

IN THE DISTRICT COURT OF SEQUOYAH COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA and CHEROKEE
NATION,

Plaintiffs,

vs.

SEQUOYAH FUELS CORPORATION

Defendant.

SEQUOYAH COUNTY, OKLAHOMA
FILED
IN DISTRICT COURT

FEB 09 2017

VICKI BEATY, COURT CLERK

BY _____ DEPUTY

CV
Case No. 2017- 23

PETITION

Plaintiffs, the State of Oklahoma and the Cherokee Nation, ex rel. Todd Hembree, Attorney General for the Cherokee Nation, respectfully request this Court (1) declare that Defendant, Sequoyah Fuels Corporation ("SFC") is in material breach of the Settlement Agreement between these parties in its expressed intent to proceed with complete and immediate *on-site* disposal of certain radioactive waste materials, and/or (2) provide a declaratory judgment concerning the obligations and rights of the parties based upon the 2004 Settlement Agreement at issue and (3) enjoin SFC from engaging in any such on-site disposal until the rights and obligations of all parties under the Settlement Agreement have been clarified by the Court and while the parties examine off-site disposal alternatives. In support of their request, Plaintiffs allege as follows:

Parties

1. Plaintiff State of Oklahoma is a party to the Settlement Agreement in dispute and appears by and through the Oklahoma Office of Attorney General, pursuant to 74 O.S.2011, § 18b(A)(3).

2. Plaintiff Cherokee Nation is a sovereign entity and is a party to the Settlement Agreement in dispute and appears by its chief law officer, Attorney General Todd Hembree and its Secretary of Natural Resources, Sara Hill.

3. Defendant SFC is a foreign corporation that owns and operates the uranium processing facility in Gore, Oklahoma. SFC is a party to the Settlement Agreement in dispute.

Jurisdiction and Venue

4. Jurisdiction exists in this Court pursuant to OKLA. CONST. art. VII, § 7.

5. Venue is proper pursuant to 12 O.S.2011, § 137.

Claim 1: Breach of Contract

6. There is approximately ten-thousand tons of bagged, radioactive waste material sitting on a concrete slab at SFC's site in Gore, Oklahoma. Through its operation of a uranium-conversion facility, SFC created that waste; pursuant to a Settlement Agreement, it is SFC's duty to dispose of it.

7. On November 30, 2004, the State of Oklahoma, the Cherokee Nation, and SFC entered into a Settlement Agreement in which the Plaintiffs agreed to terminate certain legal proceedings against SFC in exchange for SFC, among other things, agreeing to dispose of the relevant waste material *off-site*—meaning, not in SFC's *on-site* disposal cell located in Gore.¹ The parties also agreed that the Settlement Agreement “may be enforced as a contractual obligation the terms of which shall be construed according to the laws of the state of Oklahoma.”²

8. To date, SFC has failed to find an off-site disposal location for the waste materials and thus none of the materials have been disposed of in the manner prescribed by the Settlement Agreement. Until as recently as September 2016, the parties to the Agreement considered the White Mesa mill in Utah to be a timely and viable option for off-site processing of the material. On January

¹ Exhibit 1, Settlement Agreement between SFC, the State of Oklahoma, and the Cherokee Nation (“Settlement Agreement”) eff. Nov. 30, 2004, at p. 2, § III, and p. 4, § V(A)(1)(a)(i).

² *Id.* p. 16, § VI(G).

1, 2017, SFC advised Plaintiffs that, imminently, “SFC will begin placing [the waste material] into SFC’s on-site disposal cell.”³

9. While the parties acknowledged in the agreement that “complete offsite disposal” may eventually prove infeasible, the parties in no way agreed that complete *on-site* disposal would be acceptable.

10. In fact, if complete off-site disposal could not be assured, the Settlement Agreement expressly provides that the parties would “attempt to reach consensus on other disposal options,”⁴ which has not occurred and which their imminent and unilateral actions preclude.

11. In an effort to comply with the Settlement Agreement, the Plaintiffs requested that SFC provide Plaintiffs time to complete its ongoing expert review of the on-site disposal plan, but SFC has refused.

12. SFC’s express intent to dispose of the relevant waste material in a manner contrary to the terms of the Settlement Agreement constitutes a material breach of that agreement.

13. Under the Settlement Agreement, the Plaintiffs withdrew proceedings before the U.S. Nuclear Regulatory Commission which were instituted to assess the adequacy of SFC’s proposed disposal plans. However, if a mutually acceptable disposal plan could not be agreed-to between the parties, the Settlement Agreement provides that SFC would not object to the Plaintiffs’ re-initiation of these proceedings as untimely.

14. Should SFC be allowed to proceed with the on-site disposal, they would significantly risk contaminating soil, drinking water, and other natural resources surrounding the disposal site and potentially subjecting citizens of both the State of Oklahoma and the Cherokee Nation to harmful

³ Settlement Agreement, Ex. 1 at p. 4, § V(A)(1)(a)(iii).

⁴ *Id.* p. 5, § V(A)(1)(a)(v).

radiation exposure, sickness, and disease and would permanently foreclose the opportunity for future off-site disposal of the waste material.

15. SFC's intended disposal precludes meaningful participation by Plaintiffs before the U.S. Nuclear Regulatory Commission due to the imminent nature of SFC's current proposal.

Count 2: Declaratory Judgment

16. Title 12 Oklahoma Statute § 1651 authorizes Declaratory Judgments "in cases of actual controversy [to] determine rights, status, or other legal relations [and] may be made either before or after there has been a breach of any legal duty or obligation. . . ."

17. SFC's imminent and unilateral actions, after twelve years of delay, to permanently dispose of *all* radioactive waste on-site, fundamentally alters the material terms of the Settlement Agreement so as to require an interpretation of the parties' rights and obligations.

18. The terms of the agreement, negotiated more than a decade ago, indicated off-site disposal was to begin within mere months of adoption of the agreement⁵ and committed SFC to spending \$3.5 million for off-site disposal.⁶ SFC's significant delay raises a question as to whether \$3.5 million was to be assessed in 2004 dollars or in the current-2017 equivalent. Moreover, if off-site disposal were to never occur, nothing indicates what was to come of this bargained-for \$3.5 million value.

19. Current estimates indicate that the wastes contain uranium and other constituents which may have value upwards of \$10 million and are suitable for reprocessing and reclamation, a factor not mentioned in the Settlement Agreement but which does impact the feasibility of off-site disposal of the material.

⁵ *Id.* p. 5, § V(A)(1)(a)(iv).


⁶ *Id.* p. 5, § V(A)(1)(a)(ii).

20. The Settlement Agreement expressly provides that if complete off-site disposal cannot be economically achieved, the parties would negotiate alternative disposal options “to achieve complete offsite disposal” of the nuclear wastes.⁷ What these negotiations were to entail and what each party is obligated to do under remains unclear—and at issue—at this time and need clarity from this Court.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request this Court declare that Defendant SFC is in breach of its contractual obligation to dispose of at least a portion of this waste material *off-site*, issue a declaratory judgment as to the rights and obligations of all parties under the 2004 Settlement Agreement, and enjoin SFC from engaging in its proposed *on-site* disposal plan.

Respectfully submitted,



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⁷ *Id.* p. 5, § V(A)(1)(a)(v).

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*ATTORNEYS FOR PLAINTIFFS
CHEROKEE NATION*

CERTIFICATE OF MAILING

This is to certify that on this 9th day of February, 2017, a true and correct copy of the foregoing instrument was forwarded via U.S. mail, postage prepaid to the following:

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Sequoyah Fuels
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