



40-8027

February 16, 1993

Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20655

Re: Sequoyah Fuels Corporation

Dear Mr. Bernero:

General Atomics ("GA") has received Mr. Taylor's letter of December 29, 1992 and the accompanying Demand for Information ("DFI") addressed to Sequoyah Fuels Corporation ("SFC") and GA. This letter transmits the "Response of General Atomics to Demand for Information Dated December 29, 1992" ("GA Response"). SFC is filing a separate response to the DFI ("SFC Response").

The SFC Response describes its plans to proceed promptly and effectively to decommission the SFC facilities at the Gore, Oklahoma site. It provides, among other things, additional information regarding the adequacy of its sources for funding decontamination and decommissioning activities. SFC also indicates that it is willing to discuss with the NRC possible financial mechanisms (such as pledges, escrow accounts, trust agreements, covenants, etc.) to provide further assurance.

I would like to confirm that GA remains willing to attempt to work cooperatively with the Commission in its efforts to assure that the decontamination and decommissioning of SFC's Gore facilities is successfully completed. GA will continue to assist SFC on a voluntary basis to achieve its goals. GA would also welcome the opportunity to discuss further with the NRC steps which would facilitate SFC's program for the decontamination and decommissioning of the Gore facilities.

The accompanying GA Response reviews in detail the facts involving my previous statements to the Commission and regarding the nature of the GA/SFC relationship in order to address apparent misunderstandings concerning my statements and the nature of the GA/SFC relationship as expressed in the DFI.

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It is important, however, to go beyond the detailed recitation of the facts set out in GA's Response to make clear that GA has been consistent in its willingness, on a voluntary basis, to assist SFC in meeting its operational, safety and remediation objectives. Further, GA's actions since it acquired SFC, demonstrate GA's good-faith efforts in cooperating with SFC so that it is able to meet those objectives. I would therefore like to summarize the context and intent of my previous statements so that the Commission will better understand and appreciate the integrity and consistency of our position.

In order to do this, it is necessary to go back to 1988 when the stock of SFC was acquired by Sequoyah Holding Corporation ("SHC"), a subsidiary formed by GA expressly for the purpose of acquiring SFC. There was nothing unusual about forming a new subsidiary in order to venture into a new business area. As the Commission is well aware, providing for limited liability through a corporate framework is commonplace not only in the nuclear field but throughout U.S. industry. In particular, with respect to potential responsibility for the decontamination and decommissioning of SFC's facilities, as described in the Attachment to the enclosed GA Response, the NRC fully understood and accepted that GA explicitly refused to furnish any guarantee.

This refusal to assume a subsidiary's responsibility did not mean, however, that GA was not a good corporate citizen and did not take seriously SFC's responsibility to discharge its obligations. Quite the contrary, GA provided ample technical and financial support to SFC. Moreover, during the first three years of GA's ownership of SFC (from October 1988 to October 1991), GA enabled and encouraged SFC to commence clean up of the environmental conditions that existed at the site because of previous operations.

During that period, SFC spent over \$10 million on the handling and removal of accumulated materials. In addition, when it became apparent that new management was needed at SFC, Mr. Sheppard was brought in as President and Chief Operating Officer, two outstanding nuclear managers were added as outside members of the Board of Directors, and key SFC officials were replaced.

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Thus, while my attendance at the March 17, 1992, SFC meeting with the Commissioners did not stem from any responsibility by GA for SFC licensed activities, I wanted to underscore, as a representative of SFC's interested parent company, that SFC's plans and the improvements in regulatory performance which Mr. Sheppard and other SFC managers achieved had the full support of GA. Both my prepared statement and substantially all of my comments dealt with that subject.

The decommissioning of the SFC facilities was not related to the shutdown order that had been issued in October, 1991, and was not part of any requirement that had to be satisfied in order to obtain NRC approval for restart. As discussed in the enclosed GA Response, various exchanges took place on March 17, but none addressed circumstances under which SFC's facilities might have to shut down prematurely before license renewal.

In the few days allotted to supplement the record of the March 17 meeting, I submitted my letter of March 19, which attempted to spell out more carefully the type of financial support that GA was willing to provide in connection with the pending relicensing application. As discussed in the GA Response, those commitments were clearly tied to the license renewal process.

I would like to emphasize the context in which all of these events took place. My statements regarding GA support for decommissioning activities related to circumstances under which SFC would be obtaining a 10-year renewal of its operating license, in connection with which GA would voluntarily provide support to SFC beyond and above any that it was legally required to furnish. No one had in mind or explicitly addressed the possibility of near-term shutdown. I did not, nor could I reasonably be expected to, commit GA to unconditionally guarantee decommissioning costs under such circumstances. In fact, it was understood that the quantification and terms of NRC-required decommissioning assurances to be provided by SFC would have to be determined during the relicensing process. Thus, the personal criticism leveled at me in the DFI on grounds of alleged inconsistencies in my statements to the Commission is totally unjustified.

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Although neither I nor GA have made any such commitments, this does not mean that GA has not voluntarily continued to assist SFC in developing the financial capability required to meet its decontamination and decommissioning responsibilities. In fact, 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.

