notification that licensed activities involving the $UF_6$ facility had already been terminated, and advance notification that licensed $DUF_4$ activities would be terminated no later than July 31, 1993.

Neither SFC nor GA provided a description of the method of assuring funds for decommissioning which satisfies 10 CFR 40.36, as required by Section IV.B. of the Demand for Information. The ConverDyn arrangement is not a prepayment method, a surety method, insurance or other guarantee of financial assurance required by the Commission's regulations in 10 CFR part 40, § 40.36(e). The "voluntary assistance" proffered by GA in its letter of February 16, 1993, does not amount to a parent corporation

guarantee, and even if it did, it would not satisfy 10 CFR 40.36(e). Moreover, neither SFC nor GA have provided the financial assurance of adequate funds for completion of decommissioning required by 10 CFR 40.42, as explained below in Section IV.

IV

After review of the formal responses of SFC and GA to the December 29, 1992 Demand for Information, and of certain proprietary documents associated with the ConverDyn arrangement made available to the NRC Staff, the NRC Staff issued a "Supplement to December 29, 1992, Demand for Information" (Supplemental DFI) to GA and SFC on July 2, 1993. The Supplemental DFI requested additional information and certain documents associated with the ConverDyn arrangement. The formal answer to the questions of the NRC Staff and the additional documents requested were supplied by a response dated July 21, 1993.

ConverDyn is a partnership established by agreement between General Atomics Energy Services, Inc. and Allied-Signal Energy Services, Inc., subsidiaries of General Atomics and Allied-Signal, Inc., respectively. The arrangement establishes that ConverDyn will provide the services necessary for SFC to meet its contractual obligations to supply $UF_6$ conversion services; in return, SFC is given rights to a share of ConverDyn's revenues, defined by a system of payment priorities and calculated pursuant to certain guidelines established by the partnership documents.

SFC projects that it will receive, at the maximum, less than $72 million in fees from the ConverDyn arrangement through the year 2003, and an income of more than $17 million from other sources. SFC estimates that the cost of decontaminating and decommissioning the SFC site will consist of some $21 million in direct costs and approximately $65 million in indirect costs, which reflect overhead such as personnel costs, legal expenses, NRC fees, taxes, insurance, $DUF_4$ operating costs, transition costs, interest, and ranch costs.

Our review of the information provided by SFC and GA in response to the Demands for Information, indicates that the proposed ConverDyn arrangement appears to be a *bona fide* business arrangement among the various parties and their principals. Estimates of income from the ConverDyn arrangement are necessarily uncertain because they are based upon assumptions about the market for $UF_6$ conversion services over the next ten years, ConverDyn's ability to keep existing customers or to obtain new customers, and the costs of business operations, and because they are based upon some speculative assumptions about whether SFC will receive the maximum possible amount in fees, in view of the system of priorities for payments to be made under the ConverDyn arrangement. Nonetheless, the NRC Staff concludes that the proposed arrangement may be capable of producing a substantial portion of the funds that SFC estimates will be needed for Facility decommissioning.

However, there are a number of important shortcomings in the proposed arrangement from the standpoint of financial assurance that adequate funding will in fact be available to properly decommission the Facility as required by Commission regulations. Because of these shortcomings, the SFC funding plan based on the ConverDyn arrangement does not fully satisfy the requirements of 10 CFR 40.36 and 40.42. No financial assurance mechanism, as required by 10 CFR 40.36, is in place, and the ConverDyn arrangement does not constitute the equivalent. Additionally, the $72 million in projected revenues from ConverDyn are of necessity based on inherently speculative assumptions about anticipated market conditions. Also, since there are a number of other claims on ConverDyn revenues that have higher payment priority than payments to SFC, there is significant uncertainty that SFC's projected revenues will in fact materialize. Furthermore, SFC's estimate of the amount of revenue projected to be derived from the ConverDyn arrangement is based upon the unsubstantiated assertion that ConverDyn's fixed costs of operation will steadily decline after 1994. Revenue estimates also assume that ConverDyn will operate at a 100% capacity utilization rate continuously through the year 2003. Finally, there is uncertainty concerning SFC's projected decommissioning costs. The proposed decommissioning plan has not yet been submitted to NRC, although a preliminary plan (the PPCD) has been submitted. SFC's cost estimate for decommissioning is based on assumptions as to acceptable decommissioning alternatives. If more costly decommissioning alternatives are required by NRC as a result of its review of SFC's decommissioning plan, the $89 million in revenues from the ConverDyn arrangement and other sources are unlikely to be sufficient.

