RAS 3157

June 25, 2001
DOCKETED 06/26/01

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of	)	
	)	Docket No. 070-03098
DUKE COGEMA STONE & WEBSTER	)	
	)	
Mixed Oxide Fuel Fabrication Facility (Construction Authorization Request)	)	

NRC STAFF'S ANSWER TO HEARING REQUESTS OF
DONALD MONIAK, BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE, GEORGIANS AGAINST NUCLEAR ENERGY, ENVIRONMENTALISTS, INC., AND EDNA FOSTER

INTRODUCTION

On April 18, 2001, the Nuclear Regulatory Commission (NRC or the Commission) published a "Notice of Acceptance for Docketing of the Application, and Notice of Opportunity for a Hearing, on an Application for Authority to Construct a Mixed Oxide Fuel Fabrication Facility" (Notice) in the Federal Register. *See* 66 *Fed. Reg.* at 19,994-96. The Notice pertains to the Construction Authorization Request (CAR), dated February 28, 2001, submitted by Duke Cogema Stone & Webster (DCS), regarding a proposed mixed oxide fuel fabrication facility (MOX Facility) at the U.S. Department of Energy's (DOE's) Savannah River Site (SRS) in South Carolina. As stated therein, the DCS application is the "first step in a process potentially leading to the issuance of a 10 C.F.R. Part 70 materials license." Notice, at 19,995 col.2.

In response to the Notice, Blue Ridge Environmental Defense League (BREDL)[1] and Georgians Against Nuclear Energy (GANE) submitted timely requests for hearing on May 17, 2001. Additionally, by filings dated May 18, 2001, Environmentalists, Inc. (EI) and Edna Foster also

[1]Donald J. Moniak requested a hearing on behalf of himself individually, and on behalf of BREDL.

submitted timely requests for hearing. BREDL, Mr. Moniak, EI, GANE, and Mrs. Foster, are *pro se* hearing petitioners. The petitioners, with the exception of Mrs. Foster, assert interests which they believe give them standing to participate in this CAR proceeding.

SUMMARY

As discussed in Sections I - III, *infra*, resolving questions of whether legal standing has been established to participate in NRC adjudicatory proceedings most basically involves inquiry into whether hearing petitioners have adequately identified interests which may be affected by the proceeding.[2] As a group, the May 17-18 hearing petitions identify a large number of interests on a wide variety of topics. Based on its review of the May 17-18 hearing petitions, the Staff concludes that some interests have been adequately identified which (1) support Mr. Moniak's standing as an individual; (2) would support the representational standing of GANE if the affidavit of the Augusta resident (Susan Bloomfield) is adequately supplemented; and (3) would support the representational standing of EI if necessary affidavits are submitted. The Commission's June 14, 2001, order (forwarding the hearing petitions to the Atomic Safety and Licensing Board Panel) indicates that rulings on standing and contentions are to be made together, after contentions are submitted. Since contentions have yet to be submitted, the Staff cannot reach any conclusions on whether the hearing petitions of Mr. Moniak, EI, and GANE should be granted or denied. In the portion of the petition (submitted by Mr. Moniak) in which BREDL sought standing in its own right, BREDL did not identify any of its members, and thus failed to establish its standing. Mrs. Foster made no attempt to establish her standing. On the present record, the petitions for hearing submitted by BREDL and Mrs. Foster should be denied (although the presiding officer may decide to offer both BREDL and Mrs. Foster, respectively, an additional opportunity to establish standing).

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[2] Section III. A discusses Mr. Moniak's request for hearing. Section III. B discusses BREDL's request for hearing. Section III. C discusses GANE's request for hearing. Section III. D discusses EI's request for hearing. Section III. E discusses Mrs. Foster's request for hearing.

After discussing the procedural background of this proceeding below, the Staff In Sections I. A-E, *infra*, sets forth the general legal framework and NRC case law on standing, including issues of individual, representational, and organizational standing, and presumptions of standing. In Section II, *infra*, the Staff discusses the scope of this CAR proceeding. Many of the interests identified in the May 17-18 hearing petitions fall outside the scope of this proceeding. In Section III, *infra*, the Staff addresses each of the interests identified by the petitioners.

PROCEDURAL BACKGROUND

On May 29, 2001, counsel for DCS filed a response to the BREDL/Moniak request for hearing. *See* "[DCS] Answer to Blue Ridge Environmental Defense League's Request for Hearing Regarding Mixed Oxide Fuel Fabrication Facility Construction Authorization Request" (May 29 Answer). On June 1, 2001, DCS filed a response to GANE's request for hearing. *See* "[DCS] Answer to Georgians Against Nuclear Energy's Request for Hearing Regarding Mixed Oxide Fuel Fabrication Facility Construction Authorization Request" (June 1 Answer). On June 4, 2001, DCS filed a response to Environmentalists, Inc.'s request for hearing. *See* "[DCS] Answer to Environmentalists, Inc. Request for Hearing and Petition to Intervene Regarding the Mixed Oxide Fuel Fabrication Facility Construction Authorization Request" (June 4 Answer). On June 5, 2001, DCS filed a response to Edna Foster's hearing request. *See* "[DCS] Answer to Edna Foster's Request for Hearing Regarding the Mixed Oxide Fuel Fabrication Facility Construction Authorization Request" (June 5 Answer). With respect to each of the hearing requests, DCS argued that the petitioners had failed to establish standing, and that the hearing requests should accordingly be denied.

On June 14, 2001, the Commission referred the hearing requests to the Atomic Safety and Licensing Board Panel for appointment of a presiding officer to consider the requests, and issued an order containing a proposed schedule for the CAR proceeding and other guidance for the conduct of the proceeding. *See* CLI-01-13, "Order Referring Petitions For Intervention and

Requests For Hearing to Atomic Safety and Licensing Board Panel," 53 NRC __ (June 14 Order). With respect to when rulings on standing are to be made, the June 14 Order indicates that such rulings should be made together with decisions on the admissibility of contentions, and within 130 days after a presiding officer is appointed. *See* June 14 Order, at 9. This alters the related Notice provisions, which had anticipated that rulings on standing would be made prior to decisions on the admissibility of contentions. *See* Notice, *supra*, 66 *Fed. Reg.* at 19,996 col.1. The June 14 Order establishes a goal of completing the full CAR proceeding (*i.e.*, assuming the necessary rulings are made that one or more of the petitioners has standing and that one or more admissible contentions have been submitted) by March of 2003, referencing the underlying U.S./Russian Federal Plutonium Disposition Agreement regarding the reduction of weapons-grade plutonium inventories as a reason for completing this proceeding in a timely and efficient manner. *See* June 14 Order, at 7-8.

On June 15, 2001, pursuant to the Commission's guidance -- *see* June 14 Order, at 2 -- a panel of three administrative judges (with Judge Thomas Moore as the Chairman) was appointed to serve as the Presiding Officer in this proceeding. *See* "Establishment of Atomic Safety and Licensing Board" (June 15 Order), at 2 (although the panel is made up of three judges, the Staff will use the term "Presiding Officer" in this answer).[3] On June 19, the Presiding Officer conducted a telephone conference in which counsel for the Staff,[4] counsel for DCS, and the hearing petitioners participated. The chief topic discussed was how the petitioners could gain access to proprietary information in the CAR for purposes of formulating contentions, and it was agreed that

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[3] The Staff views this action as resolving an issue raised by GANE regarding the appointment of a three-member board. *See* GANE's hearing petition, at 10.

[4] The Commission's proposed schedule for the CAR proceeding anticipated that the NRC Staff would participate as a party. *See* June 14 Order, at 9. The Staff had previously determined that it would choose to participate as a party in this proceeding, and pursuant to 10 C.F.R. § 2.1213 the Staff hereby gives formal notice of this to the Presiding Officer, DCS, and the hearing petitioners.

DCS would draft a proposed protective order and affidavit as has been done in prior NRC proceedings involving proprietary information.[5] By order dated June 20, 2001, the Presiding Officer established July 30, 2001, as the deadline for the hearing petitioners to file their contentions. The Staff now files this answer, pursuant to 10 C.F.R. § 2.1205(g).

DISCUSSION

I. Requirements to Establish Standing to Participate in an NRC Proceeding

As discussed in the Notice, an initial issue in any NRC adjudicatory proceeding involves whether the hearing petitioners have established their standing. *See* Notice, *supra*, 66 *Fed. Reg.* at 19,996 col.1. Accordingly, this answer focuses on issues of standing,[6] and the Staff first sets forth the general NRC case law on this subject.

Congress vested authority to administer the licensing provisions of the Atomic Energy Act (AEA) in the NRC.[7] The requirement to establish standing arises from Section 189a(1) of the AEA, 42 U.S.C. § 2239(a)(1), which states that in any proceeding under the AEA pertaining to the granting of any license, the Commission "shall grant a hearing upon the request of any person whose interest may be affected by the proceeding." *Id*. Accordingly, to determine whether a

[5] The Staff views this result as resolving, at least for the moment, an issue raised by GANE regarding the proprietary information . *See* GANE's hearing petition, at 10.

[6] The hearing petitioners affirmed during the June 19 telephone conference that in accordance with the Notice provisions, they did not intend that any statements in their initial petitions be treated as contentions. As contemplated in the Commission's June 14 Order the petitioners will have the opportunity of filing contentions later, and as stated above, Judge Moore has now established July 30, 2001, as the deadline for the hearing petitioners to file their contentions. The Staff will respond to any contentions at the appropriate time.

[7] *See* Energy Reorganization Act of 1974, as amended, §§ 201(f) and (g), 42 U.S.C. §§ 5841(f) and (g).

petitioner for hearing has the required interest, the Commission has long applied judicial standards for establishing standing.[8]

A. Individual Standing

To establish standing, the Commission requires a petitioner for an NRC hearing to establish that (1) he or she will suffer a distinct and palpable "injury in fact" within the zone of interests arguably protected by the statutes governing the proceeding (here, the AEA or the National Environmental Policy Act of 1969 (NEPA);[9] (2) such injury is fairly traceable to the proposed action; and (3) such injury is likely to be redressed by a decision in the petitioner's favor.[10] Identification of a threatened injury may be sufficient to establish standing, but the threat must not be "too speculative," since the requisite injury "must be both concrete and particularized, not 'conjectural' or 'hypothetical.'" *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994) (footnote and citations omitted). However, in evaluating a petitioner's standing, the hearing petition is construed in favor of the petitioner. *See Georgia Inst. of Tech.* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995). Standing must be established in all NRC adjudicatory proceedings, regardless of whether a materials license or a

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[8] *See*, *e.g., Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit No. 1), CLI-83--25, 18 NRC 327, 332 (1983), and cases cited therein.

