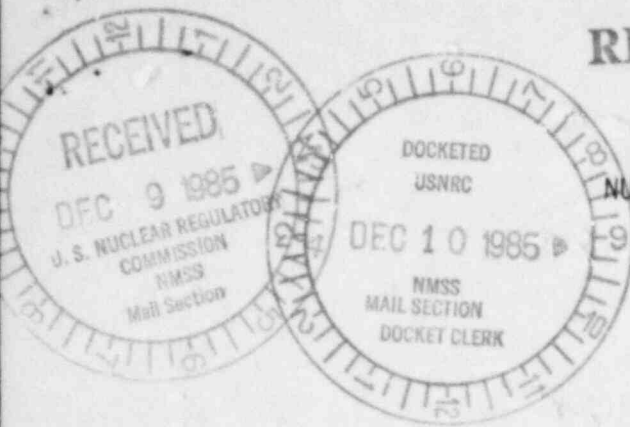


RETURN TO 396-SS PDR

40-8027



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before

John H Frye, III
Administrative Judge

DOCKETED
'85 DEC -3 P1:38

In the Matter of
SEQUOYAH FUELS CORPORATION
(Sequoyah Facility)

Docket No. 40-8027

ASLBP No. 85-513-03-ML

December 2, 1985

SERVED DEC 3 1985

MEMORANDUM AND ORDER

Native Americans for a Clean Environment Client Council (NACE), by a petition dated November 19, 1985, addressed to the Atomic Safety and Licensing Board, requested a hearing on Sequoyah Fuels Corporation's (SFC) Comprehensive Radiological Storage and Disposal Plan. This plan was distributed to the parties by Kerr-McGee at my direction following a request from one of the parties.

NACE's request for a hearing on the disposal plan has been forwarded to the Commission which alone possesses the authority to act on it, along with a November 20 letter from the National Water Center (NWC) which also raises concerns about the disposal plan.

In a letter of November 20, NACE has objected to portions of the November 5 Memorandum and Order designating the matters to be addressed at hearing.

NACE's objections concern my treatment of three petitions other than NACE's petition, my ruling on the deep well disposal matter, my ruling on the scope of the hearing as that is impacted the disposal

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plan, my ruling on the applicability of 10 CFR § 40.34, and the schedule for the hearing.

NACE's legal interest in this proceeding is not affected by my rulings on petitions other than its own. Hence NACE lacks legal standing to complain of these rulings. Nonetheless, I address each of NACE's complaints in this regard.

NACE asserts that the Cherokee Nation has standing to participate in this proceeding. I agree and so ruled in my September 26 Memorandum and Order. However, because the Cherokee Nation had not stated its complaints, I conditioned its participation on consolidation with NACE. The Nation subsequently withdrew its petition.

Next, NACE asserts that NWC has been left off the agenda for the hearing. NWC also pointed this out. I dealt with this point in a Memorandum and Order of November 19.

NACE also complains that the Muskogee County Client Council (MCCC) should have been allowed to participate. NACE bases this complaint on the ground that MCCC is "the only group that represents the interest of Black people from this area and to exclude them limits the input into the opposition to Indians and Whites." The Commission's rules regarding participation in this proceeding are totally "color blind." Race is not a basis for exclusion, nor is it a basis for inclusion in the proceeding. Each organization must meet the Commission's procedural requirements in order to participate. Because MCCC did not meet these requirements, its petition was denied. However, in accord with my

August 8 Memorandum and Order, MCCC's petition will be treated as a limited appearance statement.

NACE refuses to believe SFC's statement that it has no intention of using the deep injection well for the disposal of wastes. Therefore NACE believes this matter should be addressed at the hearing. Regardless whether NACE's assessment of the reliability of SFC's statement is correct, the application reveals that no wastes generated by the UF_6 to UF_4 facility here in issue are candidates for deep well injection. Hence this matter is outside the scope of this proceeding.

NACE raises the question of the relevance of the disposal plan to this proceeding, citing the fact that some wastes generated by the UF_6 to UF_4 process would be disposed of under the plan. In a letter of November 20, NWC also raises the relevancy of the disposal plan, asserting that ". . . the major, in fact only, issue to be dealt with regarding this Kerr-McGee plant is the safety and efficacy of their waste disposal practices . . .".

The introduction to the disposal plan indicates that SFC proposes to store raffinate sludge onsite and to dispose of fluoride sludge and contaminated noncombustible materials (plant equipment, scrap, and incinerator ash) onsite. Table 17 (p.59) of SFC's October 16 response to the petitions indicates that the volume of these materials generated by the existing plant amounts to 163,330 cubic feet per year, while the volume generated by the UF_6 to UF_4 facility amounts to 4080 cubic feet per year. The volume generated by the facility here in issue is thus 2.5 percent of the volume generated by the existing facility. This is

clearly an inconsequential amount when considered in the context of the overall waste disposal program.

