

Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 219-4752.

Signed at Washington, D.C. this 24th day of October 1995.

Joaquin Otero,

Deputy Under Secretary, International Affairs.

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 40-8027]

### Sequoyah Fuels Corporation; Issuance of Director's Decision Under 10 CFR Part 2.206

#### I. Introduction

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC) has issued a Director's Decision under 10 CFR 2.206 regarding the Sequoyah Fuels Facility in response to a petition received from Ms. Diane Curran (Petitioner), dated March 14, 1995, on behalf of the Native Americans for a Clean Environment. (NACE) The petition also considered a subsequent letter from Petitioner dated March 31, 1995.

The petition was referred to the staff for consideration pursuant to 10 CFR 2.206 of the Commission's regulations. For the reasons stated in the enclosed "Director's Decision under 10 CFR 2.206," items 1, 3, and 4 of the Petition have been denied, and item 2 is moot.

Native Americans for a Clean Environment (NACE) submitted to the Nuclear Regulatory Commission (NRC), a "Petition for an Order Requiring Sequoyah Fuels Corporation to File a Final Site Characterization Plan (SCP) and for an Order to Obtain a License Amendment" (Petition) dated March 11, 1995. NACE requested NRC to take action with respect to the Sequoyah Fuels Corporation (SFC or Licensee) pursuant to 10 CFR 2.206. The Petitioner requests that NRC:

(1) Reverse the NRC staff's decision to permit SFC to proceed with site characterization without submitting a final Site Characterization Plan (SCP), by issuing an Order or a Confirmatory Action Letter obliging SFC to submit a final SCP by a date certain;

(2) Obtain a copy of the Environmental Protection Agency's (EPA) title search or perform a title search of all property used in connection with the SFC license, in order to clarify the identity and ownership of all property subject to NRC License No. SUB-1010;

(3) Issue an order forbidding SFC, Sequoyah Fuels International Corporation, Sequoyah Holding Corporation, or any other associated corporation that holds title to property under NRC License No. SUB-1010 from transferring any interest in any of its property before SFC applies for and receives a license amendment authorizing transfer; and

(4) Before issuing any such license amendment, find reasonable assurance that any entity acquiring an interest in the SFC property fully understands the nature of the liabilities and responsibilities it is undertaking for cleanup and long-term care of the site and that it has the financial capability to carry out those responsibilities.

The Petition alleges the following bases for its requests:

(1) The NRC staff illegally and improperly excused SFC from its obligation to submit a final SCP;

(2) SFC is presenting a "Trust Indenture" to several towns and the county of Sequoyah for the creation of an industrial park;

(3) Neither SFC's letter to Mr. Main (Secretary of Commerce, Oklahoma Department of Commerce), the Fact Sheet, nor the Trust Agreement, itself, refers to the fact that SFC has been ordered by NRC and EPA to characterize the extent of the contamination in the 1,400 acres that surround the 85-acre processing area, the focus of site characterization and remediation efforts; nor do those documents refer to the other sources of potential contamination, consisting of groundwater migration from the admittedly contaminated processing area, effluent streams and ditches, and the Carlisle School (located on the land proposed for an industrial park, and used by SFC as a laboratory);

(4) The Trust Indenture depicts the 1,400 acres of land subject to NRC License No. SUB-1010 as the candidate area for the industrial park; SFC has made conflicting representations regarding the size of the "facility" or "site" to NRC and in the Trust Indenture. SFC responded to the Petition by a letter dated March 29, 1995, and requests that the Petition be denied in all respects.

By letter dated March 31, 1995, NACE supplemented its Petition. NACE states that SFC is conducting site

characterization by utilizing the EPA Facility Investigation Workplan (FIW), which was prepared for the EPA pursuant to requirements of the Resource Conservation and Recovery Act (RCRA). Petitioner asserts that by relying on the FIW to conduct site characterization, SFC has neither understood nor implemented NRC staff criticisms of the draft SCP. Petitioner asserts that NRC should require SFC to submit a written final SCP because the FIE does not:

(1) Resolve NRC comments related to site hydrogeology and vertical and lateral contamination;

(2) Resolve NRC sample density concerns; or

(3) Provide for characterization of the DUF<sub>4</sub> processing, decorative pond, and parking lot areas.

By letter dated May 10, 1995, the Director, Office of Nuclear Material Safety and Safeguards acknowledged receipt of the Petition, and informed the Petitioner that the Petition would be evaluated under 10 CFR 2.206 of the Commission's regulations.