[9] The zone of interests encompassed by the AEA is radiological health and safety, while the zone of interests covered by NEPA is the identification and balancing of environmental harms. *See Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1420 (1977).

[10] *See Shieldalloy Metallurgical Corp.* (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 353 (1999), *citing Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998). *See also Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72-76 (1994).

nuclear power reactor license is at issue.[11] *See Shieldalloy Metallurgical Corp.* (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 351-54 (1999) (materials license proceeding in which Commission affirmed presiding officer's decision denying hearing requests for failure to establish standing).

B. Representational Standing

Similar to the need for an individual to establish standing to participate in an NRC adjudicatory proceeding, any organization seeking to represent the interests of members by petitioning for a hearing must establish its representational standing. To establish such standing, an organization must show that (1) one or more of its members have standing in their own right; (2) the interests the organization seeks to protect are germane to its purpose; (3) neither the claim asserted nor the relief requested requires the participation of each individual member; and (4) one or more individual members have authorized the organization to represent his or her interests. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 30-31 (1998); *see also Warth v. Seldin*, 422 U.S. 490, 511 (1975).

C. Organizational Standing

An organization petitioning for a hearing in its own right must establish its standing by showing that it has or will suffer an injury in fact to some organizational interest that is within the zone of interests of the AEA or the NEPA. A mere academic interest in a matter, or an asserted

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[11] While materials license proceedings are governed by 10 C.F.R. Part 2, subpart L, and power reactor proceedings are governed by 10 C.F.R. Part 2, subpart G, the procedural requirements for establishing standing in the two types of proceedings are the same. *Cf.* 10 C.F.R. §§ 2.1205 (e)(1-2) and (h)(1-3), to 10 C.F.R. §§ 2.714 (a)(2) and (d)(1)(i-iii). In this subpart L proceeding, to establish standing, the hearing petitioners must "describe in detail" their interest in the CAR proceeding, and how such interests "may be affected by the results of the proceeding." 10 C.F.R. § 2.1205(e)(1-2). More specific factors on which standing determinations must be based here include the extent of any petitioner's "property, financial, or other interest," and the effect any order entered in this CAR proceeding might have on the petitioner's interest. 10 C.F.R. § 2.1205 (h)(2-3). The Notice referenced these procedural requirements for establishing standing. *See* 66 *Fed. Reg.*, *supra*, at 19,996 col. 1.

harm reflecting a generalized grievance shared by a large class of citizens, regardless of whether the organization is national or local in scope, is not sufficient to establish an organization's standing.[12] Generalized grievances neither establish the sort of particularized interest, nor result in the type of distinct and palpable harm, necessary to support the participation of an individual or an organization in NRC adjudicatory proceedings. *See Three Mile Island, supra*, CLI-83-25, 18 NRC at 332-33. *See also Westinghouse Electric Corp*. (Export to South Korea), CLI-80-30, 12 NRC 253, 258 (1980) (no matter how qualified an organization may be to evaluate an issue, to establish its standing it must identify "some threatened or actual injury" resulting from the proposed agency action). Generalized grievances do not establish standing because as both the Commission and federal courts have long recognized, there is a "functional need for well defined and specific interests, which will lend concrete adversity to the decision-making process." *Transnuclear Inc.*, CLI-77-24, 6 NRC 525, 531 (1977) (citation omitted).

D. Presumption of Standing Based on Proximity to Licensed Activities

NRC case law for standing in nuclear power reactor licensing proceedings established a rule whereby persons living within 50 miles of a power reactor site were presumed to have standing.[13] In a proceeding involving an application for renewal of a 10 C.F.R. Part 30 materials license, which authorized possession of 320,000 curies of radioactive cobalt-60, an appeal board found a presumption of standing based on an affidavit establishing that a member of the organization requesting a hearing lived three miles from the licensed facility. *See Armed Forces Radiobiology Research Institute* (Cobalt-60 Storage Facility), ALAB-682, 16 NRC 150, 152-54

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[12] *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 529-30 (1991). Similarly, interest in a cause -- advancing the "generalized goal" of nuclear non-proliferation, seeing that laws are obeyed, or furthering social goals -- do not by themselves establish a basis for an organization's standing. *Dellums v. U.S. Nuclear Regulatory Commission*, 863 F.2d 968, 972 (D.C. Cir. 1988).

[13] *See, e.g., Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 n.7 (1977).

(1982) (reversing a licensing board decision that the organization lacked standing). The Commission decided in 1987 that the 50-mile rule applied in power reactor licensing proceedings would not be applicable in materials licensing proceedings.[14] As discussed below, presumptions of standing here based on geographic proximity to the site of the proposed MOX Facility must be evaluated in terms of the particular licensed material the facility would use.

A presumption of standing based on geographic proximity to a licensed site or activity is not confined to power reactor proceedings, and may be applied in materials licensing proceedings -- albeit "at distances much closer than 50 miles" -- so long as "the potential for offsite consequences is obvious." *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22, *citing Armed Forces Radiobiology Research Institute*, *supra*. How close a hearing petitioner must live to a source of radioactivity (or the necessary frequency of contacts) for the presumption to apply in non-power reactor cases "depends on the danger posed by the [radioactive] source at issue." *Sequoyah Fuels,* 40 NRC at 75 n.22. In *Georgia Tech, supra*, a case involving the license renewal of a non-power research reactor, the Commission affirmed a licensing board's finding that frequent presence within one-half mile (and closer) of the reactor site was sufficient to confer standing. The Commission stated that a "presumption of standing based on geographic proximity" may apply if it is found that "the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences." CLI-95-12, 42 NRC at 116 (citations omitted). "Whether and at what distance a petitioner can be presumed to be affected must be judged on a case-by-case basis," considering the "nature of the proposed action and the significance of the radioactive source." *Id*., at 116-17 (citations omitted).

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[14] *See* 52 *Fed. Reg.* 20,089, at 20, 090 col.3 (May 29, 1987) (publishing draft subpart L rules). In finalizing the subpart L rules in 1989, the Commission reiterated its rejection of the "fifty-mile radius" rule applicable in power reactor licensing proceedings. *See* 54 *Fed. Reg.* 8269, at 8272 col.2 (February 28, 1989).

Here, the Staff is not yet able to state with any confidence the degree of risk -- if any -- that offsite radiological contamination could result from the operation of the proposed MOX Facility at the selected site. Given this present uncertainty, the Staff cannot yet take a position on whether presumptions of standing should be applied in this proceeding.[15] Unlike proceedings involving the licensing of power reactors, the Commission has not established a *per se* rule in the case of a fuel fabrication facility that a petitioner living or working within X miles from the proposed site of such a facility should be presumed to have standing. However, the Staff does take the position that to establish standing in this proceeding, petitioners must provide specific reference to the distance (in miles) from the licensed site that their residence or other frequent activities places them.[16] The Commission has recently emphasized that in cases where the proposed licensing action does not obviously involve "an increased potential for offsite consequences," standing cannot be based

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[15] Major releases from the proposed MOX Facility are considered to be extremely low probability events. On CAR page 1.2-7, a total plutonium inventory of approximately 18,400 kg. Is stated. Much of this material is in forms that are not readily dispersible and would not contribute to offsite doses, such as sintered pellets, completed fuel rods and assemblies, and containers for storing and handling plutonium. A major accident/release is listed in CAR Table 5.5-26 as having a dose at the site boundary of approximately 1.2E-2 rem, including a credit of functioning HEPA filters (a 1E-4 reduction). Preliminary analyses indicate this would be reduced approximately 1/500th at the 20 mile point, corresponding to a dose under 10 millirem. At the present time, information on the specific accident scenarios is not sufficient to determine if the design and HEPA filters are sufficiently reliable to adequately mitigate these types of accidents. Without mitigation, the dose to the 20 mile receptor could approach the rem range. As part of the CAR review process, more detailed information has been requested from DCS to allow the staff to perform more refined accident analyses. Since the Staff has not thus far conducted its own independent analyses, the above analysis is only a preliminary one.

[16] *See Atlas Corporation* (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 424-27 (1997), *affirmed*, CLI-97-8, 46 NRC 21 (1997) (petitioner's hearing request denied for failure to establish standing, due in part to failure to specify degree of proximity to activity licensed under 10 C.F.R. Part 40). To establish "injury in fact," a petitioner for hearing must outline how cognizable impacts from the materials involved in the licensing action at issue "can reasonably be assumed to accrue to the petitioner." *Atlas, supra*, 45 NRC at 426 (citations omitted).

simply upon frequent contacts in the general area of a licensed site. *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 191 (1999) (citation omitted).[17]

E. Scope of Proceeding's Relationship to Issue of Standing

Regardless of whether individual, representational, or organizational standing is being evaluated, the scope of the licensing action at issue must first be determined in deciding whether a petitioner has established standing. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 203 (1998). *See also Westinghouse Electric Corp*. (Export to South Korea), CLI-80-30, 12 NRC 253, 260 (1980) (participation in an adjudicatory proceeding "may not be based on claims pertaining to matters that are beyond the scope" of the proceeding). In adjudicatory proceedings, licensing boards and presiding officers are "delegates of the Commission and exercise only those powers which the Commission has given them."[18] The delegated authority held by licensing boards and presiding officers is based on section 191 of the AEA, which authorizes the Commission's establishment of boards "to conduct such hearings as the Commission may direct." 42 U.S.C. § 2241.

