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MAR 28 1986  
46-09027

MEMORANDUM FOR: Guy H. Cunningham, III, Director  
Office of the Executive Legal Director

FROM: Richard E. Cunningham, Director  
Division of Fuel Cycle and Material Safety

SUBJECT: SEQUOYAH FACILITY - COMMISSION ORDER  
AFFORDING AN INFORMAL HEARING

My staff has not started its review of the Sequoyah Fuels Corporation (SFC) application to dispose of low-level waste by land burial onsite, and, therefore, we have not yet determined whether we would consider it necessary for the Staff to participate as a party to this proceeding. Additionally, we note that the Presiding Officer's Memorandum and Order, dated March 5, 1986, states that petitioners will not be required to submit their detailed complaints with regard to the application until after the Presiding Officer has considered whether this proceeding should be consolidated with the UF<sub>6</sub> to UF<sub>4</sub> proceeding and whether this proceeding should be deferred pending<sup>6</sup> submittal on October 1, 1986 of a revised decommissioning plan to encompass the permanent disposal of all solid wastes generated by the facility. The Presiding Officer has also provided that the Staff may defer its determination as to whether it wishes to participate as a party. Accordingly, we propose to wait until we have proceeded further with our review of the application and have received the detailed complaints of the petitioners before taking a position on our party status.

Original Signed by  
Richard E. Cunningham

Richard E. Cunningham, Director  
Division of Fuel Cycle and  
Material Safety, NMSS

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RECunningham	Docket File 40-8027 <i>w/m</i>
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FCUF R/F	PDR
NMSS R/F	LPDR
FC Central File	SLewis, ELD
BClausser	
CCudd	

OFC: FCUF <i>WTC</i>	:FC	:FC	: ELD	:	:	:
NAME: WTCrow/as	:DRChapell	:RECunningham	:SLewis	:	:	:
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Note to: John G. Davis, Director  
Office of Nuclear Material Safety and Safeguards

Robert D. Martin, Regional Administrator  
Region IV

From: Guy H. Cunningham, III  
Executive Legal Director

SUBJECT: SEQUOYAH FACILITY -- COMMISSION ORDER AFFORDING AN  
INFORMAL HEARING

In an order (enclosed) issued on February 20, 1986, the Commission determined that six individuals or groups with pending requests for a hearing should be afforded a hearing on Sequoyah Fuels Corporation's ("SFC") May 24, 1985 request for authorization under 10 C.F.R. § 20.302(a) to dispose of or store certain waste materials at the site of its Sequoyah Facility. The Commission determined that a formal hearing is not required and that there are no considerations which would cause the Commission to exercise its discretion to institute a formal proceeding. Accordingly, the Commission ordered that an informal hearing be instituted.

The order contains essentially the same provisions as in three orders issued by the Commission in other proceedings on July 24, 1985 (SFC's UF<sub>6</sub> to UF<sub>4</sub> application, B&W's Parks Township application, and Precision Materials Corporation's Mine Hill application). Specifically, the Commission provided:

- ° A single presiding officer should be designated from the Licensing Board Panel to preside over the proceeding. [On February 25, 1986, Judge John H. Frye, III, who is presiding over the SFC UF<sub>6</sub> to UF<sub>4</sub> proceeding, was designated as presiding officer for this proceeding.]
- ° The presiding officer was given discretion as to whether to consolidate this proceeding with the pending UF<sub>6</sub> to UF<sub>4</sub> proceeding for hearing or for other purposes.
- ° A notice of opportunity for hearing should be published in the Federal Register stating that hearing requests have been filed and that any interested person desiring to intervene in any hearing to be held should file a petition to intervene within thirty days of the notice.
- ° The presiding officer may request whatever written submissions and documents he deems necessary from any

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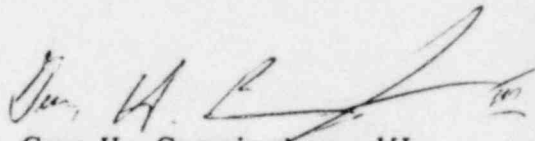
party. In his discretion, he may also hold a hearing for the receipt of oral presentations.

- ° The NRC staff may appear as a party to the proceeding, if it so desires.

Based upon our review of the order and our experience with the three informal proceedings identified above, we would expect the presiding officer to afford the Staff a short time (perhaps two weeks) after the close of the intervention period to determine whether it intends to participate as a party. If the Staff elects not to become a party, the presiding officer may nevertheless ask the Staff to provide information for the record.