The NRC is not confronted by a licensee which must shut its doors without resources to meet decommissioning obligations. Instead, as SFC describes in its response to the DFI, during the contemplated ten-year decommissioning period, SFC expects to receive substantial revenues from its own resources and under the ConverDyn agreements. These revenues are expected to be sufficient to meet decommissioning costs and SFC's other necessary expenses. It is worth noting that SFC estimates that the total spending for its direct costs of activities related to decommissioning will be about \$21 million, of which approximately \$3.8 million will be spent this year.

We believe that SFC will be able to fulfill its decommissioning obligations. We urge the Commission to let SFC proceed to do just that.

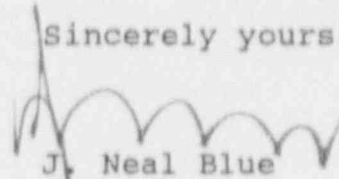
We understand that the Commission would prefer that there be "guarantees" that funds will be available to meet such obligations. As mentioned above, and as discussed at the February 10 meeting with the NRC and in its response to the DFI, SFC has offered to discuss with the NRC possible financial mechanisms to provide that SFC's net assets and revenues will be devoted to the completion of decommissioning.

I would like to assure the Commission that GA will encourage and support SFC in that dialogue and, also, in discussions with the EPA and other regulatory agencies having an interest in this matter. In that context, GA would be willing to discuss with the NRC steps that GA might take to provide further assurance that SFC's net assets and projected revenues are available to meet the contemplated costs of completing decommissioning.

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As I indicated at the meeting on December 21, it is in the best interest of all parties that available resources be devoted to decommissioning tasks. I hope that the focus will be on accomplishing that task, and that resources will not be diverted to unnecessary and fruitless controversy. We wish to work with NRC toward that goal.

Sincerely yours,



J. Neal Blue
Chairman

cc: Lawrence J. Chandler, Esq.
Diane Curran, Esq.
Allyn M. Davis
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February 16, 1993

**Response of General Atomics to
December 29, 1992 Demand For Information**

I. INTRODUCTION

On December 29, 1992, the NRC issued a "Demand for Information" ("DFI"), which was served upon both the Sequoyah Fuels Corporation (SFC) and General Atomics (GA). GA is a third tier parent company of SFC, which is the holder of NRC License SUB-1010 (Docket No. 40-8027) and owner of the NRC licensed facilities at Gore, Oklahoma.

The DFI refers to a December 21, 1992 meeting at which representatives of GA and SFC met with the Commission to discuss the status of SFC's facilities in Gore, Oklahoma. At this meeting, SFC representatives described technical and business developments and the status of the SFC facilities. Additionally, GA's Chairman and CEO, J. Neal Blue, described GA's continuing efforts to provide technical and financial support for SFC and the decontamination and decommissioning (D&D) of the Sequoyah facilities, but noted that changes in SFC's circumstances that affected its plans for license renewal had eliminated the foundation on which certain prior GA statements were based. Following the December 21 meeting the NRC concluded that developments affecting the SFC facilities raised "uncertainties with respect to the nature of and funding assurance for site remediation and decommissioning." Apparently, this is the basis for the issuance of the DFI.

The DFI makes several factual allegations regarding the meaning of statements made by GA in connection with SFC's D&D efforts and regarding the nature of GA's corporate relationship with SFC. Additionally, the DFI appears to reach factual and legal conclusions, asserting that "GA has had and now has de facto control over the day-to-day business of SFC" and that GA and SFC "are jointly and severally responsible" for both remediation and financial assurance for decommissioning of the Gore site.

The DFI does not demand information from GA regarding these allegations and legal conclusions. Rather, it seeks a decommissioning plan and decommissioning funding plan for the SFC facilities from both GA and SFC. GA is not the NRC's licensee in connection with the SFC operations and is not otherwise subject to NRC's jurisdiction for the reasons set forth below. Thus, this aspect of the DFI is properly addressed, at best, only to SFC, and SFC is responding to it. GA believes, however, that the DFI reflects certain misunderstandings concerning the statements previously made by GA to the Commission and the nature of the GA/SFC relationship. This submittal seeks to address these misunderstandings.

The DFI appears to assert jurisdiction over GA on two grounds:

- (1) It asserts that GA has made commitments to the NRC which result in an enforceable obligation to fund SFC's remediation efforts and to guarantee that

SFC will be able to provide financial assurance for the decommissioning of its Gore facilities; and

- (2) It maintains that GA has *de facto* control over SFC's day-to-day operations and therefore, that GA and SFC are "jointly and severally responsible" for funding remediation of the Gore site and providing financial assurance for decommissioning.

Each of these assertions is addressed below.

II. GA'S PRIOR STATEMENTS, THEIR INTENT AND EFFECT

The GA statements relied upon by NRC were made in a meeting with the Commissioners on March 17, 1992 and in a March 19 letter confirming GA's position.

A. The March 17 Meeting

Although the DFI cites no specific statement made at the meeting, it concludes:

GA, through its chairman, made commitments to the NRC to supply funding in order to guarantee that SFC will satisfy its obligation to provide financial assurance of funding for decommissioning.

The statements made at the March 17 meeting do not support this conclusion. At that meeting, Mr. Blue noted that the Sequoyah plant "is a nuclear materials facility that requires special skills, resources and attention [and] which must be operated in a structured regulatory environment." (Tr. at 11). He then added that "[w]ith the full backing of General Atomics,

financial and technical, Sequoyah is addressing these specific requirements." (Tr. at 11).