II. Scope of the CAR Proceeding

The April 18, 2001 Notice identifies both AEA safety matters and NEPA-related issues as being within the scope of the proceeding, stating as follows:

> The NRC has now accepted the CAR for docketing, and, accordingly, is providing this notice of opportunity for hearing on the DCS application for authority to construct a MOX fuel fabrication facility. In order to approve the CAR, the NRC must find that the design bases of the proposed MOX fuel fabrication facility's principal structures, systems, and components, together with the DCS quality

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[17] In affirming the licensing board's decision denying a request for hearing, the Commission refused to presume standing -- even though the proceeding involved a nuclear power reactor -- noting the "shutdown and defueled status of the units," and the fact that neither reactor would ever operate again. *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 191 (1999) (citation omitted).

[18] *Public Service Co. of Indiana, Inc.* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170 (1976) (citation omitted).

> assurance plan, "provide reasonable assurance of protection against natural phenomena and the consequences of potential accidents." 10 C.F.R. 70.23(b). Additionally, to meet the NRC's responsibilities under the National Environmental Policy Act (NEPA), the NRC's environmental review of the proposed licensing action must determine whether "the action called for is the issuance of the proposed license." 10 C.F.R. 70.23(a)(7). If the necessary findings are made and the CAR is approved, construction of the MOX fuel fabrication facility could then begin.

66 *Fed. Reg.*, *supra*, at 19,995 col. 2. The Commission's June 14 Order reiterates this description of the CAR proceeding's scope, and then adds that in proffering contentions, a hearing petitioner "must demonstrate that a genuine dispute exists" between it and DCS, and that "the dispute lies within the scope of the proceeding." June 14 Order, at 6.

As indicated in the above excerpt from the Notice, the AEA issues of radiological health and safety raised by the CAR concern whether the design bases of the proposed MOX Facility's principal structures, systems, and components, together with the DCS quality assurance plan, are adequately protective against events such as hurricanes, earthquakes, and tornadoes, and the consequences of any potential accidents. *See* 10 C.F.R. § 70.23(b). If the CAR is approved, construction is completed, and the MOX Facility is eventually allowed to begin operating, the Staff at that point will have issued an operating license to DCS. Such a license would authorize DCS to possess and use significant amounts of special nuclear material (SNM) at the SRS site. While approval of the CAR itself would not authorize DCS to possess and use any SNM, the Staff in deciding whether to approve the CAR must evaluate whether the proposed design bases -- assuming they are properly implemented during construction -- would adequately protect the public from any radiological consequences of potential accidents or other events in the future. *See* 10 C.F.R. § 70.23(b). It would make little sense to focus on the present lack of any SNM held by DCS, given its future intention to operate a MOX Facility at its SRS site. Accordingly, the Staff views radiological health and safety issues as being within the scope of this CAR proceeding. Thus, sufficiently particularized interests in being protected from possible offsite radiological

consequences allegedly related to the future operation of a MOX Facility at the selected SRS site will establish standing to participate in the CAR proceeding.[19]

With respect to NEPA-related issues, the Staff's position is that since its environmental review of the proposed MOX Facility must be completed before a decision on the CAR may be made, and because the required environmental review (if it concludes that a 10 C.F.R. Part 70 license may later be issued) includes establishing appropriate license conditions "to protect environmental values" (10 C.F.R. § 70.23(a)(7)), NEPA issues in this proceeding are not limited to environmental impacts caused by the construction of the MOX Facility. Consistent with this view, the Staff's environmental impact statement regarding the MOX Facility will address potential impacts of constructing and operating the facility. Thus, sufficiently particularized interests in protecting environmental values allegedly threatened by the future operation of a MOX Facility at the selected SRS site will establish standing to participate in the CAR proceeding.

III. The Petitions for Hearing on the CAR

A. Mr. Moniak's Request for Hearing

As stated above, Donald J. Moniak requested a hearing on behalf of himself individually, and on behalf of BREDL. Mr. Moniak's bases for claiming individual standing to participate in the CAR proceeding are set forth in sections 6 (a-k) of his May 17, 2001 letter.[20] Each basis is addressed below. For ease of reference, the sub-sections below are numbered 1 through 12 (but

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[19] The Notice explains that DCS plans to submit a later request next summer for authority to operate the MOX Facility, and that this request would be the subject of a separate notice of opportunity for hearing. *See* 66 *Fed. Reg.*, *supra*, at 19,995 col. 2. DCS apparently reads this portion of the Notice to mean that issues related to potential future operation of the MOX Facility may only be addressed "during a later phase" of the proceeding. June 1 Answer, at 11. The Staff does not agree that the Notice should be so construed.

[20] In support of his standing claim, Mr. Moniak makes several references to non-existent sections within "item 8" of his letter. The Staff is assuming that in these instances, Mr. Moniak intended to make references to the corresponding sections within item 6 of his letter, and has construed his standing claim accordingly.

note that these numbers do not correspond with Mr. Moniak's numbered bases). As discussed below, the Staff concludes in sub-sections 3, 6, and 7, that Mr. Moniak has adequately identified interests which support his claim for individual standing.

Before addressing Mr. Moniak's claims for standing, the Staff notes that some of his supporting statements are in the nature of contentions, which will not be addressed as such by the Staff at this time. For example, the Staff concludes that Mr. Moniak's Bases 6.(j).(v), 6.(j).(viii), and 6.(j).(ix) fall in the contention category. In Basis 6. (j). (v), Mr. Moniak asserts that the design of the proposed MOX Facility conflicts with the DOE's Standard 3013 (Technical Standard for the Long-Term Stabilization and Storage of Plutonium Oxides and Metal, requiring that plutonium be subjected to a certain degree of heat to remove moisture and impurities), and that the plutonium polishing step DCS plans to use in its proposed MOX Facility "is far more difficult" to achieve using material meeting DOE's Standard 3013, than if non-standard material is used.[21] In Basis 6. (j).(viii), Mr. Moniak asserts that DCS has improperly failed to prepare an emergency management plan for the proposed MOX Facility.[22] In Basis 6.(j). (ix), Mr. Moniak states that DCS plans to use ventilation systems containing HEPA filters in its proposed MOX Facility, even though the DOE has

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[21] In addressing Basis 6. (j). (v), DCS denies that the MOX Facility design is in conflict with DOE Standard 3013, stating that the standard "is specifically included in the design specifications" for its MOX Facility." May 29 Answer, at 18.

[22] Under applicable Staff guidance, an applicant such as DCS is not expected to submit an emergency plan "with the portion of the license application submitted for the construction approval review." *See* "Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility," NUREG-1718, at Section 14.5.1. Moreover, at the time an operating license is applied for, an emergency plan is not required if the applicant can demonstrate that the maximum dose to a member of the public offsite due to a release of radioactive materials would not exceed specified limits. *See* 10 C.F.R. § 70.22(i)(1)(i-ii). Consistent with the above guidance and regulation, DCS states that it intends to demonstrate -- as part of its future application for a possession and use license to operate the proposed MOX Facility -- that the maximum offsite dose would not exceed the limits specified in the regulation, but that if need be, it intends to have an emergency plan integrated within the larger program already existing at the SRS. *See* May 29 Answer, at 18 and n.92.

experienced "grave difficulties" with such systems at other facilities.[23] The issues between DCS and Mr. Moniak regarding DOE Standard 3013, an emergency management plan, and the use of HEPA filters, will need to be resolved in considering later contentions that Mr. Moniak may file.

1. Mr. Moniak first states as a basis for his standing that he owns and lives on property in Aiken County, South Carolina, located 19.3 miles from the proposed MOX Facility site. Basis 6 (a). As discussed in Section I.D, *supra*, proximity-based presumptions of standing may be applied in materials licensing proceedings only if it is found that the proposed action "involves a significant source of radioactivity producing an obvious potential for offsite consequences." *Georgia Tech, supra*, CLI-95-12, 42 NRC at 116 (citations omitted). The Commission has recently emphasized that in cases where the proposed licensing action does not obviously involve "an increased potential for offsite consequences," standing cannot be based simply upon frequent contacts in the general area of a licensed site. *Zion, supra*, CLI-99-4, 49 NRC at 191(citation omitted). Thus, by itself, basis 6 (a) does not support Mr. Moniak's standing here. [NEED NMSS INPUT HERE]

2. Mr. Moniak states that he lives within 1.3 to 4.3 miles from State Highway 19 and Interstate 20, both of which are described as "probable" MOX fuel transport routes. Basis 6 (a), n.10. Any future shipments of MOX fuel from the SRS site are contingent upon a commercial power reactor having been authorized by the NRC to use such fuel, which will require one or more amendments to existing 10 C.F.R. Part 50 licenses. Any such amendment requests would be topics of separate notices of opportunity for hearing, and the use of MOX fuel in reactors is thus a topic which is outside the scope of this CAR proceeding. Accordingly, even if State Highway 19

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[23] In addressing Basis 6. (j). (ix), DCS states that generalizations regarding unspecified "grave difficulties" with HEPA filters "are too vague to provide a basis for standing." May 29 Answer, at 17. DCS further states with respect to both Basis 6.(j).(v) and (j).(ix), that even if the assertions are true, Mr. Moniak has failed to explain how he -- residing almost 20 miles away from the proposed MOX Facility -- would be personally affected by the use of HEPA filters, or by the alleged conflict with DOE's Standard 3013 *See* May 29 Answer, at 17-18.

and Interstate 20 are assumed to be future MOX fuel transport routes, Mr. Moniak's proximity to those routes, by itself, does not support his standing to participate in this proceeding.

An additional reason for finding that the transportation issues raised here by Mr. Moniak are outside the scope of this proceeding is that his argument may be read as a prohibited challenge to the Commission's 10 C.F.R. Part 71 regulations governing the transport and shipment of radioactive materials under the NRC's jurisdiction. DCS is working with the DOE on the design of shipping containers that will be acceptable under these regulations. *See* Environmental Report, Appendix E at E-2 to E-4. NRC regulations may not be challenged in Subpart L proceedings. *See* 10 C.F.R. § 2.1239.