Thus, although the funding plan proposed by SFC based on the ConverDyn arrangement may be capable of producing a substantial portion of the funding that may be required for Facility decommissioning and should be carried out in order to provide funding for this purpose, the funding plan does not provide the level of assurance required by the Commission that adequate funds will be available to fully decommission the Facility. Accordingly, to satisfy the Commission's requirements, the ConverDyn arrangement must be supplemented by funding assurances to protect against SFC revenue shortfalls, and to assure additional funding if more costly decommissioning alternatives are required. This Order imposes the supplemental conditions necessary to fully satisfy the Commission's financial assurance requirements. However, since the ConverDyn arrangement appears to be SFC's only source of income, SFC does not appear to be able to satisfy the Commission's financial assurance standards. Accordingly, supplemental financial assurance is required from SFC's parent corporation, GA.

V

GA made a number of commitments to the NRC concerning the operation and cleanup of the SFC Facility and GA has had direct involvement with the operation of SFC.

As mentioned above, in connection with the Commission's consideration of the restart of the Facility after the October 3, 1991 Order suspending operations, the Commission was concerned about funding for the required cleanup of the Facility site. 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. In a letter of NRC Chairman Selin dated March 19, 1992, GA confirmed this commitment. In addition, recognizing the need to remediate existing environmental concerns on a reasonable schedule, GA stated in the March 19, 1992 letter its commitment to fund site remediation during operation should SFC fail to do so. In the March 19, 1992 letter, GA set forth its commitments as follows:

To summarize the highlights of our commitments to the support of SFC's operations:

(1) SFC complies fully with all present regulatory requirements to provide financial assurance for the decommissioning of the facility. Further, GA supports SFC's program to minimize or prevent any adverse

environmental effects resulting from SFC's future operations and to remediate existing environmental concerns on a reasonable schedule as may be agreed to by SFC, the NRC and other governmental entities. SFC should be able to fund these programs from current revenues when operations are resumed. Should those revenues prove insufficient, the associated commitments will be fulfilled by GA.

(2) The longer term program to decontaminate and decommission the SFC facility will be backed by such guarantees from GA as may be required to satisfy NRC regulations. This is a matter which will be determined in connection with the NRC's action on the pending SFC license renewal application. SFC's renewal application utilizes alternative financial mechanisms permitted under the regulations. However, GA is prepared to provide its guarantee or financial support, if that proves necessary.

The Commission relied on the above GA financial commitments in authorizing restart of the SFC Facility on April 16, 1992. In addition, the NRC acknowledged GA's commitments in a letter dated May 6, 1992, in which the NRC requested GA to formalize those commitments and advised GA that these commitments were in addition to, and not in lieu of, satisfaction of the Commission's decommissioning funding requirements. See 10 CFR 40.36. By letter dated June 24, 1992, GA agreed to formalize its commitments by executing an agreement with SFC and submitted a draft agreement to the NRC which it stated would be presented to the boards of directors of SFC and GA for approval. SFC and GA, however, have not executed that agreement.

GA has had and now has de facto control over the day-to-day business of SFC. That control is demonstrated by, but not limited to, the following facts: GA owns all the capital stock of SFC indirectly through a subsidiary, Sequoyah Fuels International Company. GA and SFC have and have had common directors or officers. For example, Richard Dean, former Chairman of the SFC Board, was also a GA Engineering Director, and Max Kemp, Chief Executive Officer of SFC and a member of its Board of Directors, also was the GA Finance Manager. GA exercises management oversight of SFC activities through periodic oversight and program audits of SFC's QA program by the QA Director of GA, and through the Nuclear Committee of the SFC Board of Directors, which was chaired by a GA Engineering Director and which not only advises SFC but directs SFC activities such as cleanup and repair of piping structures in the SFC Solvent Extraction Building, and by the appointment of a GA Engineering Director to serve as Manager, Engineering for SFC. GA supplies technical expertise and personnel to SFC; for example, the GA Quality Systems Manager acted as the SFC QA manager and a GA Engineering Director served as Manager, Engineering for SFC, while both remained on GA's payroll. In addition, the SFC Source Material License specifies that the Corporate Manager, Health Physics, the Corporate Manager, Licensing, Safety and Nuclear Compliance, and the Vice President, Human Resources, all of whom are GA employees, shall be responsible for auditing SFC licensed activities and ensuring the qualifications of certain SFC employees. Also, GA has directed SFC regarding satisfying requirements for site remediation and decommissioning and GA made "a strong commitment" to SFC that resources are available to SFC for site remediation and decommissioning. Moreover, GA's Chairman, J. Neal Blue, represented to the NRC at the Commission's March 17, 1992, public meeting, that GA would guarantee the financial resources necessary for SFC site remediation and decommissioning. As indicated above GA has now structured the business activities of SFC by entering into a joint venture with Allied Signal Corporation, creating a partnership, ConverDyn, in order to satisfy outstanding business commitments of SFC.