Mr. Blue's statements indicated that GA would assist SFC by making it possible for SFC to use operating revenues for remediation activities and other capital improvements. For example, SFC's President, James J. Sheppard, elaborated on GA's "strong financial backing" by noting that SFC had been able to spend over \$10 million "to resolve old problems that were inherited when the facility was purchased." (Tr. at 20). Mr. Sheppard further pointed out that SFC had been able to budget approximately \$5.6 million for capital expenditures in the previous three years, and the same level had been budgeted for the upcoming three years. (Tr. at 20-21). It is clear that Mr. Blue was addressing "operations" at SFC and not any near-term decommissioning of the facility. Moreover, these references did not suggest that GA was directly funding these programs, but rather, they referred to SFC's freedom to retain earnings for these purposes.

In a subsequent exchange with Chairman Selin, the nature and extent of GA's commitment was further clarified. Noting that Mr. Blue had "talked mostly in the context of operations," Chairman Selin asked a more pointed question regarding GA "commitments to Sequoyah as far as financial and other support for decontamination and decommissioning." (Tr. at 66). In response, Mr. Blue noted that "[t]he commitment levels, of course, for decontamination and decommissioning are a subject

[for] the license [renewal] review and that will be . . . reviewed in connection with those hearings."

Chairman Selin pressed his questioning regarding D&D funding, asking whether GA had made "open-ended commitments to do what is necessary to meet the D&D [decontamination and decommissioning] requirements in addition to the specific funds that have been set aside." (Tr. at 66). Mr. Sheppard interjected that he had broad assurances that GA "expects us to meet those commitments and to proceed on." (Tr. at 67). However, it is clear that Mr. Sheppard was referring to the use of SFC resources from on-going operations since he noted that "the resources required will not be held against me in any way in terms of profit type considerations in my performance."

The Chairman later asked Mr. Blue, "Does GA have a commitment if Sequoyah is not able to provide the resources from its own operating budgets, not able to accumulate the resources to finish the D&D properly and return the site to general appropriate use?" (Tr. at 68). Mr. Blue responded that GA was a medium-sized company that did not have the resources of General Motors, but that there was a positive trend in terms of remediating the problem during on-going operations. (Tr. at 68-70). At this point, the Chairman summed up the discussion as follows:

Chairman Selin: Well, that's a question of judgment. What I hear you saying very clearly is you think that over time, assuming continued operation, the magnitude of the problem will decrease. What I'm asking is,

is GA committed to dealing with the residual magnitude of the problem when it has to be faced?

Mr. Blue: Yes, we're committed to dealing with the residual when it has to be faced.

(Tr. at 70) (emphasis added).

In this exchange, the Chairman explicitly recognized that Mr. Blue's statements were made in the context of, and assumed there would be, years of continued operations. Mr. Blue's understanding was that the Chairmar was asking whether, after this period of continued operations, GA would deal with D&D requirements that might be left at the end, *i.e.*, those that had not been fully remediated during the operational period and were not adequately addressed by SFC's final D&D efforts. However, this entire discussion, as reflected in Chairman Selin's question, contemplated the continued operation of the SFC facilities (in accordance with a renewed license); neither the Chairman, nor Mr. Blue, addressed circumstances under which the facility might be prematurely shut down before license renewal.

B. March 19, 1992 Letter.

Mr. Blue's March 19 letter to Chairman Selin confirmed GA's commitments as outlined in the March 17 meeting. The DFI points to two numbered paragraphs which "highlight" GA's commitments. However, the DFI provides no basis for concluding that the undertakings reflected in these paragraphs were unconditional. The language, itself, demonstrates the contrary.

The first numbered paragraph of the March 19 letter referred to GA's support for SFC's remediation program, and the schedule for conducting the program, which was to be negotiated with the NRC and other government entities:

- (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.

This paragraph emphasizes that the remediation programs were to be funded from operating revenues. GA intended to provide stop-gap funding for items that were not being covered by operating revenues; it never expressed an intent to fully fund such activities itself. Moreover, it is clear that any further obligation to provide funding with respect to the remediation activities and their schedule was to be "as may be agreed to by SFC" in the context of the license renewal process.

The second paragraph in question articulated GA's commitment with regard to financial assurance for D&D:

- (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.

Read as a whole, the offer of financial guarantees in paragraph (2) related to, and was dependent upon, SFC's license renewal application and SFC's ability to obtain a renewed license for the operation of its facilities for a 10-year renewal term. The first sentence expresses GA's commitment to back SFC by providing such guarantees as may be required to satisfy NRC regulations, anticipating the requirements applicable in the upcoming license renewal process. The next sentence in the paragraph defines the limits of this commitment by making clear that D&D funding was "a matter which will be determined in connection with the NRC's action on the pending license renewal application." The letter further explained that SFC utilized alternative financial mechanisms in its renewal application, and that GA was "prepared to provide its guarantee or financial support, if that proves necessary."