I have completed my evaluation of the matters raised by the Petitioner and have determined that, for the reasons stated below, the Petition is denied in part, was satisfied in part, and NRC regulations address the Petitioner's concerns related to the requests for issuance of orders related to transfer of property.

#### II. Background

From 1970 until July 6, 1993, SFC operated a uranium conversion facility at a site located in Gore, Oklahoma, under the authority of NRC License No. SUB-1010, issued pursuant to 10 CFR Part 40. The main process was the conversion of uranium oxide (yellowcake) to uranium hexafluoride. A second process, initiated in 1987, consisted of the conversion of depleted uranium hexafluoride to uranium tetrafluoride, the first step in producing depleted uranium metal.

After the discovery of contaminated soil surrounding structures used by SFC for its licensed activities, NRC staff issued an order suspending SFC's authorization to operate its conversion facilities. See "Order Modifying License (Effective Immediately) and Demand for Information," EA 91-067 (October 3, 1991). After studies by SFC, operational and organizational changes by SFC, extensive NRC inspections, and several public meetings, NRC, on April 16, 1992, lifted the order suspending the SFC license and authorized SFC to resume operation of its conversion facility.

In November 1992, SFC (and subsequently in writing) informed NRC that operation of its main process for the conversion of uranium oxide (yellowcake) to uranium hexafluoride was permanently terminated and that the second process, the conversion of depleted uranium hexafluoride to uranium tetrafluoride, would be terminated by July 1993. SFC formally notified NRC of its intentions to terminate all conversion processes and seek license termination in accordance with 10 CFR 40.42(e), in a letter dated February 16, 1993. In addition, a proposed plan to address decommissioning issues related to the SFC facility, entitled "Preliminary Plan for Completion of Decommissioning (PPCD)," was enclosed in its letter of February 16, 1993.

By letter dated March 23, 1993, NRC staff notified SFC that its 10 CFR 40.42(e) notification had been accepted, and that activities at the site should be limited to those related to decommissioning. By letter dated July 7, 1993, SFC notified NRC staff that SFC had ceased all operational licensed activities. Since that time, SFC has restricted its activities to disposal of contaminated material and planning for decommissioning.

On August 4, 1993, SFC and EPA Region VI signed an Administrative Order on Consent (AOC), establishing a schedule for compliance with Section 3008(h) of the Solid Waste Disposal Act, as amended by the RCRA, as further amended by the Hazardous and Solid Waste Amendments of 1984, 42 USC 6928(h). The AOC required SFC to perform a number of tasks aimed at monitoring site conditions, site characterization, corrective measures, and financial assurance. A key element of the AOC is the RCRA Facility Investigation (RFI) Workplan. The RFI Workplan data needs closely parallel those of an NRC SCP. For SFC's site, both the RFI Workplan and the SCP involve characterization of much of the same property. The major difference between the RFI Workplan and the SCP rests only on the constituents that are analyzed (nonradioactive materials for EPA and radioactive materials for NRC).

Common to both plans is the characterization of the soil, bedrock, and groundwater underlying the site. SFC agreed to drill a series of wells to the next lower water-bearing strata to better define the geology underlying the site and to sample for contamination. These wells are in addition to the 100 wells previously installed by SFC at the site. Whether or not the deeper wells planned by SFC to address EPA concerns will also satisfy NRC concerns

related to the vertical extent of radiological contamination will have to await the evaluation of sample analyses.

To avoid unnecessary duplicative regulatory actions, EPA and NRC drafted a site-specific Memorandum of Understanding (MOU). Under the terms of this MOU, EPA and NRC will exchange pertinent documents, keep each other informed of planned actions, and, to the extent possible, coordinate major characterization and remediation tasks on similar schedules. The MOU was signed by EPA on September 21, 1995, and by NRC on September 25, 1995.

SFC submitted to EPA a draft RFI Workplan in January 1994. EPA reviewed the draft RFI Workplan and provided SFC comments in a letter dated August 25, 1994. Based on the comments provided by EPA, SFC made changes to the draft RFI Workplan and a final Workplan was approved by EPA in December 1994. In accordance with the requirements of the AOC, SFC must submit a final RFI Report to EPA by December 1995.