3. Mr. Moniak states as a basis for his standing that he "grows vegetables for consumption" at his Aiken County residence. Basis 6 (b). As discussed in Section I.A, *supra*, the second element of standing is whether the threatened injury is fairly traceable to the proposed action, meaning that there must be a plausible chain of causation connecting the threatened injury to the proposed action. *See Sequoyah Fuels, supra,* CLI-94-12, 40 NRC at 75. Mr. Moniak references the consequences of potential accidents at the MOX Facility (*see, e.g*, Bases 6.j, 6.j.i, and 6.j.vii), and the Staff concludes that he adequately identifies an interest here to support his claim for standing. For purposes of establishing his standing, Mr. Moniak need not at this time prove the truth of the allegations referenced above, which are now to be construed in his favor. *See Georgia Tech, supra*, CLI-95-12, 42 NRC at 115. While the NRC has previously rejected similarly vague claims as bases for standing,[24] there is a lack of binding precedent specific to the growing of one's own vegetables. In addressing Basis 6 (b), DCS argues that Mr. Moniak has failed to adequately specify a way in which the MOX Facility could impact his garden. *See* May 29 Answer, at 9 and

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[24] *See Atlas Corporation, supra*, LBP-97-9, 45 NRC at 426, *affirmed*, CLI-97-8, 46 NRC 21 (1997) (vague assertions of potential impacts due to use of water from river flowing next to a materials facility fail to establish with sufficient specificity a threat of personal harm necessary for standing).

n.39, *citing Philadelphia Electric Co*. (Limerick Generating Station, Units 1 and 2), LBP-83-43A, 15 NRC 1423, 1449 (1982); and *Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 336 (1979) (refusing to allow intervention on the basis of the possibility of petitioners' consuming produce, meat products, or fish originating within 50 miles of the site). But as unreviewed licensing board decisions, the *Limerick* and *WPPSS* decisions cited by DCS carry no precedential value.[25] Moreover, whether DCS is reading the *Limerick* decision correctly is questionable.[26]

4. Mr. Moniak states that his water supply (from the City of Aiken) comes in part from town wells 250-300 feet deep located 15 to 16 miles from the proposed MOX Facility site, and in part from the town's treatment plant located 22 miles from the proposed site (drawing surface water from Shaws Creek). *See* Basis 6 (c) (i-ii). The record to date establishes that the surface water on the land comprising and surrounding the proposed MOX Facility site (*i.e*., SRS F Area) drains into either Upper Three Runs Creek or Fourmile Branch. *See* "Mixed Oxide Fuel Fabrication Facility Environmental Report," submitted by DCS in December 2000 (ER), at section 4.4.2.2, page 4-14. Both of these streams flow in a west to southwesterly direction and empty into the Savannah River, which in turn flows in a southeasterly direction and eventually into the Atlantic Ocean. *See* ER Figure 4-1, at 4-45. Similarly, groundwater in the aquifers underlying the proposed MOX

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[25] *See Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 343 n.3 (1998).

[26] The staff believes that a close reading of the case does not support the conclusions advanced by DCS. In *Limerick*, a reactor operating license proceeding, the licensing board was engaged in determining which of the several persons requesting to intervene in the proceeding had standing. *Limerick*, 15 NRC at 1430-31. One of the parties who had requested to intervene (Dr. William Lochstet) argued that he "may consume food grown close to the plant." *See id.* at 1447. The board denied Dr. Lochstet's request, stating that his allegations were "too remote and too generalized." *Id.* at 1449. Further, the board reasoned that nothing contained in his petition explained how contaminated food would end up on Dr. Lochstet's table. *Id.* Here -- assuming Mr. Moniak does indeed grow and eat food from his own garden -- some of the uncertainty which troubled the *Limerick* board is absent.

Facility site flows horizontally and discharges into the Savannah River, and southeast towards the coast. *See* ER section 4.4.3.2, at 4-17. Figure 1 of Mr. Moniak's hearing request depicts the geographic relationship the locations of the proposed MOX Facility, the Savannah River, and the town's two water supplies have to one another. Figure 1 shows that the two sources comprising the City of Aiken's water supply -- from which Mr. Moniak obtains his water -- are both located to the north of the proposed MOX Facility site. As discussed above, no water at the proposed MOX Facility site flows north, and there is no indication that the town wells or Shaws Creek have any hydrological relationship to either Upper Three Runs Creek, Fourmile Branch, or the Savannah River. The record as it stands thus shows a lack of any connection between water used by Mr. Moniak, and water that could later be affected if the MOX Facility is built and operated. Accordingly, Basis 6 (c) (i-ii) does not establish Mr. Moniak's standing to participate in the CAR proceeding.[27]

5. Mr. Moniak asserts that he participates in various recreational activities within the local Savannah River watershed area, "including boating, fishing, hunting, canoeing, birdwatching, camping, wildlife observation, and study of the natural environment." Basis 6 (d).[28] Mr. Moniak does not specify how frequently he engages in these recreational activities, or where in the watershed area they occur. To establish standing petitioners must state the distance (in miles) from the licensed site that their frequent activities places them, and in the case of water-related activities a petitioner must specify whether such activities are engaged in upstream or downstream from the facility. *See Atlas Corporation, supra*, LBP-97-9, 45 NRC at 424-27, *affirmed*, CLI-97-8,

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[27] *See Atlas Corporation, supra*, LBP-97-9, 45 NRC at 426, *affirmed*, CLI-97-8, 46 NRC 21 (1997) (assertions of potential impacts due to use of water must be sufficiently specific to establish a threat of personal harm necessary for standing).

[28] Mr. Moniak also states here that this local watershed area has already been impacted by "past and present SRS activities" and other local industrial activities. Basis 6 (d). This may be so, but any such impacts are outside the scope of this proceeding and would provide no basis for his standing to participate in the CAR proceeding. *See generally* Section I.E., *supra.*

46 NRC 21 (1997). This last fact was deemed "critical to establishing whether these activities will provide the requisite injury in fact" (*id*., at 426), but Mr. Moniak does not provide any information regarding whether his water-related activities are being conducted upstream or downstream from the proposed MOX Facility site. Moreover, as discussed in Section I. D, *supra*, absent situations where the proposed licensing action involves "an increased potential for offsite consequences," standing cannot be presumed based simply upon frequent contacts in the general area of a licensed site. *Zion, supra*, CLI-99-4, 49 NRC at 191. Thus, basis 6 (d) does not support Mr. Moniak's standing here.

6. Mr. Moniak states that the cumulative impact of adding another facility at SRS which handles plutonium will substantially increase the risk of a major accident that could, among other things, (1) contaminate his residential property; (2) degrade water supplies; (3) affect his ability to engage in local recreational activities; and (4) restrict his opportunities to consume local fish and game species. *See* Basis 6 (e). The Staff reads this basis as invoking Mr. Moniak's AEA interest of radiological health and safety, and his NEPA interest in seeing that the potential environmental harms involved in the proposed action -- which harms include potential cumulative impacts -- are properly identified and balanced.[29] For purposes of establishing Mr. Moniak's standing, the Staff thus views this as an adequate identification of cognizable interests held by him.[30]

7. Bases 6 j (i), (vi), and (vii) of Mr. Moniak's hearing request appear similar to Basis 6 (e), and are thus addressed here. Basis 6 j (i) states that since a large amount of plutonium would be present if the DCS MOX Facility is operated, an accident would result in environmental

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[29] As noted above, the zone of interests covered by NEPA is the identification and balancing of environmental harms. *See Watts Bar, supra,* ALAB-413, 5 NRC at 1420.

[30] In arguing against standing on this basis, DCS referenced unspecified "analyses described in the CAR" which "indicate that operation of the MOX Facility will not substantially increase the risk of a major accident that could impact the health and safety of the public." May 29 Answer, at 14. This is an issue that will need to be resolved in considering later contentions that Mr. Moniak may file.

contamination. Basis 6 j (vii) adds that the risks of plutonium contamination from accidental explosions, leaks, or fires, or dispersals caused by earthquakes or tornadoes, are "substantial," and would result in environmental contamination "not found in the immobilization alternative and the no action alternative." In Basis 6 j (vi), Mr. Moniak states that the proposed location of the MOX Facility within the F-Area at SRS was not selected through the NEPA process. The Staff reads these statements as invoking Mr. Moniak's NEPA interest in seeing that the potential environmental harms involved in the proposed action are properly identified and balanced. For purposes of establishing Mr. Moniak's standing, the Staff thus views these statements as an adequate identification of cognizable interests held by him.

8. Mr. Moniak asserts that he owns property located approximately 30.5 miles from "Zone 4" of the Pantex Nuclear Weapons Plant in Randall County, Texas, and that this plant has 12,500 plutonium pits containing an estimated 35-40 metric tons of weapons-grade plutonium stored in substandard conditions. *See* Basis 6 (f). As discussed in Section I.E, *supra*, asserted interests must involve issues within the scope of this CAR proceeding to support standing here. There is no plausible way in which building and operating a MOX Facility in South Carolina would affect Mr. Moniak's property interest in Texas, and his statements -- assuming all of them to be true -- raise issues far outside the scope of this proceeding. Accordingly, Basis 6 (f) does not establish Mr. Moniak's standing to participate in the CAR proceeding.

9. Mr. Moniak states that as an American citizen and taxpayer he is entitled to a hearing on the CAR based on an "ownership interest in the Federally-owned lands" on which the MOX Facility is proposed to be constructed, since such publicly-owned lands would be "affected by further radioactive or chemical contamination," and by "impacts on threatened and endangered wildlife and plant species" located thereon. Basis 6 (g). As discussed in Section I.C, *supra*, an asserted harm reflecting a generalized grievance shared by a large class of citizens is not sufficient to establish an individual's standing in NRC adjudicatory proceedings. *See Three Mile Island,*

supra, CLI-83-25, 18 NRC at 332-33. Generalized grievances do not establish the sort of particularized interest, or result in the type of distinct and palpable harm, necessary to support an individual's standing. *See id*. Moreover, the fact that one pays taxes does not generally establish judicial standing,[31] and taxpayer interests are not within the zone of interests covered by the AEA or NEPA.[32] Accordingly, Basis 6 (g) does not confer standing on Mr. Moniak here.