GA confirmed both in the March 17 briefing and in Mr. Blue's March 19 letter that it was "prepared" to make guarantees or arrange for financial assurance mechanisms in connection with SFC's application to renew its license and continue operations for a ten year term. It is not reasonable to conclude that GA would do so, except in the context of SFC's

receipt of the benefit of a license authorizing renewed operations for a ten year term.

C. NRC Reliance on Mr. Blue's Statements.

The DFI states that "[t]he Commission relied on the above GA financial commitments in authorizing restart of the SFC Facility on April 16, 1992." This is not reflected in the NRC correspondence and memoranda associated with that decision and, in fact, the documentation suggests the contrary. For example, in its Staff Requirements Memorandum following the meeting, the Commission:

- directed that "if it is practicable and advisable to do so," the Staff should make "legally binding on General Atomics" the commitments in paragraphs "(1)" and "(2)" of the March 19, 1992 letter;
- noted that the matters discussed at the March 17 meeting fell "into two categories: a.) solutions to problems identified in the October 3, 1991 Order, which therefore are preconditions to restart and b.) 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 letter "legally binding" were not "a precondition to restart."

The NRC Staff documents associated with the April 16 restart authorization reflect the same lack of reliance on the

March 17 and 19 statements. ^{1/} The NRC Staff's April 16 letter which authorized restart of the Sequoyah facility explicitly identified the bases for the decision, and it did not reflect any reliance upon Mr. Blue's statements.

D. The Draft SFC-GA Agreement.

As noted in the DFI, the NRC Staff requested on May 6, 1992 that SFC submit plans to consummate a contract or other arrangement with GA that would make the commitments in paragraphs (1) and (2) of Mr. Blue's March 19 letter "legally binding." The DFI goes on to state, however, that in a June 24, 1992 letter "GA agreed to formalize its commitments by executing an agreement with SFC and submitted a draft agreement." This is not correct. The draft agreement was submitted by SFC in a letter dated June 24, 1992, and it did not state that either SFC or GA had agreed to execute the proposed agreement. Rather the June 24 letter noted that "[t]he Agreement is being submitted for approval to the Boards of Directors of SFC and GA. After such approval, a copy executed on behalf of both companies will be provided to the NRC."

^{1/} Concededly, in an attachment to the restart letter, the NRC Staff noted that it was "pursuing this legal issue with the Office of the General Counsel." SECY-92-132, at 7 (Apr. 14, 1992) (NRC Staff Memorandum to the Commission Re: Restart of SFC Facility). This reference, however, placed no reliance on the commitments as a factor in the restart decision and in fact, appears to indicate that the commitments were no more than a "legal issue" which would be pursued, i.e., NRC Staff would attempt to make them "legally binding" if it were "advisable to so." See SRM ¶ 8.

As stated in the DFI, the draft agreement was never executed. Nevertheless, the draft is useful in helping to define the nature of the commitment GA was prepared to make as part of its financial support for SFC.

In Section I.A of the draft, SFC committed to attempt to meet its D&D obligations independently. In summary, this section provided that SFC would use its best efforts (1) to fund remediation activities from "operating revenues"; (2) to establish a reasonable schedule for "remediation of environmental concerns identified in the Action Plan"; and (3) to obtain adequate financial assurance for decommissioning "in such amounts as . . . is committed to by SFC to the NRC." Sections I.B and I.C of the draft provided mechanisms by which SFC could request assistance from GA if it were not able to fulfill its obligations independently.

Section I.B provided that SFC could request assistance to cover shortfalls in funding from operating revenues for the remediation activities conducted during ongoing operations. The draft then provided that:

In the case of a request submitted by SFC in conformance with Paragraph I.B, GA shall provide to SFC the requested funding for that portion of SFC's program or programs specified in such request.

Draft Agreement, Section II.A.

This language clearly contemplated that the remediation programs would be funded from ongoing operations, and GA would provide stop-gap funding. Additionally, GA's commitment was tied

to remediation activities in SFC's Action Plan for which "a reasonable schedule" was to be negotiated. Draft Agreement, Section II.A.2. NRC had indicated that the Action Plan and its schedule would be reviewed during the license renewal process.

Section I.C of the draft agreement gave SFC the right to request GA assistance to meet its obligations to provide financial assurance for decommissioning. GA's commitment, however, was limited to the specific amount to be agreed to by SFC. Section II.B spells out:

In the case of a request submitted by SFC [for financial assurance for decommissioning], GA shall either provide financial support to SFC, provide its corporate guarantee, or obtain such other financial instruments as GA may choose, at its discretion, in order to enable SFC to provide the financial assurance for decommissioning in the amount to which it has committed to the NRC.

(emphasis added). The amounts referred to were clearly those "committed to" by SFC in connection with the license renewal application.

These provisions are entirely consistent with the March 19 letter. GA's intended commitments with respect to D&D were limited to specified amounts to be agreed to by SFC in connection with the renewal of the license for the operation of SFC's facilities.

Thus, the limits of GA's undertakings are plainly and consistently set forth in the decommissioning correspondence and draft agreement discussed above. Contrary to the inferences

drawn in the DFI, GA neither offered nor did the NRC rely on any "unconditional commitment" from GA to back up SFC's D&D obligations. This is consistent with the limitations on GA's commitments with respect to SFC, as reflected throughout the entire record of communication with the NRC dating back to 1988. Although not requested in the DFI, this history is summarized in the Attachment to this response because it furnishes additional context within which to consider GA's voluntary undertakings with respect to SFC and the NRC's understanding of GA's obligations.