SFC submitted a draft SCP to NRC in January 1994. Interested persons, including EPA, the United States Geological Survey (USGS), and NACE reviewed the draft SCP and provided comments to NRC. Consistent with the staff's commitment to NACE, in a letter from J.H. Austin (NRC) to D. Curran (NACE), dated December 9, 1993, to keep NACE involved in the review process, the NACE comments were discussed with representatives of NACE, NRC and SFC in a May 31, 1994, meeting.

NRC staff performed an extensive review of the draft SCP and of all the comments regarding the draft SCP. Where appropriate, NRC staff factored those comments into NRC staff's comments, which were transmitted to SFC by letter dated November 3, 1994. The essence of NRC staff's comments was that SFC must do substantially more sampling than proposed in the draft SCP. Additional sampling is necessary to reliably identify the types and extent of contamination on and around the SFC site. NRC staff requested that SFC address the staff's comments, or provide the basis for not making changes to the SCP.

In its November 1994 quarterly report to EPA, required by the AOC, SFC raised concerns related to possible duplication of SFC's decontamination and decommissioning efforts that could result in unnecessarily increased costs.

In January and February 1995, NRC staff engaged in technical discussions with SFC regarding the November 3, 1994, comments of the staff concerning

the draft SCP. The discussions covered a broad range of issues related to site characterization and scheduling.

By letter dated February 5, 1995, the Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, confirmed NRC staff's understanding of SFC's verbal commitment, by telephone in early February 1995, to use NRC staff's comments of November 3, 1994, during site characterization and in SFC's preparation of its Site Characterization Report (SCR). Furthermore, NRC agreed with SFC that the schedule for the SCR should parallel that for the RFI Report, in order to minimize possible redundancy and associated costs, and to facilitate the effective utilization of SFC resources. Accordingly, NRC gave SFC a due date of January 15, 1996, for submission of a draft SCR. The staff also reminded SFC that NRC may establish legally binding requirements, if necessary, to ensure timely and effective remediation of Site Decommissioning Management Plan (SDMP) sites. The SFC facility is an SDMP site. In its March 29, 1995, response to the Petition, SFC again committed to address the NRC's comments on the SCP during conduct of the site characterization effort. SFC confirmed its understanding of the staff's November 3, 1994, comments by a letter dated June 2, 1995, in which SFC again committed to incorporate those staff comments into its SCR.

### III. Discussion

#### *A. Petitioner Requests That NRC Staff Reverse Its Decision To Permit SFC To Proceed With Site Characterization Without Submitting a Revised SCP, by Issuing an Order or Confirmatory Action Letter Requiring SFC To Submit a Written Final SCP*

Petitioner contends that by not requiring SFC to submit a written final SCP, NRC staff illegally and improperly excused SFC from its obligations in violation of the:

(a) Timeliness in Decommissioning Rule;

(b) NRC's "Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites" (Action Plan), 57 Fed. Reg. 13389 (April 16, 1992);

(c) NRC's December 29, 1992, Demand for Information to SFC;

(d) MOU between NRC and EPA; and

(e) NRC's commitments to Petitioner in a letter dated December 9, 1993, that SFC would be required to demonstrate how it would sample all potentially contaminated areas as part of the SCP.

NRC staff weighed the potential benefits, and the increased costs of and

delays in decommissioning, of requesting SFC to revise its draft SCP in accordance with NRC staff comments, which SFC understood and had already agreed to incorporate into the site characterization process and SCR. NRC staff concluded that the objectives of site characterization could be met, and data appropriate to support a proposed decommissioning alternative could be produced, if NRC staff's comments were implemented during site characterization. NRC staff's action was intended to avoid potentially costly delays in decommissioning and to prevent duplication of regulatory actions, based on work already underway as a part of the EPA-approved RFI Workplan.

Additionally, the staff's action was consistent with agency efforts to streamline the Site Decommissioning Management Plan (SDMP) regulatory review process.<sup>1</sup> The SFC site is an SDMP site. This streamlining involves, among other things, discontinuance of NRC staff review of SCPs and SCRs prior to the submittal of decommissioning plans. Site characterization information will be considered by NRC staff in its review of decommissioning plans. NRC regulations do not require the submission of SCPs or SCRs, but do require site characterization data to be submitted with the decommissioning plan. See 10 CFR 40.42(f)(4)(i). Streamlining the SDMP process is consistent with NRC regulations.

Streamlining promotes a more coordinated and focused review of the licensee's characterization information and place greater emphasis on issues that affect the selection and implementation of a decommissioning approach.