On November 23, 1992, SFC informed the Commission that it intended to continue with only short-term limited operations at the Facility and that the unexecuted funding guarantee agreement between SFC and GA was "no longer applicable." GA and SFC asserted that such limited operations are expected to generate cash flow greatly reduced from that expected at the time of the March 17, 1992, public meeting. The November 23, 1992, letter raised serious questions as to whether SFC would have the financial resources to accomplish site remediation and decommissioning. Accordingly, the Commission held a public meeting on December 21, 1992, with the management of SFC and GA to obtain information concerning the plans for the Sequoyah Fuels Facility, particularly concerning assurance of financial resources needed to decontaminate and decommission the Facility and site. At the December 21, 1992, meeting, Mr. Blue addressed the Commission regarding GA's support for the decommissioning of the Facility and site. Contrary to Mr. Blue's March 17, 1992, financial assurance commitments, as well as his March 19, 1992, letter affirming his "financial support and guarantees", Mr. Blue stated on December 21st that GA could no longer provide financial assurance because the commitment to do so was premised on license renewal and long-term operation of the Facility.

Mr. Blue's December 21st statement that GA's March 17th and 19th commitments were conditional is contrary to the record. Mr. Blue's March 17th statements to the Commission and his March 19th letter to Chairman Selin were clear and unconditional financial assurance guarantees. On March 17 and 19, Mr. Blue represented that SFC's operating revenues would be sufficient to cover remediation and decommissioning costs. On December 21, he assured the Commission that revenues paid to SFC by ConverDyn likewise would be sufficient. This latter assurance is inconsistent with Mr. Blue's December 21 representation that the financial status of SFC was significantly deteriorated such that GA's financial assurance of remediation and decommissioning costs was no longer possible. Furthermore, Mr. Blue's characterization of Citicorp's reason for not approving GA's financial assurance guarantee is not supported by Citicorp's letter of December 18, 1992 (submitted to the NRC by GA as proprietary confidential information), which is a general prohibition on assuming financial liability and is not based on any changed financial conditions of SFC. In short, Mr. Blue's stated bases for GA's withdrawal of its financial assurance commitments not only appears to be internally inconsistent, but also contrary to the clear record of GA's financial assurance guarantees of March 17th and 19th on which the Commission relied in authorizing restart of the Facility on April 16, 1992. As a result of Mr. Blue's statements 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 necessary decontamination and decommissioning of the Facility and site. Accordingly, on December 29, 1992 the NRC Staff issued a Demand for Information to SFC and GA concerning this matter.

The December 29, 1992 Demand for Information required GA and SFC to submit a plan for decontaminating and decommissioning the SFC Facility and a decommissioning funding plan for decommissioning the SFC Facility in compliance with 10 CFR 40.36. Although SFC submitted a Preliminary Plan for Completion of Decommissioning (PPCD) the SFC site, and preliminary cost estimates for activities directly and indirectly related

to decommissioning, neither SFC nor GA provided a description of the method of assuring funds for decommissioning which satisfies 10 CFR 40.36, as required by Section IV.B. of the Demand for Information, or which satisfies 10 CFR 40.42, as discussed above.

Mr. J. Neal Blue states in his letter of February 16, 1993, transmitting the GA response to the Demand for Information, that GA has been consistent in its willingness, on a voluntary basis, to assist SFC in meeting its remediation objectives. For example, between October 1988 and October 1991, GA enabled SFC to commence clean-up of the environmental conditions at the site. Mr. Blue also states that the ConverDyn arrangement is a good-faith effort by GA to assist SFC in arranging resources necessary to meet SFC's obligations. Nevertheless, neither the voluntary assistance by GA nor the ConverDyn arrangement are sufficient to satisfy NRC requirements for financial assurance under 10 CFR 40.36 or 10 CFR 40.42, as discussed above.