10. Largely for the same reasons discussed immediately above, Bases 6 (h), 6 (i), 6 (j) and 6 (k) in Mr. Moniak's hearing petition fail to establish his standing to participate in the CAR proceeding. Basis 6 (h) asserts Mr. Moniak's civic interest in a "sound government," and his financial interest that the government "will not waste tax dollars on unnecessary and dangerous facilities when better alternatives exist" (citing the proposed MOX Facility as an example of a multi-billion dollar government expenditure "that is unnecessary and dangerous"). Basis 6 (i) asserts Mr. Moniak's interest in having federal agencies "obey the laws of the nation" and to be "held accountable for violations of federal laws and making false and incomplete claims" to Congress. Basis 6 (j) asserts Mr. Moniak's civic, moral, ethical, and financial interests "in protecting federally owned facilities from unnecessary harm and protecting federal and other public properties from harm."[33] Similarly, Basis 6 (k) identifies Mr. Moniak's civic, moral, ethical, financial, and property interests in reducing the amount of plutonium available for weapons of mass destruction, stating

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[31] *See Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.,* 454 U.S. 464, 477-482, 102 S. Ct. 752, 761-764 (1982) (the mere fact that a person is a taxpayer is an insufficient basis for standing to object to a proposed agency action).

[32] *See Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), LBP-77-36, 5 NRC 1292, 1294 (1977), *aff'd*., ALAB-413, 5 NRC 1418, 1421 (1977).

[33] In addition to the factors discussed above, Basis 6 (j) has the further infirmity of asserting an interest in property not individually owned by Mr. Moniak. However, as explained elsewhere in this Answer, the Staff reads subsections i-ix of Basis 6 (j) as constituting independent bases for standing, some of which adequately identify potentially affected interests. *See, e.g.*, Basis 6 (j) (vii), referencing protection from the consequences of plutonium contamination produced by natural phenomena or potential accidents which could occur at the proposed MOX Facility. *See also* 10 C.F.R. 70.23(b). Thus, subsections i-ix are addressed separately from Basis 6 (j).

that the proposed MOX Facility and the "larger MOX fuel option for plutonium disposition" increases risks of nuclear proliferation, creates risks and threats to security, and risks environmental harm in specified ways.[34] Because these four bases are each predicated on Mr. Moniak's status as a taxpayer, and since each asserts only one or more generalized grievances shared by a large class of citizens, Bases 6 (h), 6 (i), 6 (j), and 6 (k), whether read singly or together, fail to establish Mr. Moniak's standing here.

11. In stating that the design bases for the proposed MOX Facility will "inevitably change" due to unspecified changes that the DOE either has made or will make in the federal government's larger plutonium disposition program, Mr. Moniak in Basis 6. j. ii raises issues which are outside the scope of the CAR proceeding. His similar statement in Basis 6.j. iv that "major design changes" would have to occur if the DOE decides to process materials at the proposed MOX Facility which contain greater quantities of impurities than the standard weapons-grade plutonium (*i.e.*, the plutonium now subject to the immobilization disposition path through the proposed Plutonium Immobilization Plant rather than the MOX fuel disposition path) also involves issues which are outside the scope of the CAR proceeding. As indicated in Sections I.E and II, *supra*, interests on which standing may be based here must relate to the application DCS has filed with the NRC regarding the proposed MOX Facility. Should DOE later decide to make changes of the type referenced above which could affect a MOX Facility, DCS would have to submit an amended application (or request a license amendment if a license has by then been issued). The NRC's regulatory jurisdiction is limited here, and the NRC has no role to play in how DOE manages other

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[34] In this regard, Mr. Moniak lists the following five examples of increased risks of nuclear proliferation and security (which also threaten environmental harm): (1) encouraging the global commerce of plutonium as fuel; (2) encouraging plutonium reprocessing; (3) discouraging less expensive plutonium disposition options; (4) adding unnecessary costs to the PDCF process; and (5) encouraging the development of a plutonium regulatory infrastructure in the United States and Russia. *See* Basis 6. k. i-v. The Staff views each of these bases as asserting generalized harms which are outside the scope of the CAR proceeding, and whether considered singly or together, they do not establish Mr. Moniak's standing here.

aspects of the federal government's plutonium disposition program, which includes the proposed Plutonium Immobilization Plant. Moreover, bases 6. j. ii and 6. j. iv are quite vague as to which of Mr. Moniak's cognizable interests are (or could be) affected by changes in the plutonium disposition program. Accordingly, these bases fail to establish Mr. Moniak's standing in the CAR proceeding.

12. Basis 6. (j). (iii) states that unspecified requirements of the proposed MOX Facility are "inadequately defined" because of improper assumptions made by DCS concerning the plutonium to be derived from the proposed Plutonium Pit Disassembly and Conversion Facility (PDCF). Mr. Moniak also references the U.S./Russian Federal Plutonium Disposition Agreement, which specifies that a quantity of the subject plutonium is not presently in plutonium pit form. Neither the proposed PDCF, nor details regarding how the U.S./Russian agreement may be implemented, come within the scope of the CAR proceeding, which is limited to consideration of the proposed MOX Facility. Moreover, this basis is quite vague as to which of Mr. Moniak's cognizable interests are (or could be) affected by either the PDCF or the fact (assuming it to be true) that a certain quantity of plutonium is not presently in plutonium pit form.[35] Accordingly, Basis 6. (j). (iii) fails to establish Mr. Moniak's standing in the CAR proceeding.

B. BREDL'S Request for Hearing

BREDL's hearing request is set forth in Bases 7 (a-h) (and various subsections therein) of Mr. Moniak's May 17, 2001 petition. BREDL's claim for organizational standing is limited to the following bald assertions: (1) as an organization it has a substantial interest in the proceeding; and (2) as an organization it has "significantly influenced, and will continue to significantly influence," the debate over plutonium storage and disposition. Basis 7. As discussed in Section I. C, *supra*, to establish organizational standing an organization must show that it has or will suffer an injury in

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[35] In addressing this basis, DCS states that under the U.S./Russian Federal Plutonium Disposition Agreement, in fact only 0.57 metric tons of non-pit form plutonium will be processed into MOX fuel, and that the origin of such material will not affect the MOX Facility design. *See* May 29 Answer, at 18.

fact to some organizational interest that is within the zone of interests of the AEA or the NEPA, and which would result from the proposed agency action. Such a showing of injury is required no matter how qualified an organization may be to evaluate an issue. *See Westinghouse, supra,* CLI-80-30, 12 NRC at 258. BREDL fails to demonstrate that it, as an organization, would be adversely affected if the CAR is approved. Accordingly, BREDL has failed to demonstrate its organizational standing to participate in the CAR proceeding.

BREDL's claim for representational standing is set forth in the second half of Basis 7, and in subsections a-h of Basis 7 (and various subsections therein) of Mr. Moniak's May 17 petition. Except for Mr. Moniak, no individual BREDL members are identified. As discussed in Section I. B, *supra*, among the requirements to establish its representational standing, an organization must show that one or more of its members have standing in their own right, and that one or more individual members have authorized the organization to represent his or her interests in the proceeding. *See Private Fuel Storage, supra,* CLI-98-13, 48 NRC at 30-31. As discussed below, BREDL has not met these requirements, and has thus failed to establish its representational standing to participate in the CAR proceeding. For ease of reference, the sub-sections below are numbered 1 through 5 (but note that these numbers do not correspond with BREDL's numbered bases.)

1. BREDL first states that unidentified members "drive on, live along, and recreate near" transportation routes to be used for shipping MOX fuel. Basis 7. a. As discussed in Section III. A, *supra*, regarding a similar claim for individual standing made by Mr. Moniak, any future shipments of MOX fuel from the SRS site are contingent upon a commercial power reactor having been authorized by the NRC to use such fuel, which will require one or more amendments to existing 10 C.F.R. Part 50 licenses. Any such amendment requests would be topics of separate notices of opportunity for hearing, and the use of MOX fuel in reactors is thus a topic which is

outside the scope of this CAR proceeding.[36] Moreover, the routes referenced in Basis 7. a are not identified with any specificity, and the members' proximity to the routes are not stated. Accordingly, Basis 7. a does not establish BREDL's representational standing here.

2. BREDL states that unidentified members "live, work, and recreate within 50 miles of the proposed MOX fuel irradiation facilities" (*i.e.*, the nuclear reactors owned by Duke Power Company at its Catawba and McGuire plant sites). Basis 7. b. BREDL further states in this regard that use of MOX fuel in these reactors would result in "unnecessary and higher risks of a major nuclear accident" producing health risks (Basis 7.b.i); would create "near de-facto plutonium storage facilities" affecting psychological well-being (Basis 7. b. ii); and would place the Charlotte, North Carolina area "at increased risk of radioactive contamination" (Basis 7. b. iii). As discussed above, all of these potential consequences are contingent upon the Catawba and McGuire reactors being authorized by the NRC to use MOX fuel, which in turn is contingent upon amendments being made to the subject 10 C.F.R. Part 50 licenses. Any license amendment requests of this sort would be topics of separate notices of opportunity for hearing, and the use of MOX fuel in reactors and related issues are thus topics which are outside the scope of this CAR proceeding. Moreover, as discussed in Section I. D, *supra*, the 50-mile rule which BREDL apparently relies on here is not applicable in materials licensing proceedings such as this one. Accordingly, Basis 7. b does not establish BREDL's representational standing to participate in a hearing regarding the proposed MOX Facility.