Contrary to Petitioner's assertion, NRC staff's action was consistent with the Timeliness in Decommissioning rule. Those amendments to NRC regulations establish specific time periods for submission of a decommissioning plan and completion of decommissioning, and were intended to reduce potential risk to public health and the environment at facilities after licensed activities have ceased. See "Timeliness in Decommissioning of Materials Facilities," 59 Fed. Reg. 36026 (July 15, 1994). The staff's February 5, 1995, letter allowed SFC to proceed with site characterization on the condition that SFC include in its SCR the staff's November 3, 1994, comments

regarding the draft SCP. The staff determined that inclusion of those comments would produce adequate site characterization and would reduce delay. Although site characterization and the data derived during site characterization are necessary inputs to a decommissioning plan,<sup>2</sup> SCPs and SCRs are not expressly required by NRC regulations. The staff did not release SFC from the "timeliness" rule or from the requirement to submit a decommissioning plan. See 10 CFR 40.42(f)(1). The staff's action reduced potential delays in site characterization and decommissioning, and cannot be considered to have contributed to any delay in SFC's decommissioning the SFC site.

Contrary to being in violation of the NRC's Action Plan, NRC staff's February 5, 1995, letter to SFC was consistent with the plan. The Action Plan was intended to encourage compliance with NRC timeliness in decommissioning regulations. The Action Plan is not itself a rule and contains no enforceable standards. The Action Plan refers to submittal of an SCP, but does not require NRC approval. The Action Plan encourages licensees to enter into early consultation with NRC staff regarding site characterization and decommissioning issues. Such consultation is intended to address site-specific conditions to ensure that site characterization is appropriately planned and conducted, and of sufficient depth to support a selected decommissioning option. Consistent with the Action Plan, NRC staff engaged in site-specific technical discussions with SFC regarding not only NRC's comments on the draft SCP, but also the comments of NACE, the USGS and EPA. See Section II, *supra*. The NRC staff's February 5, 1995, letter to SFC was consistent with the Action Plan, and cannot be considered to have contributed to any delay in compliance with timeliness requirements for decommissioning, for the same reasons that the staff's action was consistent with the Timeliness in Decommissioning Rule.

Petitioner does not explain, nor is it apparent how, the NRC staff's February 5, 1995, letter contravened the December 29, 1992, Demand for Information (DFI) to SFC. As Petitioner notes, the February 13, 1993, Preliminary Plan for Decommissioning, submitted by SFC in response to the DFI, commits SFC to submission of an

SCP to NRC and to implementation of the SCP by early 1994. The staff in its February 5, 1995, letter did not delay the submission or implementation of the SCP. To the contrary, the staff permitted SFC to proceed expeditiously with an SCP which NRC had reviewed and considers adequate, as long as the staff's November 3, 1994, comments are incorporated, which SFC has undertaken to do.

Contrary to Petitioner's assertion, NRC staff's action in its letter of February 5, 1995, did not violate the (then draft) MOU between NRC and EPA. The then draft MOU, as well as the final MOU, state that NRC will ensure that SFC develops and implements an SCP, which NRC staff has done. Moreover, in the spirit of the EPA and NRC site-specific MOU, NRC and EPA have worked together to avoid unnecessary duplicative regulatory actions and their attendant costs. Specifically, after consultation with the EPA, NRC staff agreed in its February 5, 1995, letter to SFC's request that the schedule for site characterization and submission of the SCR should parallel that of the EPA RFI Workplan. The development of the EPA MOU and NRC MOU was a major consideration in NRC staff's action allowing SFC to proceed with site characterization and to incorporate NRC staff's comments in the SCR, rather than to require submission of yet another version of the SCP.

Contrary to the Petitioner's assertions, NRC staff's action by its letter of February 5, 1995, did not violate NRC's commitments to Petitioner, made in a letter dated December 9, 1993, that SFC would be required to demonstrate how it would sample all potentially contaminated areas as part of the SCP. The December 9, 1993, letter also stated that NACE's concerns would be addressed during NRC staff's review of the SCP.