In the "Response of General Atomics to December 29, 1992 Demand for Information" attached to Mr. Blue's letter of February 16, 1993, GA disputes that Mr. Blue's statements at the March 17, 1992, meeting constituted a commitment to provide financial guarantees by GA, and asserts that Mr. Blue only committed GA to make it possible for SFC to use its operating revenues and retained earnings for remediation and other capital improvements, and that any GA financial commitment would arise after a period of continued operation under a renewed license. GA also disagrees that Mr. Blue's letter of March 19, 1992, to Chairman Selin constituted a financial guarantee, asserts that it evidenced only an intention to provide "stop-gap" funding for items not covered by SFC operating revenues, and maintains that any offer of financial guarantees was dependent upon renewal of the SFC operating license. Notwithstanding GA's assertions, Mr. Blue's statements of March 17 and 19, 1992, constituted a guarantee of financial resources necessary for SFC site remediation and decommissioning.

Mr. Blue argues that his commitments must be viewed in the context of GA's acquisition of SFC, specifically, that in 1988, when GA's subsidiary, Sequoyah Holding Company, acquired the stock of SFC, the NRC "fully understood and accepted that GA explicity refused to furnish any guarantee" for decontamination and decommissioning of the SFC Facility, and that the license makes only SFC financially responsible for decontamination and decommissioning. (Letter of J. Neal Blue, dated February 16, 1993, to Robert M. Bernero, p. 2, and its Attachment, "1988 Acquisition of SFC and Subsequent NRC Financial Review", pp. 1–5) Although at the time of the purchase GA may have refused to guarantee SFC's obligation to decontaminate the facility, GA's actions in control over the day-to-day operations and business of SFC, and GA's representations of financial guarantees described above, on which the Commission has relied, make GA responsible, along with SFC to satisfy the NRC financial assurance requirements.

GA asserts that the DFI incorrectly states that the Commission relied on the GA financial commitments in authorizing restart of the SFC facility on April 16, 1992. Although the Staff Requirements Memorandum of March 27, 1992, specified that NRC Staff efforts to make the March 19, 1992, commitments legally binding were not a necessary precondition to restart, nonetheless, Mr. Blue's commitments of March 17 and March 19 were relied upon by the Commission in authorizing restart. The Commission reasonably took Mr. Blue at his word. The Commission's decision not to delay the SFC Facility restart to await legal documents formalizing Mr. Blue's commitments hardly means, as GA would have it, that the Commission was indifferent to GA's guaranty. To the contrary, Mr. Blue's promise to stand behind SFC reassured the Commission that SFC's cleanup effort was creditable and would proceed upon restart.

GA disputes the conclusions in the DFI that GA has had and now has *de facto* control over the day-to-day business of SFC, and that this control makes GA and SFC jointly and severally responsible for funding decontamination and decommissioning of the SFC site. In this regard, GA relies upon immaterial facts,[1] disputes the significance of virtually each individual indicia of control relied upon by the DFI, and even provides additional evidence of GA's control over SFC.[2] GA, however, provides no basis to change the conclusion that the entire body of evidence establishes that GA exercised and exercises *de facto* control over the day-to-day business of SFC.

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.

## VI

In summary, although SFC has outlined its plan for funding Facility decommissioning through the ConverDyn arrangement and while such arrangement may be a reasonable business arrangement, it does not satisfy the requirement of the Commission's regulations in 10 CFR 40.36(e) for financial assurance or in 10 CFR 40.42 to submit a plan assuring the availability of adequate funds for completion of decommissioning. Neither SFC nor GA proposed or established a funding mechanism in compliance with 10 CFR 40.36(e). Moreover, after review of the ConverDyn arrangement and SFC's financial projections, the NRC Staff has concluded for the reasons set forth above that SFC's funding plan must be supplemented with additional assurances before it can be accepted by NRC as providing reasonable assurance that SFC will be able to satisfy its obligations to provide adequate funding for the ultimate decommissioning of the Facility or that the health and safety of the public will be protected. Since decommissioning will likely commence in the near future, I find that steps must be taken now to assure the availability of adequate funding for decommissioning.

Independent of the NRC's activities regarding the cleanup of the Facility, the United States Environmental Protection agency (EPA) recently issued an Administrative Order on Consent which required SFC to study and correct contamination at the SFC site in Gore, Oklahoma. Sequoyah Fuels Corporation, U.S. EPA Docket No. VI–005–(h)93–H (August 3, 1993). Although EPA's action

[1] For example, GA asserts that none of the six members of GA's Board of Directors were simultaneously members of the SFC Board of Directors. *See*, "Response of General Atomics to December 29, 1992, Demand for Information" (February 16, 1993), p. 14. The NRC Staff did not assert that any of these individuals were simultaneously on both the GA and SFC Boards of Directors. The NRC Staff cited as indicia of GA's *de facto* control of SFC that GA and SFC shared "common directors or officers", specifically that Dr. Dean was on the SFC Board of Directors while at the same time he was the GA Engineering Director, and that Mr. Kemp was the GA Finance Manager while at the same time he was the Chief Executive Officer of SFC. *See*, Demand for Information (December 29, 1992), pp. 3–4.