Accordingly, there is no basis for NRC to assert that GA is obligated to fund SFC's remediation and decommissioning activities.

III. GA'S RELATIONSHIP TO SFC

The DFI asserts that "GA has had and now has *de facto* control over the day-to-day business of SFC" in support of its assertion that GA and SFC "are jointly and severally responsible" for providing funding to remediate existing decontamination at the SFC Facility and for providing financial assurance for decommissioning. As demonstrated below, this is not correct.

The DFI asserts that GA owns all the capital stock of SFC. Although not precisely correct, ^{2/} the point is irrelevant. It is well understood that mere ownership of the stock of a subsidiary does not mean that a parent is in control of the day-to-day business of the subsidiary.

^{2/} As the Commission is aware, SFIC owns the stock of SFC.

The DFI relies on the fact that "GA and SFC have common directors or officers." The circumstance that certain individuals may be directors or officers of both a parent corporation and its subsidiary is a common occurrence and does not mean that the parent controls the day-to-day business of the subsidiary. In any event, there is currently no commonality in the boards of directors of GA and SFC, and there have not been any common members since April of 1992 (when Admiral Bird replaced Mr. Jones on SFC's Board). The SFC Board of Directors currently consists of James J. Sheppard, Richard A. Dean, Max D. Kemp, Admiral Ralph Bird, James R. Edwards and Murray Selman. Of this group, only Messrs. Edwards and Kemp currently hold positions with GA. Dr. Dean recently retired from GA where his last position was Senior Vice President, Reactor Operations. Neither Mr. Edwards, Mr. Kemp, nor Dr. Dean have ever been members of GA's Board of Directors. The other three Board members, Mr. Sheppard, Admiral Bird and Mr. Selman have never held any position with GA.

With respect to the officers of the two companies, three of the nine officers of SFC also hold positions with GA. These are Messrs. Edwards and Navarra and Ms. Dawson. 3/ This

3/ Mr. Edwards is a Vice-President, General Counsel and Secretary of GA, and is SFC's Secretary and acts as SFC's General Counsel; Mr. Navarra is Treasurer for both GA and SFC; and Ms. Dawson is an Assistant Secretary for both GA and SFC. As stated above Dr. Dean was an officer of GA until his retirement last year. Max Kemp is a Senior Vice-President and Chief Financial Officer of GA and served for a
(continued...)

has been the approximate ratio of common officers since the stock of SFC was acquired from Kerr-McGee.

The DFI also asserts that "GA exercises management oversight of SFC activities." It is not clear exactly what the DFI means by "management oversight." However, it is not at all uncommon or suggestive of day-to-day control for a parent to "oversee" the activities of its subsidiary. In any event, the specific examples of "management oversight" provided in the DFI clearly do not suggest day-to-day control of SFC's business by GA.

The DFI points to "periodic oversight and program audits of SFC's QA program by the QA Director of GA." The SFC license now provides in Section 2.8, and in substance has always provided since SHC acquired the stock of SFC from Kerr-McGee, that GA's Director, Licensing Safety and Nuclear Compliance ("DLS&NC") "shall ensure that quarterly audits are conducted at the Sequoyah Facility." The DLS&NC is required to prepare and submit a formal report of the findings, observations and recommendations of the audit to SFC's Vice President, Regulatory Affairs. 4/ The DFI in no way suggests how such audits and reports thereof are in any way different from similar inspections

3/(...continued)

period of months as SFC's CEO during the transition from SFC's previous chief executive officer, Mr. Graves, to SFC's current CEO, Mr. Sheppard.

4/ Copies of the report are also submitted to SFC's President and Senior Vice President and to GA's Manager, Health Physics.

and audits performed by the NRC itself or outside consultants. That copies of the reports are provided to a GA manager is clearly understandable; this is exactly the type of report that a parent or stockholder would ask for and receive from a subsidiary.

Secondly, the DFI asserts that "GA exercises management oversight of SFC activities . . . through the Nuclear Committee of the SFC Board of Directors." There is no basis for this contention. The Nuclear Committee of the SFC Board was created in order to increase the degree of SFC management oversight of SFC activities by SFC Board members with experience in the nuclear industry. The Committee has three members -- Dr. Dean, Admiral Bird and Mr. Selman. As described above, Admiral Bird and Mr. Selman are outside directors, and have never held any positions with either GA or SFC. Dr. Dean has been an outside director since his retirement from GA. It is therefore implausible to argue that this Committee indicates control over SFC activities by GA.

It is equally inaccurate to state, as asserted in the DFI, that the Nuclear Committee "not only advises SFC but directs SFC activities." The Nuclear Committee statement of responsibilities clearly states under the heading "Authority" that "[t]he Committee shall submit its views and reports to the full Board of Directors at least quarterly and, in addition, to

the senior levels of General Atomics management." The Committee does not "direct" any activities of SFC. 5/

Thirdly, the DFI contends that GA management oversight of SFC activities is demonstrated "by the appointment of a GA Engineering Director to serve as Manager, Engineering for SFC." This statement apparently refers to Frank Warner, who holds the title of Director, Manufacturing & Product Support in GA's Engineering Department. From mid-April to mid-November, 1992, he served as the Acting Manager of Engineering at SFC. His salary was directly billed to SFC, and he reported to John Ellis, SFC's Senior Vice President. His position at SFC was intended to be, and was, on an interim basis until SFC could hire a permanent engineering manager. Thus, there is no difference in substance in SFC having obtained this engineering expertise on a temporary basis from GA as opposed to any other company involved in providing such temporary services.