NRC staff met these commitments to NACE. NACE reviewed the SFC draft SCP and provided comments to NRC staff. NACE's comments were discussed in a meeting on May 31, 1994, with representatives from NACE, NRC, and SFC. All applicable NACE comments were incorporated into NRC staff's comments and transmitted to SFC by letter dated November 3, 1994. SFC verbally committed, by telephone in early February 1995, to use NRC staff's comments of November 3, 1994, during site characterization and in SFC's preparation of its SCR. SFC confirmed its understanding of the staff's November 3, 1994, comments by a letter dated June 2, 1995, in which SFC again committed to incorporate those staff comments into its SCR. Accordingly,

<sup>1</sup> On May 19, 1995, the NRC staff briefed the Commission on SDMP Policy and Program issues, including the staff's implementation of streamlining. 10 CFR 40.42(f)(4)(i). Streamlining the SDMP process is consistent with NRC regulations.

<sup>2</sup> The licensee's decommissioning plan must include a description of the site, buildings, and outside areas affected by licensed activities. 10 CFR 40.42(f)(4)(i).

contrary to Petitioner's assertion, there is no basis to conclude that NACE's concerns will not in fact be addressed. Moreover, NRC remains committed to ensuring that SFC conduct a complete and accurate characterization of all radiological contamination on the SFC site and on property affected by SFC's licensed activities, through reviews of SFC's SCR and a subsequent decommissioning plan.

By letter dated March 31, 1995, NACE supplemented its Petition. NACE states that SFC is conducting site characterization by utilizing the RCRA Facility Investigation Workplan. Petitioner asserts that by relying on the EPA Workplan to conduct site characterization, SFC has neither understood nor implemented NRC staff criticisms of the draft SCP. Petitioner asserts that NRC should require SFC to submit a written final SCP because the EPA Workplan does not:

- (1) Resolve NRC comments related to site hydrogeology and vertical and lateral contamination;
- (2) Resolve NRC sample density concerns; or
- (3) Provide for characterization of the DUF<sub>4</sub> processing, decorative pond, and parking lot areas.

As explained above, NRC staff concluded after a series of discussions with SFC, that SFC does understand the staff's November 3, 1994, comments regarding the draft SCP. Moreover, SFC has committed itself to incorporating those staff comments during site characterization and in the SCR. In addition, NRC staff concludes, after review of the EPA-approved RFI Workplan, that:

- (a) The approved RFI Workplan adequately addresses NRC comments regarding questions of hydrogeology and the vertical and lateral extent of contamination;
- (b) The RFI Workplan, draft SCP, and the SFC commitment to incorporate NRC staff's comments on the draft SCP into site characterization activities will together ensure adequate sampling for site characterization; and
- (c) The SCP, provides for adequate characterization of the DUF<sub>4</sub> processing area (Unit 29), the decorative pond (Unit 26), and parking lot (Unit 31) (see Figure 2 of the SCP).

NRC staff has neither violated, nor excused SFC from complying with, any NRC regulatory requirements, the MOU between NRC and EPA, any NRC staff commitments to Petitioners, or the December 29, 1992, DFI to SFC. Petitioner has raised no health and safety concern arising from NRC staff's action by letter of February 5, 1995, permitting SFC to address and

implement the staff's November 3, 1994, comments during site characterization and in the SCR. Additionally, the staff's action was consistent with agency efforts to streamline the SDMP review process. Furthermore, to require submission of a written final SCP would unnecessarily delay decommissioning of the SFC site and unduly raise the costs of decommissioning.

In view of the above, there is no basis to require SFC to submit a written final SCP.

*B. Petitioner Requests That NRC Obtain From EPA a Copy of Its Title Search or Perform a Title Search of all Property Used in Connection With the SFC License*

By letter dated April 20, 1995, Mark W. Potts (EPA Region VI), provided to Lance Hughes, on behalf of NACE, a copy of a document entitled "Preliminary Property Search Document; Sequoyah Fuels Corporation; Gore, Oklahoma." The document is dated July 26, 1994, and was prepared by PRC Environmental Management, Inc. for EPA. The document identifies SFC as the sole owner of the 85-acre process area of the Sequoyah Fuels facility and the approximately 2,100 acres of land surrounding the facility. A copy of this report has been placed in the SFC licensing docket and is available through either NRC's Public Document Room (PDR) at 2120 L St. NW., Washington, DC 20037, or the local PDR (LPDR) at the Stanley Tubbs Memorial Library, 101 E. Cherokee, Sallisaw, OK 21801.