3. BREDL's Basis 7. c tracks Mr. Moniak's Basis 6 (g), and is similarly deficient as a basis for standing. BREDL states that because its members are American citizens and taxpayers, they

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[36] Similarly, if the MOX Facility is built and licensed to operate, subsequent shipments of MOX fuel may well increase "DOE radioactive material shipments in the area between SRS" and reactor sites licensed to use MOX fuel (Basis 7. a. i) resulting in "convoys of truck traffic" (Basis 7. a. ii) that may create "great public uncertainty and anxiety" (Basis 7. a. iii), but these are topics which are outside the scope of this CAR proceeding, and thus do not establish BREDL's representational standing here.

have ownership interests "in the Federally-owned lands" on which the MOX Facility is proposed to be constructed, since such publicly-owned lands would be "affected by further radioactive or chemical contamination," and by "impacts on threatened and endangered wildlife and plant species" located thereon. Basis 7. c. As discussed in Section I.C, *supra*, an asserted harm reflecting a generalized grievance shared by a large class of citizens is not sufficient to establish an organization's standing in NRC adjudicatory proceedings. *See Three Mile Island, supra*, CLI-83-25, 18 NRC at 332-33. Additionally, as noted above, the fact that one pays taxes does not generally establish judicial standing, and taxpayer interests are not within the zone of interests covered by the AEA or NEPA. In addition to the factors discussed above, Basis 7 (c) has the further infirmity of asserting interests in property not individually owned by BREDL's members. Accordingly, even if BREDL had adequately identified individual members, Basis 7 (c) would fail to establish BREDL's representational standing.

4. BREDL states that its members -- unnamed and unknown -- who live "within the 50 mile radius" of the proposed MOX Facility have the same affected interests as those set forth in Bases 6.a through 6.d of Mr. Moniak's claims for standing. Basis 7 (d). Without knowing the details of where these members live and work in relation to the site of the proposed MOX Facility, or the frequency of their visits to areas in the vicinity of the site, no meaningful evaluation of this standing claim is possible. As discussed in Section I. D, *supra*, no presumption of standing applies to individuals living within 50 miles of a proposed facility in materials licensing proceedings such as this one. Accordingly, absent further identification of BREDL's members, Basis 7 (d) fails to establish BREDL's representational standing to participate in a hearing regarding the proposed MOX Facility.

5. Since BREDL's remaining claims of representational standing (*see* Bases 7 (e), 7 (f), 7 (g), and 7 (h)) are based on the status of its members as American citizens and taxpayers,

closely track similar claims of individual standing made by Mr. Moniak,[37] and are similarly deficient as bases for standing, they will only be addressed briefly as a group here. BREDL, on behalf of its members, asserts their civic interests in a "sound government," and their financial interests that the government "will not waste tax dollars on unnecessary and dangerous facilities when better alternatives exist" (citing the proposed MOX Facility as an example of a multi-billion dollar government expenditure "that is unnecessary and dangerous"). Basis 7 (e). In Basis 7 (f), BREDL asserts interests in having federal agencies "obey the laws of the nation" and to be "held accountable for violations of federal laws and making false and incomplete claims" to Congress. Next, BREDL asserts civic, moral, ethical, and financial interests "in protecting federally owned facilities from unnecessary harm and protecting federal and other public properties from harm." Basis 7 (g).[38] Finally, BREDL asserts civic, moral, ethical, financial, and property interests in reducing the amount of plutonium available for weapons of mass destruction, stating that the proposed MOX Facility and the "larger MOX fuel option for plutonium disposition" increases risks of nuclear proliferation, creates risks and threats to security, and risks environmental harm. Basis 7 (h). As discussed in Section I.C, *supra*, an asserted harm reflecting a generalized grievance shared by a large class of citizens establishes neither an individual's nor an organization's standing in NRC adjudicatory proceedings. *See Three Mile Island, supra*, CLI-83-25, 18 NRC at 332-33. Generalized grievances do not establish the sort of particularized interest, or result in the type of distinct and palpable harm, necessary to support standing. *See id*. Moreover, the fact that one

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[37] Basis 7 (e) tracks Basis 6 (h). Basis 7 (f) tracks Basis 6 (i). Basis 7 (g) tracks Basis 6 (j). Basis 7 (h) tracks Basis 6 (k).

[38] To the extent BREDL in Basis 7 (g) seeks to assert interests in protecting its members from the risks of transporting MOX fuel from the proposed MOX Facility, and the risks of using MOX fuel in reactors, those topics are outside the scope of the CAR proceeding as discussed in Sections III. A. 2 and B. 2, *supra*. Additionally, BREDL in Basis 7 (g) asserts its members' financial interests in certain "physical assets" held by DOE. As discussed in Section III. A. 10, *supra*, the lack of individual ownership in such assets defeats this standing claim.

pays taxes does not generally establish judicial standing,[39] and taxpayer interests are not within the zone of interests covered by the AEA or NEPA.[40] Accordingly, Bases 7 (e), 7 (f), 7 (g), and 7 (h) fail to establish BREDL's representational standing to participate in the CAR proceeding.

C. GANE'S Request for Hearing

In its petition for hearing, GANE does not state whether it is claiming organizational or representational standing (or both). As discussed in Section I. C, *supra*, to establish organizational standing, an organization must show that it has or will suffer an injury in fact to some organizational interest that is within the zone of interests of the AEA or the NEPA, and which would result from the proposed agency action. Such a showing of injury is required no matter how qualified an organization may be to evaluate an issue. *See Westinghouse, supra,* CLI-80-30, 12 NRC at 258. GANE fails to demonstrate that it, as an organization, would be adversely affected if the CAR is approved. Accordingly, GANE has failed to demonstrate its organizational standing to participate in the CAR proceeding.

GANE's unstated claim for representational standing appears to be based solely on an affidavit, dated May 14, 2001, signed by Susan Bloomfield (May 14 Affidavit), and attached to GANE's request for hearing.[41] The Staff thus views GANE's May 17, 2001 hearing petition (GANE's Petition) as asserting a claim for representational standing. As discussed in Section I.B, *supra*, to establish such standing, an organization must show that (1) one or more of its members have standing in their own right; (2) the interests the organization seeks to protect are germane to its

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[39] *See Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.,* 454 U.S. 464, 477-482, 102 S. Ct. 752, 761-764 (1982) (the mere fact that a person is a taxpayer is an insufficient basis for standing to object to a proposed agency action).

[40] *See Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), LBP-77-36, 5 NRC 1292, 1294 (1977), *aff'd*., ALAB-413, 5 NRC 1418, 1421 (1977).

[41] GANE's request for hearing is signed by Glenn Carroll, who apparently lives in or near Atlanta, Georgia. She makes no claims that she would be personally affected by the proposed agency action.

purpose; (3) neither the claim asserted nor the relief requested requires the participation of each individual member; and (4) one or more individual members have authorized the organization to represent his or her interests. *See Private Fuel Storage, supra,* CLI-98-13, 48 NRC at 30-31.

In her May 14 Affidavit, Ms. Bloomfield states that she lives in Augusta, Georgia, and that her residence there is located "less than 20 miles" from the proposed MOX Facility.[42] Ms. Bloomfield states that she has authorized GANE, Ms. Carroll, and/or "anyone she [Ms. Carroll] designates" to represent her interests in this proceeding, but does not state whether she is a member of GANE. May 14 Affidavit, at 1. In its June 1 Answer, DCS argues that because (1) there is no indication that GANE authorized Ms. Carroll to file a hearing petition on its behalf (and no indication of what Ms. Carroll's capacity is within GANE);[43] and (2) there is no indication that Ms. Bloomfield is a member of GANE, that GANE's hearing petition should be denied. *See* June 1 Answer, at 3-5, and nn. 10 and 17. The Staff views item two as a technical pleading defect which would not justify the denial of GANE's Petition at this time. Rather, GANE should be given the opportunity of amending its hearing petition by submitting another affidavit signed by Ms. Bloomfield, stating whether she is now a member of GANE, and whether she was at the time she signed her May 14 Affidavit. Commission guidance in this proceeding contemplates that additional filings on standing would be allowed within 45 days of the appointment of a presiding officer. *See* June 14 Order, at 9.

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[42] In looking at Figure 1 attached to Mr. Moniak's hearing petition, it appears from the Augusta city limits depicted thereon that Ms. Bloomfield could live no closer to the proposed MOX Facility than does Mr. Moniak (who states that he lives 19.3 miles away). The F Area in which the proposed MOX Facility would be built is located in the north-central area of the SRS. *See* Figure 1.3.1-1 of the CAR. The closest edge of the Augusta town limits are approximately 20 miles northwest of the F Area. *See* Figure 1.3.1-3 of the CAR. Thus, for purposes of evaluating GANE's claim for representational standing, much of the discussion in Section III. A, *supra*, is equally applicable here.

[43] By affidavit dated June 15, 2001, Glenn Carroll cured this defect.

DCS also argues that in the May 14 Affidavit, Ms. Bloomfield fails to adequately "particularize how the NRC's approval of the CAR might adversely affect her life or health," and cautions the Staff not to "read between the lines of Ms. Bloomfield's statements to particularize her injuries for her. " June 1 Answer, at 6. The Staff's position is that the May 14 Affidavit should be read together with the rest of GANE's Petition in evaluating GANE's claim for representational standing. Accordingly, GANE's Petition is discussed below. For ease of reference, the sub-sections below are numbered 1 through 17. As discussed below, the Staff concludes in sub-sections 3, 4, and 13 that GANE has adequately identified interests which support its claim for representational standing (assuming the May 14 Affidavit is adequately supplemented as discussed above).

Before addressing GANE's claims for standing, the Staff notes that some of its supporting statements are in the nature of contentions, which will not be addressed as such by the Staff at this time. For example, the Staff concludes (as it did on a similar claim of Mr. Moniak's) that GANE's reference to (1) the proposed use of HEPA filters (instead of "better, more expensive sand filters"); and (2) its claim that HEPA filters are unacceptably vulnerable to fire, given the pyrophoric nature

of plutonium (GANE's Petition, at 2),[44] are in the nature of contentions, rather than claims for standing.[45] Likewise, the Staff views GANE's reference to the present lack of an Emergency Management Plan (*see* GANE's Petition, at 2) as a contention, as it did a similar statement made by Mr. Moniak.

1. GANE's Petition first discusses DOE's surplus plutonium disposition policy, which takes a hybrid approach by using both the immobilization and MOX fuel fabrication options to convert this nation's designated surplus plutonium into forms which are less accessible for unauthorized use. GANE would prefer that all of the designated surplus plutonium be immobilized. *See* GANE's Petition, at 1-2, and 11. As discussed in Section III. A. 11, *supra*, the NRC has no authority to reverse or evaluate DOE's general surplus plutonium disposition policy. Accordingly, any GANE interests in changing this policy form no basis for standing here, since such interests fall outside the scope of this CAR proceeding.