The DFI also states that GA "supplies technical expertise and personnel to SFC." It is not clear whether the provision of such technical services is intended as another type of "management oversight" or a separate category of conduct that supports the allegation of day-to-day control over SFC's

5/ GA is uncertain as to what events are referred to in the DFI regarding piping structures in the SFC SX Building. (DFI at 4). However, from discussions with SFC's President, GA understands that, on one of the Nuclear Committee's visits to the SFC site, it pointed out a potential problem with piping structures. As a result, SFC took appropriate action. There was no "direction" of activities by the Committee.

business. In either event, the DFI fails to suggest how the provision of technical services constitutes control over SFC's day-to-day business.

Among the examples of GA's "technical expertise" cited in the DFI is that:

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.

The case of the "GA Engineering Director," Mr. Warner, has been described above. The circumstances regarding GA's Quality Systems Manager, Mr. Dunlap is similar. He did serve as the interim QA manager at SFC. He reported to SFC's Vice President, Regulatory Affairs. As in Mr. Warner's case, GA directly billed his salary and benefits to SFC.

The DFI asserts as another example of technical expertise provided by GA that:

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.

The role of GA personnel in connection with audits of certain SFC activities is already discussed above in connection with the DFI's "management oversight" allegation. In performance of these functions, the GA personnel involved do not have any authority over SFC employees and the work they perform is paid

for by SFC. Moreover, it is incorrect to state broadly that GA employees are "responsible for auditing SFC licensed activities." The license also specifies certain auditing activities that are the responsibility of SFC personnel. 6/

The allegations of the DFI that "GA made 'a strong commitment' to SFC that GA resources are available to SFC for site remediation and decommissioning" and that GA represented to the NRC at the March 17, 1992 meeting that "GA would guarantee the financial resources necessary for SFC site remediation and decommissioning," repeat earlier assertions in the DFI. They are addressed in Section II above, and in any event, have no bearing on whether GA controls the day-to-day operations of SFC.

Finally, the DFI alleges that "GA has structured the business activities of SFC by entering into a joint venture with Allied-Signal Corporation (ConverDyn) in order to satisfy outstanding business commitments of SFC." First, ConverDyn was not formed "in order to satisfy outstanding business commitments of SFC." The SFC-ConverDyn Conversion Services Agreement provides that SFC will meet outstanding UF₆ commitments from pre-converted UF₆, then obtain from ConverDyn the remaining UF₆.

6/ As for the allegation that GA employees are responsible for "ensuring the qualifications of certain SFC employees," this is also an overstatement of GA's role in SFC personnel matters. For example, although section 2.1 states that the Corporate Manager, Health Physics shall be responsible for ensuring the qualifications of the SFC Manager, Health and Safety, section 2.4 provides that "[t]he President, SFC, shall approve personnel selection for safety related Sequoyah Facility staff positions described in section 2.5 of this license."

services needed to fulfill existing contracts at essentially the contract price. This arrangement was part of the overall transaction between SFC and ConverDyn, including the Standby Agreement under which substantial fees are to be paid to SFC over a period of years. Moreover, the SFC Board of Directors decided that due to current economic conditions and increased costs, it was in its best interests to cease active UF₆ conversion operations, and to enter into the agreements with ConverDyn.

Accordingly, the DFI identifies no ground upon which it could be concluded that GA controls the day-to-day business of SFC, and thus, provides no basis for the conclusion that GA is jointly responsible with SFC for decontaminating and decommissioning SFC's Gore facility.

IV. GA'S STATEMENTS AT THE DECEMBER 21 MEETING

Section III of the DFI characterizes several statements made by Mr. Blue at the December 21 meeting and concludes that "[i]n short, Mr. Blue's stated bases for GA's withdrawal of its financial assurance commitments not only appear to be internally inconsistent, but also contrary to the clear record." These allegations result from a misunderstanding between GA and the NRC as to the nature of the commitments that had been made. Mr. Blue has never acted to "withdraw the commitments" GA made to support SFC as asserted in the DFI. Rather, as has been described in detail in Section II of this response, those commitments related

to expectations (the contemplated license renewal) which have been overtaken by intervening events.

Contrary to the DFI's assertion, the record demonstrates that the GA commitments did not constitute "financial assurance guarantees" and were not "clear and unconditional." As described in Section II.B above, the March 19 letter clearly notes that the level of financial assurance would "be determined in the license renewal process." GA's commitment was to act in good faith to provide SFC with the support necessary for that purpose. GA was prepared to assist SFC by providing funding, arranging for financial assurance, and/or giving a guarantee as a condition to the renewal of the license. This commitment was not open-ended; the precise amount of liability to be assumed by GA, if any, would have been determined in the course of the renewal process. In the absence of license renewal, the GA "commitments" are inapplicable by their own terms.