Petitioner has identified no inconsistencies between the Trust Indenture and any representations to NRC regarding the size of the "facility" or "site". The land subject NRC license SUB-1010 is principally the 85-acre site along with any adjacent lands that have been affected by licensed activities.<sup>3</sup> The copy of a "Trust Indenture" submitted by Petitioners neither describes the SFC facility or site, nor does it describe any lands subject to the Trust Indenture.<sup>4</sup> Article V merely

<sup>3</sup> Licensed activities do not include raffinate spreading because the treated raffinate is released for unrestricted use prior to spreading. However, if NRC determined that treated raffinate spreading significantly affected adjacent lands, then NRC would consider the need for additional characterization and remediation.

<sup>4</sup> SFC denies having contributed any corporate resources to drafting or developing the proposed Trust Indenture or in circulating it to local communities, but states that it has openly pursued development of an industrial park with local and state officials to replace jobs lost as a result of closing the SFC plant. SFC states that a local community group, SAFEST, has been working on the Trust Indenture with the Sequoyah County Commission. See Letter of John H. Ellis, President,

identifies the Trust Estate as all property coming into the possession of the trustees pursuant to the Trust Indenture. The enclosure to a letter dated August 18, 1994, from John Ellis, President, SFC, to the Oklahoma Department of Commerce, both of which were attached to the Petition, describes the proposed industrial park as a site of 1,430 acres on the east bank of the Kerr-McClelland Waterway. Clearly the proposed industrial park surrounds or includes, in part, the SFC site, but is not identified by the Trust Indenture as all or part of the property subject to NRC License No. SUB-1010.

Petitioners have not raised a safety concern regarding the identity and ownership of lands subject to NRC License No. SUB-1010. Moreover, because EPA provided a copy of its title search the Petitioner's request has been satisfied.

*C. Petitioner Requests That, Before Permitting Transfer of Land Subject to License No. SUB-1010, NRC Find Reasonable Assurance That Any Entity Acquiring an Interest in the SFC Property Fully Understands the Nature of the Liabilities and Responsibilities It Is Undertaking for Cleanup and Long-term Care of the Site and That It Has the Financial Capability to Carry Out Those Responsibilities*

NRC regulations at 10 CFR 40.42(c)(2) and 40.42(d), and License Condition No. 14 of NRC License No. SUB-1010, require that any real property subject to the License or affected by licensed activities must be remediated by SFC in accordance with an approved decommissioning plan, such that the property is suitable for release in accordance with NRC requirements. This means that SFC may not transfer nor release, by sale or any other means, property subject to NRC License No. SUB-1010, or property affected by SFC's licensed activities, until SFC remediates such property and SFC demonstrates that the property meets NRC criteria for release.

It is not apparent from the NACE Petition, and no information has come to the attention of NRC staff to indicate, that there has been a transfer of any real property subject to or affected by activities conducted pursuant to NRC License No. SUB-1010. It does appear that several local governmental authorities, including Sequoyah County and the cities of Gore, Vian and Webbers Falls, have entered into an agreement to participate in the proposed Trust Indenture.

SFC, dated March 29, 1995, to James M. Taylor, Executive Director for Operations, NRC.

In its response to the Petition, SFC committed to inform NRC of any proposal SFC receives for transfer of property adjacent to the industrial area, before SFC acts on any such proposal. SFC also states that at some future time, SFC may dispose of real property unaffected by licensed operations at the SFC facility, and would do so only after notifying NRC. In the case of affected areas, SFC states that it will dispose of such property that has been released by NRC, after SFC demonstrates that appropriate criteria have been met.

Before real property used in connection with or affected by activities conducted pursuant to NRC License No. SUB-1010 could be transferred to a person without authority to engage in NRC-licensed activities, that property must be decommissioned to meet the criteria for release for unrestricted use. See 10 CFR 40.4 and 40.42, and License SUB-1010, Condition 14. Since the proposed Trust Indenture would involve the transfer of land for the purposes of an industrial park, it appears that the potential transferees have no plan to engage in NRC-licensed activities. Thus, the decommissioning criteria for release of such property would be for unrestricted use.<sup>5</sup> If SFC were to decommission property used in connection with its licensed activities to meet NRC criteria for release for unrestricted use, the transferee would assume no obligation to remediate or to engage in long-term care of such property, and NRC would have no regulatory authority over the transfer of or the transferees of such property.