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[44] GANE adds that DOE facilities have had difficulty in containing powdered plutonium, and that plutonium might collect in air ducts at the proposed MOX Facility, leading to the potential for an "accidental plutonium criticality." GANE's Petition, at 2. GANE similarly alleges that such a criticality event "poses a real threat to Georgia residents' health and property" based on a "lack of data on unique criticality concerns posed by weapons-grade plutonium," and that DCS lacks relevant experience since it has only dealt with producing MOX fuel from reactor-grade plutonium. GANE's Petition, at 2.

[45] DCS notes that GANE has not provided any legal or factual basis for its claims regarding HEPA filters, or its claims that plutonium has collected in air ducts at DOE facilities, and that Section 11.4 of the CAR describes DCS' planned steps for protecting HEPA filters against fires. DCS also states in this regard that the plutonium to be used in the proposed MOX Facility is already oxidized, and is therefore not in a pyrophoric form as implied. *See* June 1 Answer, at 14, and n. 56, *citing* 10 C.F.R. § 2.714(b)(2), and CAR Section 1.1.4. DCS also states there is no basis for the claim that weapons-grade plutonium poses any unique criticality concerns, referencing discussions in Section 6.3.5.3 of the CAR (regarding the large number of well-documented criticality benchmark experiment descriptions provided in technical reports and literature applicable to plutonium configurations anticipated to be present in the proposed MOX Facility). DCS also references Section 5.5.3.4 of the CAR, which analyzes the consequences of a hypothetical criticality accident and shows that the doses at the controlled area boundary are negligible and well within the limits of 10 C.F.R. § 70.61. *See* June 1 Answer, at 15-16.

2. Similarly outside the scope of this CAR proceeding are issues GANE raises regarding the potential for accidental releases of radiation caused by the use of MOX fuel in nuclear power reactors. *See* GANE's Petition, at 9-10, and 11. As discussed in Section III. B. 2, *supra*, amendments to Part 50 licenses would be required before any such use of MOX fuel could be authorized. Accordingly, the subjects raised here by GANE provide no basis supporting its claim for representational standing.

3. GANE asserts that the design basis for the proposed MOX Facility "does not appear to meet seismic standards enforced for other facilities at Savannah River Site," pointing to the presence of a nearby geologic fault which could produce an earthquake resulting in an off-site release of radiation. GANE's Petition, at 2. The Staff concludes that this as an adequate identification of a cognizable interest held by Ms. Bloomfield that her health and safety be protected from radiological harm. For purposes of establishing GANE's representational standing, it is plausible to suppose that an earthquake of sufficient magnitude hitting the MOX Facility during its operation could spread radioactive material in such a way as to harm Ms. Bloomfield.[46]

4. GANE raises an issue regarding the lack of glove box confinement around the sintering furnaces in the proposed MOX Facility, stating that the sintering of MOX fuel pellets "is one of the most dangerous steps in the MOX fabrication process" since it occurs at 1700 degrees Centigrade, involves combustible hydrogen gas, and utilizes the piece of equipment "that requires the most maintenance, according to experience at the MELOX plant." GANE's Petition, at 3. This identification of a possible fire hazard is sufficient to establish GANE's representational standing.

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[46] DCS notes that Section 1.3.6 of the CAR contains an extensive analysis of the seismicity of the site, and that this CAR section also describes the design basis earthquake (DBE) for the MOX Facility. GANE's Petition does not identify any deficiency in the DBE analysis, or otherwise discuss the CAR. *See* June 1 Answer, at 13, *citing* 10 C.F.R. § 2.714(b)(2)(iii). DCS is confusing the issue of standing here with the issue of whether -- if the above statements were treated as a contention -- they would constitute an admissible contention.

The proposed design of the MOX Facility is said to increase the risk of fire, which could plausibly result in offsite consequences to the detriment of Ms. Bloomfield's health and safety interests.[47]

5. GANE states that SRS workers who are not affiliated with the proposed MOX Facility should not be subject to the 10 C.F.R. Part 70 worker dose limits, but instead should be regarded as members of the public. *See* GANE's Petition, at 3. Later in its hearing request, GANE also generally references "black workers;" workers at "Cigar Lake" in Canada; SRS workers threatened by dangerous work conditions; and "SRS workers handling depleted uranium in MOX manufacture." GANE's Petition, at 8. Ms. Bloomfield is not identified as one who works at the SRS, or elsewhere, and GANE makes no showing that it is authorized to represent the interests of any such workers. Accordingly, these points provide no basis which supports GANE's claim for representational standing.[48]

6. GANE states that the NRC Staff lacks sufficient experience to safely license facilities that use plutonium, leading to the possibility that an "oversight" during the licensing review "may result in off-site contamination which will harm Georgia residents." GANE's Petition, at 3. Later in its hearing request, GANE states that funding requirements for MOX Facility decommissioning purposes are unclear, thereby threatening an outcome of having a permanently contaminated

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[47] In addressing this point, DCS references CAR Section 5.5.2.2, which postulates a fire event involving the furnace of the sintering unit and a release of all material at risk in the furnace. To mitigate this event and ensure that doses to the public are acceptable, the design of the proposed MOX Facility contains fire barriers to limit the spread of the fire, and confinement systems to limit the spread of radioactive materials. DCS notes that GANE has not identified any deficiency or omission in that discussion. *See* June 1 Answer, at 16-17, *citing* 10 C.F.R. § 2.714(b)(2)(iii). DCS is confusing the issue of standing here with the issue of whether -- if the above statements were treated as a contention -- they would constitute an admissible contention.

[48] Similarly deficient are GANE's assertions that people downstream of SRS fish the Savannah River for their main diet, that these "traditional people" eat the whole fish including the bones, and that these practices increase their risk of radiation uptake and exposure. GANE's Petition, at 5. Ms. Bloomfield is not identified as one of these "traditional people," and GANE makes no showing that it is authorized to represent the interests of any such persons. Accordingly, this point provides no basis which supports GANE's claim for representational standing here.

facility located on the Georgia border. *See* GANE's Petition, at 6-7. GANE raises a similar regulatory issue in asserting that there is the "potential for regulatory oversight gaps from overlapping and novel interagency responsibilities of DOE, NRC, and EPA." GANE's Petition, at 9.[49] GANE also states that the Staff should not review the CAR until its environmental review of the proposed action is completed. *See* GANE's Petition, at 10. The Staff views these four issues raised by GANE as pertaining to general process matters which are outside the scope of this proceeding. As stated in the Notice, the focus of this proceeding is on whether the CAR and other documents submitted by DCS adequately support the proposed action. Subjects regarding the Staff's competence, unclear funding requirements,[50] overlapping regulatory responsibilities, and the manner in which Staff reviews are performed, are not within the scope of this proceeding, and are not generally subjects for adjudication in NRC proceedings. *See Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 165 (2000). Accordingly, these points provide no basis which supports GANE's claim for representational standing here.

7. GANE's reference to the potential need to revise the CAR later (*see* GANE's Petition, at 3-4) is not adequate to establish standing, for the reasons stated in Section III. A. 11, *supra*.

8. GANE states that the MOX Facility will be located on a highly contaminated site, and that there are unresolved issues related to converging waste streams from the MOX Facility and other SRS activities. *See* GANE's Petition, at 4. Similarly, GANE states that MOX fuel fabrication will "produce an enormous inventory of liquid waste on the overburdened Savannah River Site," and

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[49] On this point, DCS correctly notes that the relative jurisdictions of NRC, DOE, and EPA cannot be changed in this proceeding. *See* June 1 Answer, at 31.

[50] The applicable funding requirements are set forth in 10 C.F.R. § 70.25. In its recent set of Requests For Additional Information regarding the CAR, the Staff identifies these requirements as perhaps being properly subject to an exemption request pursuant to 10 C.F.R. § 70.17, given the DOE's financial involvement in, and backing of, the proposed MOX Facility. *See also* the related discussion in Section III. C. 18, *infra*.

also claims that the SRS tank farm that will accept the MOX Facility liquid wastes is unsafe, leading to "a clear threat to Georgia public health and its natural environment." GANE's Petition, at 5. But as discussed in Section II. A. 4, *supra*, the lack of any hydrological connection between the site of the proposed MOX Facility and areas north and west of the SRS F Area leads the Staff to conclude that fears of water contamination in Augusta (where Ms. Bloomfield lives) provide no basis for GANE's representational standing in this proceeding.[51]

9. GANE asserts that the ER submitted by DCS is deficient because it does not include the safety and environmental record "of each DCS entity, most especially COGEMA," and that COGEMA's operations in Europe and Canada "compel deep and public inquiry into COGEMA's suitability to engage in MOX manufacture" at SRS. GANE's Petition, at 4. COGEMA's record is a subject which is not within the scope of this proceeding. As described in the Notice, it is the DCS CAR which is at issue. The AEA issues of radiological health and safety raised by the CAR concern whether the design bases of the proposed MOX Facility's principal structures, systems, and components, together with the DCS quality assurance plan, are adequately protective against events such as hurricanes, earthquakes, and tornadoes, and the consequences of any potential accidents. *See* 10 C.F.R. § 70.23(b). If the CAR is approved, construction is completed, and the MOX Facility is eventually allowed to begin operating, the Staff at that point will have issued an operating license to DCS, not COGEMA. Such a license would authorize DCS -- not COGEMA -- to possess and use SNM at the SRS site.

10. GANE states that recent studies have shown that plutonium is more soluble in water than previously thought, that radioactive elements from SRS have been detected in groundwater,

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[51] In addressing this point, DCS states that insofar as GANE is alleging that there will be cumulative impacts from the proposed MOX Facility and the existing contamination at SRS, the MOX Facility is being designed so that there would be no radioactive liquid effluents, and DCS further states that GANE has provided no basis for any allegation that normal operation of the MOX Facility would otherwise result in any appreciable contamination of groundwater. *See* June 1 Answer, at 20 and n. 75, *citing* CAR Section 10.1.1.

and that the health of the public is threatened by the potential for plutonium to contaminate water sources. *See* GANE's Petition, at 4. As discussed in Section III. A. 4, *supra*, the record to date establishes that no hydrological connections exist between the site of the proposed MOX Facility and areas to the north and west (including Augusta) where Ms. Bloomfield lives. Accordingly, this point provides no basis which supports GANE's claim for representational standing here.