At the December 21 meeting Mr. Blue stated that "[i]n addition, of course, it became obvious that our bank, under the deteriorating conditions, would not consent to any GA guarantee of Sequoyah's financial obligations." (12/21/92 Tr. at 45). The DFI states that "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 . . . which is a general prohibition on assuming financial liability." GA's credit agreement with its bank does indeed prohibit GA, with

inapplicable exceptions, from becoming liable for the contingent obligations of third parties or its subsidiaries. However, GA originally believed that its bank would amend or waive this requirement, as it has done on many other occasions, if SFC could demonstrate a return to sustained profitable operation following the April 1992 restart. That did not prove possible, and at the time SFC determined to enter into the ConverDyn arrangements, GA understood that bank approval was still unobtainable. This was the basis for Mr. Blue's characterization of the bank's position on December 21, 1992. 7/

Mr. Blue stated to the Commission at the December 21, 1992 meeting that the ConverDyn arrangements "will provide an alternative source of funding so that the licensee can accomplish and fulfill its obligations." He then added, "That is the fundamental spirit and context of my comments to you on the 17th of March and as attempted to be elaborated upon in the subsequent correspondence." (12/21/92 Tr. at 54). The DFI suggests that this statement is "inconsistent" with what it claims is GA's position that "the financial status of SFC is significantly deteriorated such that GA's financial assurance is no longer possible."

7/ In addition, the NRC Staff had requested at a December 1, 1992 meeting that GA confirm that its bank would have been unwilling to approve the execution of the SFC/GA Draft Agreement. GA requested such confirmation in a December 18, 1992 letter, and on December 21, 1992 GA provided the NRC with copies of this correspondence and the bank's response.

This mischaracterizes Mr. Blue's statement. He did not state that SFC's deteriorating financial condition made "GA's financial assurance no longer possible" but rather 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).

More importantly, Mr. Blue's conclusion that the deteriorated financial condition of SFC made continued operations impossible is not inconsistent with the expectation that SFC's current assets and funds from the ConverDyn arrangements should provide sufficient revenues to conduct the D&D of the SFC facilities. In its response to the DFI, SFC is providing additional information regarding the adequacy of its sources for funding D&D activities. This information will, as requested by the DFI, provide the NRC with "an adequate basis to conclude that funding will in fact be available as needed to carry out necessary decontamination and decommissioning of the Sequoyah Fuels Facility and site."

V. CONCLUSION

In summary, GA is a third tier owner of SFC and is not, and never has been, involved in the day-to-day management of SFC and cannot be held liable as though it were the licensee. Despite SFC's inability to profitably continue operations, as a result of the agreements with ConverDyn, GA expects that SFC will

have substantial resources to meet its decommissioning obligations and other expenses. The record demonstrates that GA has acted in good faith. It has provided valuable assistance to SFC on a voluntary basis, and GA contemplates continuing to do so consistent with good business practice. GA would welcome the opportunity to discuss further with the NRC steps which would facilitate SFC's program for the decontamination and decommissioning of the Gore facilities.

1988 Acquisition of SFC
And Subsequent NRC Financial Reviews

Mr. Blue's statements to the Commission and the unexecuted draft SFC/GA agreement cannot be viewed in a vacuum, but rather, must be viewed in the context of GA's acquisition of the Sequoyah companies in 1988. The circumstances surrounding the 1988 acquisition add context to GA's ongoing financial and technical support for the Sequoyah companies, its commitments to the NRC, and the reasonableness of the NRC's interpretation of GA's statements.

In 1988, GA formed a wholly-owned subsidiary, Sequoyah Holding Corporation (SHC), for the purpose of acquiring the stock of Kerr-McGee's subsidiary, the then Sequoyah Fuels Corporation (Old SFC). ^{1/} GA and SHC fully intended to maintain the existing corporate structure in order to operate the Sequoyah facilities as an independent company. A Senior Vice-President and Director of GA, Reau Graves, was made President of SHC and in that capacity, had primary responsibility for the acquisition of Old SFC. Mr. Graves later became President of SFC and remained as the company's primary operating officer until the fall of 1991. Although he retained the title of Senior Vice President

^{1/} After the acquisition, in 1989, Old SFC transferred its operating assets and the NRC license to the New Sequoyah Fuels Corporation (New SFC), a wholly-owned subsidiary of Old SFC. Subsequently, in early 1990, Old SFC changed its name to SFIC, and New SFC assumed the name SFC. The NRC approved each of these transactions.

during this time, Mr. Graves relinquished his duties as an officer of GA.

As required by Section 184 of the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2234), SHC sought prior NRC approval for the transfer of control of the Sequoyah license from Kerr-McGee to SHC. SHC submitted financial statements for Old SFC and provided other information to the NRC which formed the basis of NRC's financial evaluation of the proposed transfer of ownership to SHC. In a September 19, 1988 internal NRC memorandum, an NRC financial analyst concluded that SHC was financially qualified to assume control of the license through stock ownership of the licensee. Internal NRC Memorandum from R. S. Wood to D. Nash and L. Rouse, at 4 (Sept. 19, 1988). 2/ Nevertheless, the analyst made two recommendations to provide additional safeguards. First, he recommended that SHC be required to provide annual financial reports. Second, he suggested:

Ask for a guarantee from Sequoyah Holding Corporation's parent, General Atomics Corporation, for decommissioning and reclamation expenses. You indicated that General Atomics would probably be unwilling to do this. If they refuse, we shouldn't make an issue of it, given the relative strength of Sequoyah Holding Corporation's financial statements; but it does not hurt to ask again. I don't believe this is essential, given the information provided to

2/ It should be noted that this evaluation did not include any review of GA's financial qualifications. As such, the conclusion did not rely upon any financial support from GA.

date; but it would provide an added degree of assurance.