If property used in connection with activities conducted pursuant to NRC License No. SUB-1010 were transferred to a person who seeks authority to engage in NRC-licensed activities, including decommissioning activities such as remediation or long-term care, SFC would be required to obtain written permission from NRC prior to the transfer. See 10 CFR 40.46. At that time, it would be appropriate for NRC to ensure that the transferee is capable of meeting NRC requirements for decommissioning and all other applicable licensing requirements and the transferee must obtain an NRC license. In view of the above, Petitioners concerns about the potential transfer of property to the Trust and state, and potential transferees of such property,

<sup>5</sup> The Commission is currently evaluating proposed changes to the rules governing release criteria. See "Radiological Criteria for Decommissioning," 59 Fed. Reg. 43200 (August 22, 1994). SFC will have to comply with all NRC requirements for release to unlicensed individuals under any revised rules.

are adequately addressed by applicable regulations.

*D. Petitioner Requests That NRC Staff Issue an Order Forbidding SFC, Sequoyah Fuels International Corporation, Sequoyah Holding Corporation, or Any Other Associated Corporation That Holds Title to Property Subject to NRC License No. SUB-1010, From Transferring Any Interest in Such Property Before SFC Applies for and Receives a License Amendment Authorizing Such a Transfer*

As explained above, SFC owns the land subject to NRC License No. SUB-1010. Before SFC may transfer or release any property used in connection with, or affected by, its licensed activity to a person not authorized to engage in NRC-licensed activity, that property must be remediated in accordance with an approved decommissioning plan to meet NRC criteria for release for unrestricted use. See Section III.C, *supra*. There is no NRC requirement that a licensee obtain NRC permission to transfer property which has been remediated to meet NRC's criteria for release for unrestricted use.

If SFC were to transfer property subject to the license or affected by licensed activity to persons for the purpose of engaging in licensed activity, 10 CFR 40.46 requires that SFC obtain written permission from NRC before transferring such property and the transferees must obtain an NRC license. Petitioners, however, have provided no evidence that such a transfer is contemplated or imminent.

Petitioners have raised no safety concern regarding a potential transfer of property used in connection with or affected by activities pursuant to NRC License No. SUB-1010, or potential transferees of such property. See Section III.C., *supra*. Moreover, since protection of the public health and safety, in the event of a transfer of such property to the proposed Trust Indenture, is already accomplished by NRC regulations, there is no justification to issue the requested order.

#### IV. Conclusion

The institution of proceedings pursuant to 10 CFR 2.202 is appropriate only where substantial health and safety issues have been raised. See *Consolidated Edison Company of New York* (Indian Point, Units 1, 2, and 3), CLI-75-8, 2 NRC 173, 175-176 (1975); *Washington Public Power Supply Systems* (WPPSS Nuclear Project No. 2), DD-84-7, 19 NRC 899 (1984). This is the standard I have applied to determine whether the action requested by

Petitioner is warranted. For the reasons given above, Petitioner's request that SFC ordered to submit a written final SCP by a date certain is denied. Petitioner's request that NRC perform a title search of property subject to NRC License No. SUB-1010 was satisfied. Action on Petitioner's request for an order forbidding the transfer of any interest in land subject to NRC License No. SUB-1010 before SFC applies for and receives a license amendment permitting such transfers is unnecessary because applicable regulations address Petitioners concerns. Likewise, Petitioner's request that, before granting such a license amendment application, NRC ensure that potential purchasers of property be subject to NRC License No. SUB-1010 to fully be apprised of their obligations for site remediation and long-term care and that NRC ensure such potential purchasers are financially qualified to do so, is unnecessary because applicable regulations address Petitioner's concerns.

As provided by 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. The Decision will become the final action of the Commission 25 days after issuance, unless the Commission on its own motion institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 23 day of October, 1995.

For the Nuclear Regulatory Commission,  
Carl J. Paperiello,

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 95-26937 Filed 10-30-95; 8:45 am]

BILLING CODE 7590-01-P

[Docket Nos. 50-255, 72-7, and 72-1007]

**Consumers Power Company, Palisades Nuclear Plant; Receipt of Petition for Director's Decision Under 10 CFR 2.206**

Notice is hereby given that by a Petition dated September 19, 1995, Lake Michigan Federation and Don't Waste Michigan request that the NRC take action regarding the use of VSC-24 casks to store spent nuclear fuel at the Palisades Nuclear Plant. Petitioners ask that the NRC find that Consumers Power Company violated NRC regulations by using the casks without first establishing adequate unloading procedures and resolving all unreviewed safety questions regarding the use of the casks.

On the basis of these violations, Petitioners ask that the NRC impose