Moreover, NACE has requested a hearing with respect to the overall waste disposal program. That request is pending before the Commission which will decide whether a proceeding should be begun. Clearly, questions regarding disposal of these wastes should be addressed in a proceeding such as the one requested by NACE which would address the entire disposal plan, not 2.5 percent of it. Were I to take this matter up, I could only review and take action with respect to the 2.5 percent; the 97.5 percent generated by the existing facility would be unaffected. This makes little sense. Consequently I adhere to my ruling regarding this matter.

NWC has also objected to certain of the hearing procedures and the hearing schedule adopted in my November 8 Memorandum and Order in light of the disposal plan. My ruling on the relevancy of the disposal plan moots the objections to hearing procedures, and my ruling on NACE's request for a postponement (below) moots the objection to the schedule.

NACE also cites the disposal plan as a reason why decommissioning costs need to be addressed. But this does not follow. As pointed out above, the UF_6 to UF_4 facility generates only 2.5 percent of the wastes to be disposed of. Whatever decommissioning costs may be relevant to the disposal plan are affected only slightly by the UF_6 to UF_4 facility. I adhere to my ruling on this matter.

NACE disagrees with my ruling that 10 CFR § 40.34 is not applicable to the UF_4 to be produced in this facility. I have considered NACE's

argument that I have read into that regulation a requirement which is not there and conclude that my original ruling remains correct. Even if I were to accept NACE's argument, the fact remains that the UF_4 is an intermediate rather than a finished industrial product to which 10 CFR § 40.34 would apply.

NACE has requested that the hearing be postponed until January in order to facilitate Richard Phillips' appearance as a witness and to permit more time to study the environmental assessment for this facility. Staff counsel has advised me that Staff's draft safety evaluation report and environmental assessment could not be served on all parties by express mail, thus further shortening the time in which intervenors may review these documents.

SFC opposes NACE's request. SFC asserts that NACE has not shown good cause for a postponement of the hearing and that significant harm could result in light of national security and economic considerations. SFC points to the target date of January 10 for a decision established in my August 8 Memorandum and Order.

NACE's request for a postponement until January is reasonable, particularly in light of the short period which would otherwise be available to review Staff's safety evaluation and environmental assessment. Moreover, a decision can still be issued promptly following the hearing, so that SFC is most unlikely to suffer any significant harm as a result of this brief delay. Consequently the deadline for intervening parties to file the outline of their testimony is postponed until December 27, and the site visit and hearing are postponed until

January 7 and 8, 1986. The schedule established in my November 5 Memorandum and Order for the site visit and hearing previously scheduled for December 18 will govern January 7, and the December 19 schedule will govern January 8. The location of the hearing remains the Holiday Inn, 201 North Eleventh Street, Fort Smith, Arkansas.

On November 19, Reverend David Flusche of the New Subiaco Abbey wrote to express his concern that NWC and the Peoples' Action for a Safe Environment be allowed to make presentations. On November 18, Paula Strachan, who is represented by the Arkansas Peace Center, wrote to express the same concerns. Peoples' Action for a Safe Environment has asked to make a limited appearance statement and will be permitted to do so. The NWC matter was dealt with in my Memorandum and Order of November 19.

In consideration of the foregoing, it is this 2nd day of December
ORDERED

1. NACE's request for a postponement of the hearing is granted:

a) Parties' intervenors are to submit the outlines of their testimony no later than December 27;

b) The hearing will take place at the Holiday Inn, 201 North Eleventh Street, Fort Smith, Arkansas on January 7 and 8, 1986; and

c) The schedule announced for December 17 will govern the proceedings on January 7, and the schedule announced for December 18 will govern January 8.

2. In all other respects, NACE's requests are denied.
3. NWC's requests are denied.



John H. Frye, III
ADMINISTRATIVE JUDGE

Bethesda, Maryland
December 2, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

the Matter of
SEQUOYAH FUELS CORPORATION
(Sequoyah Facility)

Docket No. (s) 40-8027-MLA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing M&O re NACE's hearing request have been served upon the following persons in accordance with the requirements of 10 CFR section 2.712.

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Dated at Washington, D. C. this
3 day of Dec. 1985.

Peggy T. Downing
Office of the Secretary of the Commission

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WM _____ I&E REF. ☒
WMUR _____ SAFEGUARDS _____
FCTC _____ OTHER _____

DESCRIPTION:

memorandum and
order

12/12/85 INITIAL CEC