Id.

SHC agreed to provide annual audited financial statements for itself and Old SFC. Letter from R. Graves (SHC) to L. Rouse (NRC) re: Transfer of Control, at 2-3 (Oct. 18, 1988). 3/ In addition, SHC agreed that the licensee would "submit to the NRC a decommissioning funding plan pursuant to 10 C.F.R. § 40.36 at the time it submits a renewal application for the license." *Id.* at 4. This requirement became Condition 52 to the license. See Letter from L. Rouse (NRC) to J. Stauter (SFC) (Oct. 28, 1988). 4/

GA specifically refused, however, to guarantee decommissioning and reclamation expenses. Thus, the request for approval of the transfer of ownership in 1988 makes clear that mechanisms in the existing license would be the basis for decommissioning funding. Letter from R. Graves (SHC) to L. Rouse (NRC) re: Transfer of Control, at 2 (Oct. 18, 1988). SHC also requested that NRC confirm that "Kerr-McGee will be released from its obligation to provide the NRC assurance of proper decommissioning and reclamation of the Sequoyah Facility, and,

3/ When the operating assets of Old SFC were transferred to New SFC in 1989, subject to prior NRC approval, SHC agreed to provide financial statements for all three Sequoyah companies.

4/ This requirement remains as Condition 22 of the license, as amended. See License No. SUB-1010, Amendment No. 16, revised (Sept. 10, 1992).

that in accordance with that release, the third paragraph in Chapter 7.5 will be deleted." Id. SHC's amendment application deleting the Kerr-McGee obligation was approved, and significantly, it was not replaced with any similar obligation for GA. Letter from L. Rouse (NRC) to J. Stauter (SFC) (Oct. 28, 1988); see also Letter from R. Graves (SHC) to L. Rouse (SFC) re: Application to Amend License, Revision 10/18/88, page II.7-6 (Oct. 18, 1988). This is the licensing basis upon which SHC and its parent, GA, acquired SFC.

The NRC concluded on the basis of its financial review "that the proposed transfer of ownership will not impair SFC's ability to perform decommissioning and reclamation activities or to safely operate the plant." NRC Staff Assessment of Acquisition of Sequoyah Fuels Corporation By Sequoyah Holding Corporation, at 2 (Oct. 27, 1988). The license therefore contained no new license conditions beyond the requirement that at license renewal SFC would submit a decommissioning funding plan pursuant to 10 CFR § 40.36 with its license renewal application. 5/

It is important to note that NRC specifically relied upon its review of SHC's financial statements, as well as SFC's financial position, in approving the 1988 acquisition. Moreover,

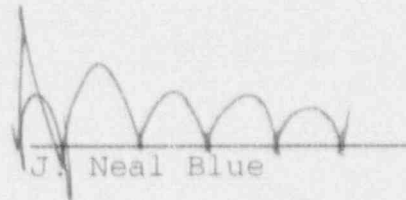
5/ Later, as required by NRC regulations, SFC submitted an irrevocable standby letter of credit in the amount of \$750,000 on July 26, 1990. Following discussions and correspondence with NRC Staff, a Final Standby Trust Agreement (\$750,000) was submitted on July 31, 1992. Letter from J. Dietrich (SFC) to J. Hickey (NRC) (July 31, 1992).

NRC has consistently reviewed the financial condition of the three Sequoyah companies in addressing the adequacy of the financial assurance for SFC's decommissioning, without reviewing GA's financial condition. As recently as July 6, 1992, NRC Staff recognized that ongoing assurance for D&D funding was based upon the financial condition of the Sequoyah companies. Internal NRC memorandum from D. Nash to J. Hickey (July 6, 1992). Notably, the review made no mention of any reliance upon GA and pointed out that "[u]pon renewal of the license, SFC will be required to comply with the decommissioning funding provisions of 10 CFR Part 40" (emphasis added). These statements and analyses further demonstrate that the basis for D&D funding under the existing license does not include any guarantee or funding commitment from GA.

February 16, 1993

AFFIDAVIT OF J. NEAL BLUE

J. Neal Blue being duly sworn, hereby deposes and says that he is Chairman and CEO of General Atomics; that he is duly authorized to sign and file with the Nuclear Regulatory Commission the "Response of General Atomics to December 29, 1992 Demand For Information"; is familiar with the content thereof; and that the facts set forth therein are true and correct to the best of his knowledge and belief.

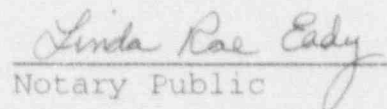

J. Neal Blue

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

SUBSCRIBED AND SWORN BEFORE ME, a Notary Public in and for the State of California on this 16th day of February, 1993.




Notary Public

SEAL
Commission expires: August 30, 1995