By this memorandum, we are requesting the views of NMSS as to whether the Staff should participate as a party to this proceeding. The significance of matters raised in the pending hearing requests and any intervention petitions filed in response to the Federal Register notice may have a bearing on this decision. We are prepared to assist your Staff in evaluating these petitions and requests.

If your Staff has any questions regarding the Commission's order and the matters addressed in this note, please have them contact Stephen Lewis (extension 28139).

  
Guy H. Cunningham, III  
Executive Legal Director

Enclosure: Commission Order in Docket No. 40-8027-MLA-2,  
dated February 20, 1986

cc w/enclosure: V. Stello

J. BARTLETT  
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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In the Matter of  
SEQUOYAH FUELS CORPORATION  
(Sequoyah Facility)

Docket No. 40-8027-MLA-2

ORDER

By letter dated May 24, 1985, Sequoyah Fuels Corporation (SFC), a wholly owned subsidiary of Kerr-McGee Corporation, forwarded to the NRC staff a request for authorization under 10 CFR § 20.302(a) for disposal or storage of certain waste materials at the site of its Sequoyah Facility near Gore, Oklahoma. The authorization request details SFC's proposal for permanent burial onsite of calcium fluoride sludge and contaminated noncombustible materials, including plant equipment, scrap, and incinerator ash, resulting from operation of this nuclear fuel facility. Also proposed by SFC are arrangements for long-term storage of raffinate sludge, a solid precipitate resulting from the facility's solvent extraction system, in order to allow for later shipment and reprocessing at a licensed uranium mill to extract residual uranium. By

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letters to Administrative Judge John H. Frye, III in November 1985, the Native Americans for a Clean Environment Client Council (NACE) and the Natural Water Center (NWC) asked that the NRC hold a hearing on the SFC request for authorization under 10 CFR § 20.302(a). These organizations are parties to a pending informal hearing being conducted by Administrative Judge Frye on an SFC request to amend its existing license to allow it to expand the Sequoyah plant to include a facility that would convert depleted uranium hexafluoride ( $UF_6$ ) to depleted uranium tetrafluoride ( $UF_4$ ). In an order dated December 2, 1985, Judge Frye, citing the tenuous relationship between the proposed storage and disposal plan and the proposed  $UF_6$  to  $UF_4$  conversion facility, declined to allow any challenge to the requested section 20.302(a) authorization to be raised in the ongoing informal proceeding. By memorandum to the Secretary dated December 3, he informed the Commission of this action and forwarded the hearing requests for appropriate action. Subsequently, by order dated December 11, 1985, Administrative Judge Frye denied a similar hearing request filed on December 9 by the Arkansas Peace Center (APC), another party to the informal proceeding. By an additional memorandum to the Secretary dated December 16, 1985, he informed the Commission of this action and forwarded the APC hearing request for Commission consideration. Thereafter, the Commission received additional hearing requests from Morton Newmark, Marjorie A. Spees, and Earth First! Austin.

Because we find Judge Frye's refusal to consider the propriety of the disposal plan for the entire Sequoyah facility in the limited context of the proceeding on the  $UF_6$  to  $UF_4$  conversion facility not

inappropriate, we will make the initial disposition of the hearing requests. In the circumstances of this case, we find that interested persons should be afforded a hearing under section 189a of the Atomic Energy Act. However, in our decision in Kerr-McGee Corp. (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232 (1982), aff'd, City of West Chicago v. NRC, 701 F.2d 632 (7th Cir. 1983), the Commission indicated that there was no entitlement to a formal, trial-type hearing under either the Atomic Energy Act or NRC regulations with regard to materials licensing actions. Further, neither these particular hearing requests nor any other information now available to us, give us cause to exercise our discretion and grant a formal hearing under the "public interest" standard of 10 CFR §§ 2.104(a) and 2.105(a)(7) or to find due process concerns require that a formal hearing must be convened. Therefore, only an informal hearing will be instituted.

With regard to the conduct of the informal proceeding, we direct the Chairman of the Atomic Safety and Licensing Board Panel to designate a single member of that Panel to act as the presiding officer. Thereafter, on motion and for good cause shown or of their own initiative, the presiding officer of this proceeding and the proceeding on the proposed  $UF_6$  to  $UF_4$  conversion facility may consolidate the proceedings for hearing or for other purposes, if it is found that such action will be conducive to the proper dispatch of their business and the ends of justice.<sup>1</sup>

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<sup>1</sup>By letter to the Secretary dated December 12, 1985, SFC stated  
[Footnote Continued]

