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February 1, 1996

OFFICE OF SECRETARY
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BRANCH

Michael F. Weber, Chief
Low-Level and Decommissioning
Projects Branch
Division of Waste Management
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Subject: Sequoyah Fuels, "exemption" from Decommissioning Funding Requirements

Greetings Mr. Weber,

I am writing in regard to the public meeting between the NRC and the Sequoyah Fuels Corporation on November 14, 1995. As stated in the Meeting Notice of November 2, 1995, the purpose of the meeting was "To Discuss Development of the Environmental Impact Statement on the Decommissioning of the Sequoyah Fuels Facility and Financial Assurance for Decommissioning".

Specifically, NACE is extremely concerned regarding your representations during the latter part of this meeting on the subject of Financial Assurance for Decommissioning. During this part of the meeting, Mr. Reau Graves asked if Sequoyah Fuels would have to comply with the new decommissioning funding requirements (10 CFR Part 40, §40.36 and §40.42). You replied that based on the Settlement Agreement approved by the Atomic Safety Licensing Board, the issue of Sequoyah Fuels complying with the new Decommissioning Funding requirements was "moot" and that Sequoyah Fuels did not have to meet these regulatory requirements. Since you made this representation in the presence of Carl J. Paperiello, Director, Office of Nuclear Material Safety and Safeguards - and since Dr. Paperiello did not object or correct your representation - I must assume such statements met his approval.

I believe you are in error by relying on the above referenced ASLB Order regarding the Settlement Agreement. The ASLB does not have the authority to rule contrary to Commission regulations, nor did it do so. As the Order (dated October 26, 1995 and now on appeal to the Commissioners) states, "Suffice it to state that these accounts [decommissioning escrow account and decommissioning reserve] are required to be established pursuant to SFC's license and NRC regulations, and neither is impacted by the Agreement" (emphasis added).

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There is no provision in 10 CFR §40.36 or §40.42 for an exemption from the decommissioning financing requirements. Even if an exemption were provided for within these specific regulations, Sequoyah Fuels has not applied for one. Yet, based on what I believe to be your misrepresentations in the November 14 meeting, members of the public were misled into thinking that Sequoyah Fuels has been granted such an exemption.

This misrepresentation not only undermines public confidence in the Commission's regulatory and rulemaking process, but also sent an improper message to Sequoyah Fuels and Fansteel (which was represented at the meeting) that licensees can escape long-term obligations to comply with NRC safety regulations through settlement of short-term enforcement actions. Further, the manner in which you announced that Sequoyah Fuels was not subject to decommissioning funding regulations - verbally, without any written record - continues an escalating practice that NACE is adamantly opposed to. We will continue to insist that decisions or announcements regarding changes of plans, policies, procedures, etc. be properly documented. Therefore, it is important that you correct your misrepresentation in a letter to Sequoyah Fuels, Fansteel and the members of the public who were in attendance at the meeting. In the event that you believe your representation is correct, then I request that a letter to that effect be provided.

Because the issues of decommissioning funding and regulatory compliance are matters of critical importance to the general public and this community especially, I would appreciate a timely response to the above request.

Thank you.

Sincerely,


Lance Hughes
Director

cc: Dr. Carl J. Paeriello, Director, NMSS
Mr. James M. Taylor, EDO
Chairman Shirley Ann Jackson
Commissioner Kenneth C. Rogers
Diane Curran, Counsel for NACE
Service List, Docket No. 40-8027-EA