[2] For example, GA states that Mr. James R. Edwards is a Vice-President, General Counsel and Secretary of GA while also acting as SFC's Secretary and General Counsel and sitting on the SFC Board of Directors. *See*, "Response of General Atomics to December 29, 1992 Demand for Information" (February 16, 1993), pp. 14–15.

was taken under the authority of section 3008h of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous Waste Amendments of 1984, 42 U.S.C. 6928h, it was coordinated with the NRC staff in an effort to avoid duplication of regulation by the Federal government and to maximize the benefits to the agencies' mutual objective of assuring a timely cleanup and decommissioning of the Facility. Thus, while the EPA Consent Order is directed only at nonradioactive materials under the terms of the EPA's authorizing statutes, the NRC believes that the conduct of the required activities may provide information that will satisfy some of the terms of this Order. Accordingly, SFC, in discharging its obligations under this Order, may avoid duplication by submitting to the NRC information prepared in fulfillment of the EPA [redacted]nsent Order to the extent that it is [redacted]o responsive to the provisions of this Order.

VII

Accordingly, pursuant to sections 62, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 40, it is hereby ordered that:

A. General Atomics Corporation and Sequoyah Fuels Corporation are and shall be jointly and severally responsible for:

1. Providing funding to continue remediation of existing contamination at the SFC Facility site, regardless of whether the Facility continues to [redacted]rate or not;

[redacted] Providing financial assurance for [redacted]commissioning in accordance with the requirements of 10 CFR 40.36; and

3. Providing an updated detailed cost estimate for decommissioning and a plan for assuring the availability of adequate funds for completion of decommissioning, in accordance with the requirements of 10 CFR 40.42(c)(2)(iii)(D);

B. Sequoyah Fuels Corporation shall: Carry out the funding plan described in its February 16, 1993 submission;

C.1. To the extent Sequoyah Fuels Corporation fails to or is unable to do so, GA shall complete the actions required of Sequoyah Fuels as described in Section VII;

2. If the revenues provided by ConverDyn or other sources to SFC in any year are less than the revenue projected in the Preliminary Plan for Completion of Decommissioning, GA shall make up the shortfall by providing funds to SFC to carry out the decommissioning activities up to the amount specified in the Preliminary Plan for Completion of Decommissioning, or by directly funding such activities so that total funding for decommissioning activities is not less than that specified in the Preliminary Plan for Completion of Decommissioning;

3. If the decommissioning alternative approved by NRC is more costly than those upon which the Preliminary Plan for Completion of Decommissioning is based, GA shall make up the shortfall by providing funds to SFC to carry out required decomissioning in accordance with schedules approved by NRC or by directly funding such decommissioning activities; and

4. On or before November 19, 1993, GA shall provide financial assurance for decommissioning and decontamination in the amount of $86 million through (a) prepayment, (b) a surety method, insurance, or other guarantee method, or (c) an external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund, in accordance with the requirements of 10 CFR 40.36 and the guidelines in Reg Guide 3.66;

5. If GA demonstrates to the satisfaction of the Commission that the amount of financial assurance provided in satisfaction of Section VII, Paragraph C.4. of this Order exceeds the amount sufficient to properly decontaminate and decommission the SFC Facility and site, GA may request the Commission to authorize a reduction in that amount; and

6. If the Commission later determines that the amount of financial assurance provided in satisfaction of Section VII, Paragraph C.4. of this Order is insufficient to properly decontaminate and decommission the Facility and site, the Commission may direct an increase in the amount or take such other action as the Commission may deem appropriate;

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by the Sequoyah Fuels Corporation or General Atomics of good cause.

VIII

In accordance with 10 CFR 2.202, SFC and GA must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and set forth the matters of fact and law on which SFC, GA, or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Services Section, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Director, Office of Nuclear Material Safety and Safeguards at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, suite 400, Arlington, Texas 76011–8064, and to SFC and GA if the answer or hearing request is by a person other than SFC or GA. If a person other than SFC or GA requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by SFC, GA, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, the provisions specified in Section VII above shall be final 20 days from the date of this Order without further order or proceedings.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 15th day of October 1993.

**Hugh L. Thompson, Jr.,**

*Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.*

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