In order to ensure that all interested persons are identified and heard on a timely basis, the presiding officer should arrange for publication in the Federal Register of a notice of opportunity for hearing that notes the pendency of the hearing requests regarding the SFC authorization application and invites all interested persons desiring to intervene in any hearing proceeding to be conducted to file a petition to intervene with the Docketing and Service Branch of the Office of the Secretary within thirty days of the publication of the notice. The intervention statement must set forth with particularity (1) the interest of that person in the proceeding; (2) how that interest may be affected by the results of the proceeding, including a delineation of the reasons why that person should be permitted to intervene that makes particular reference to (a) the nature of the person's right under the Atomic Energy Act to be made a party, (b) the nature and extent of the person's property, financial, or other interest in the proceeding, and (c) the possible effect of any order that may be entered in the proceeding on the person's interest; and (3) the specific

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[Footnote Continued]

that it will be submitting a revised disposal plan by October 1986 that will encompass permanent disposal rather than storage of the raffinite sludge, as was proposed in its May 1985 submittal. The letter suggests that because of this, a hearing is not now appropriate. By letter to Judge Frye dated December 24, 1985, the NRC staff acknowledged that it will be awaiting this SFC submittal prior to reviewing the proposed authorization as it relates to the raffinite sludge, but that it will continue with its review of the other aspects of the disposal authorization request. Since SFC's December submission does not withdraw its request for disposal authorization under section 20.302(a), it only raises a question about the timing of the hearing that can best be dealt with by the presiding officer, in consultation with SFC, any intervening parties, and the NRC staff.

aspect or aspects of the subject matter of the proceeding that the person seeks to have litigated. Statements by those seeking to intervene as parties will be deemed filed when personally delivered to the Office of the Secretary or when deposited in the United States mail, properly addressed and first-class postage prepaid.

The parties to the informal adjudication shall be applicant SFC; petitioners NACE, NWC, APC, Newmark, Spees, and Earth First! Austin, if their hearing requests are found to be adequate; and any person found to have filed a proper intervention statement. The NRC staff also can appear as a party if it so desires.

Determinations by the presiding officer on the standing of persons seeking to intervene as parties to the proceeding will be governed by existing agency precedents regarding 10 CFR § 2.714(d). See Rockwell International Corp. (Energy Systems Group Special Nuclear Materials License No. SNM-21), ASLPB No. 83-488-01 ML, at 4-5 (Admin. Judge Oct. 7, 1983). If the presiding officer finds that the hearing petitions or any intervention petition should be denied in toto on the basis of lack of standing or any other reason, such determination, which must be in writing, will become final agency action within thirty days unless the Commission, on its own, undertakes a review of that decision. No petition for review will be entertained by the Commission regarding the presiding officer's decision on such matters.

In carrying out his responsibility under this delegation, the presiding official also will have the authority to request and receive whatever written submissions and documents he deems necessary from any party on any schedule he deems proper. Such requests can include



requirements that petitioners or intervening parties provide additional information relative to their standing to participate or further particularize the aspects of the subject matter of the proceeding they wish to litigate or that the parties answer specific questions, with supporting materials, that the presiding officer poses to them. In addition, at such time as may be specified by the presiding officer, persons who do not desire to become parties or cannot fulfill the requirements for party status can file a statement indicating they wish to make a limited appearance regarding any issue in the proceeding. The presiding officer will have the authority to fix such limitations and conditions as appropriate on the participation of those making limited appearances and they are not otherwise to participate in the proceeding.

In his discretion the presiding office also can entertain oral presentations from the parties or those making a limited appearance. Any oral communications between the presiding officer and any party or any person making a limited appearance concerning any matter at issue in the proceeding will be conducted in the presence of the parties or memorialized in a written memorandum that is served on all parties and made a part of the docket file on the proceeding.

If, on the basis of the parties' presentations and other information that the adjudicator is entitled to rely upon as discussed below, the presiding officer believes that additional procedures are necessary to ensure the full development of the agency record or to resolve any material factual issues that could not be resolved through the procedures set forth in this order, he should seek authority from the Commission to implement any additional procedures.

The presiding officer's decision, which is to be in writing, should be made on the basis of the written submissions of the parties, any oral presentations by the parties, and other technical or factual information that is publicly available in the docket file. The presiding officer's decision will become final agency action thirty days after the date of issuance unless the Commission, on its own motion, undertakes a review of the decision. No petition for review will be entertained by the Commission regarding the presiding officer's decision.

It is so ORDERED.



For the Commission

A handwritten signature in dark ink, appearing to read "Samuel J. Chalk", is written over a horizontal line.

SAMUEL J. CHALK  
Secretary of the Commission

Dated at Washington, D.C.

this 20<sup>th</sup> day of February, 1986.