11. GANE argues that it has standing because plutonium shipments to the SRS may travel near the home of Ms. Bloomfield. *See* GANE's Petition, at 5; *see also* May 14 Affidavit at 1. It is not known what routes DOE will use in shipping plutonium to the SRS for eventual processing in the proposed MOX Facility, and GANE's statements on this point are no more than speculation. Moreover, Ms. Bloomfield does not specify what transportation routes she lives near. A more fundamental problem with GANE's assertions here regarding the safety of DOE's plutonium shipments to the SRS is that they pertain to issues beyond the scope of the Commission's regulatory authority. In section 202 of the Energy Reorganization Act of 1974, 42 U.S.C. 5842(5),[52] Congress laid out the discrete areas on which it was giving the Commission jurisdiction over a facility operated for the purpose of fabricating MOX fuel. *See* 42 U.S.C. 5842(5). In the relevant legislative history Congress makes it abundantly clear that it did not intend for the Commission to engage in broad-based external regulation of the DOE.[53] Thus, in the Staff's view, the NRC has no control over the ways in which the DOE chooses to transport the nation's surplus weapons-grade plutonium to the SRS. The NRC will only assume jurisdiction over the plutonium and its derivatives once the material is inside the proposed MOX Facility. Accordingly, GANE's statements

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[52] *See* Energy Reorganization Act of 1974, Pub. L. No. 93-438, § 202 (5), 88 Stat. 1233 (1974), *amended by* Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105-261, Div. C, Title XXI, § 3134 (a), 112 Stat. 2247 (1998).

[53] *See, e.g.,* H.R. REP. NO. 105-736, at 813 (1998) (stating that Congress did not "endorse wholesale external regulation of Department of Energy ..."); S. REP. NO. 105-189, at 426 (1998) (same).

regarding plutonium shipments to the SRS provide no basis which supports GANE's claim for representational standing here.

12. Likewise, GANE's statements regarding the safeguarding of plutonium shipments provide no basis which supports GANE's claim for representational standing in this CAR proceeding. GANE states that the "best security is inadequate to safeguard weapons-grade plutonium from theft, diversion or acts of terrorism." GANE's Petition, at 5. As discussed immediately above, the safety of DOE's plutonium shipments to the SRS pertain to issues beyond the scope of the Commission's regulatory authority. GANE raises additional security concerns here regarding the transportation of MOX fuel from the MOX Facility to commercial reactors. As discussed in Section III. A. 2, *supra*, such transportation issues fall outside the scope of this CAR proceeding.[54]

13. GANE alleges that the proposed "specifications for monitoring radiation emissions to air, land and water are insufficient and unreliable," and that the public's health is thereby threatened. GANE's Petition, at 6. As discussed in Section III. A. 4, *supra*, the lack of any hydrological connection between the site of the proposed MOX Facility and areas north and west of the SRS F Area leads the Staff to conclude that fears of water contamination in Augusta provide no basis for standing. But for purposes of establishing GANE's representational standing, the Staff views the above statements of GANE as an adequate identification of a cognizable AEA interest held by Ms. Bloomfield in being protected from potential airborne radiological releases.[55]

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[54] Moreover, although physical protection is required for plutonium "delivered to a carrier for transportation pursuant to part 70" (10 C.F.R. § 73.20(a)), a licensee is exempt if the plutonium is "being transported by the United States Department of Energy transport system." 10 C.F.R. § 73.6(d). MOX fuel will be transported by DOE, and therefore, under NRC's regulations, DCS does not need a security plan for shipment of MOX fuel.

[55] DCS in addressing this point notes that GANE has provided no basis for its allegation that radiation monitoring for the MOX Facility will be insufficient or unreliable, and references provisions for effluent and environmental monitoring for the MOX Facility described in Chapter 10 of the CAR.
(continued...)

14. GANE states that the nation may revive a nuclear materials reprocessing program, and alleges that the Staff's development of a generic Standard Review Plan for the MOX Facility review process "fosters public perception that there is a hidden agenda" to reestablish such a program. GANE's Petition, at 6-7. Whether the United States revives a nuclear materials reprocessing program pertains to policy decisions beyond the scope of the NRC's authority. Such issues thus fall outside the scope of this CAR proceeding, and provide no basis which supports GANE's claim for representational standing here.

15. GANE questions the financial stability of DCS as the applicant, because one of its parent companies, Stone & Webster, has "filed for bankruptcy twice and changed ownership" since DCS was created. GANE adds that "every U.S. taxpayer is affected and should have standing." GANE's Petition, at 7. The MOX Facility applicant is DCS, not Stone & Webster. Moreover, as DCS notes, Chapter 2 of the CAR discusses how the DOE is funding the construction, operation, and deactivation of the proposed MOX Facility through its contract with DCS. *See* June 1 Answer, at 27. The Staff finds that concerns over the financial stability of Stone & Webster provide no basis which supports GANE's claim for representational standing here. Moreover, as discussed in Section III. A. 9, *supra*, status as a taxpayer does not confer standing here.

16. GANE states that the CAR "fails to establish the limit of plutonium to be processed" at the MOX Facility, thereby increasing the risk of offsite radiological consequences. GANE's Petition, at 7. GANE also states that the computer software industry has inherent safety issues, and that DCS will be using "unaccountable and unregulated software" at the proposed MOX Facility.

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[55](...continued)
See June 1 Answer, at 26, *citing* 10 C.F.R. § 2.714(b)(2)(iii). DCS is confusing the issue of standing here with the issue of whether -- if the above statements were treated as a contention -- they would constitute an admissible contention.

GANE's Petition, at 8.[56] The Staff concludes that these asserted interests are too vague to support GANE's claim for representational standing here, since injury in fact to Ms. Bloomfield's interests are not sufficiently particularized.

17. GANE asserts that there are "unresolved questions" (which are not further specified) about the protections afforded by the Price-Anderson Act, thus gravely limiting financial protection to Georgians and thereby risking "the health and property of Georgia residents." GANE's Petition, at 8. The Staff finds this concern to be too vague to establish with the requisite degree of particularity the harm necessary to support GANE's claim for representational standing in this proceeding. DCS states that DOE has agreed that the protections of the Price-Anderson Act apply to the proposed MOX Facility, and that DOE has included a provision in its contract with DCS that confirms this applicability. *See* June 1 Answer, at 29 and n. 102, *citing* CAR Section 2.5. If there are any issues regarding application of the Price-Anderson Act to the MOX Facility, they are not sufficient to confer standing here.

D. EI'S Request for Hearing

In the "Request For Hearing And Petition To Intervene" signed by Ruth Thomas and filed on May 18, 2001 (EI's Petition), EI does not state whether it is claiming organizational or representational standing (or both). As discussed in Section I. C, *supra*, to establish organizational standing, an organization must show that it has or will suffer an injury in fact to some organizational interest that is within the zone of interests of the AEA or the NEPA, and which would result from the proposed agency action. EI states in this regard that it is "a responsible public-interest

[56] In addressing the software issue, DCS notes that, as indicated in the Notice, DCS has submitted a MOX Project Quality Assurance Plan (MPQAP). Section 3.2.7 of the MPQAP provides an extensive set of controls for ensuring the adequacy of computer software (including computer software verification and validation, software configuration control, verification reviews, software problem reporting and corrective action, software procurement controls, and computer program testing), and GANE has not identified any defect or omission in those controls. *See* June 1 Answer, at 31, *citing* 10 C.F.R. § 2.714(b)(2)(iii).

organization concerned with the construction and operation of nuclear facilities in such a way as to eliminate uncalled for risks to the health, welfare and safety of the public and to the environment as a whole." EI's Petition, at 6. EI further states that it desires "to ensure that the provisions of NEPA, the AEA, and other federal and state legislation for the preservation of environmental qualities and the protection of people from the damaging effects of radiation are enforced." *Id*.

As discussed in Section I. C *supra*, these types of generalized grievances are not sufficient to confer organizational standing. EI fails to demonstrate that it, as an organization, would be adversely affected if the CAR is approved. Such a showing of injury is required no matter how qualified an organization may be to evaluate an issue. *See Westinghouse, supra,* CLI-80-30, 12 NRC at 258. Accordingly, EI has failed to demonstrate its organizational standing to participate in the CAR proceeding.

The Staff views EI's Petition as instead asserting a claim for representational standing. As discussed in Section I.B, *supra*, to establish such standing, an organization must show that (1) one or more of its members have standing in their own right; (2) the interests the organization seeks to protect are germane to its purpose; (3) neither the claim asserted nor the relief requested requires the participation of each individual member; and (4) one or more individual members have authorized the organization to represent his or her interests. *See Private Fuel Storage, supra,* CLI-98-13, 48 NRC at 30-31.

EI's unstated claim for representational standing appears to be based on the interests of six individuals it identifies as being EI members. *See* EI's Petition, at 4-5. The Staff first addresses the interests of four of these stated members (William Jocoy, Nancy Jocoy, Jess Riley, and Marian Minerd). Two of these individuals, Mr. and Mrs. Jocoy, are said to live about ten miles away from Duke Power's Catawba nuclear reactors. *Id*., at 4. Mr. Riley is said to live about 15 miles away from the Catawba reactors, and about 20 miles from the McGuire reactors (also owned by Duke Power). *Id*., at 5. Ms. Minerd is said to own and operate a business located about ten miles away

from the Catawba reactors. *Id*., at 4-5. Mr. and Mrs. Jocoy, and Mr. Riley, are said to be concerned about transportation of MOX fuel from the MOX Facility to the reactors. Ms. Minerd's concerns are somewhat less specific. Elsewhere in the petition, among the concerns EI identifies are those pertaining to the use of MOX fuel in the Catawba and McGuire reactors; and fears over possible terrorist activities pertaining to either plutonium coming into the MOX Facility, or MOX fuel going from the facility to the reactors. *See* EI's Petition, at 2-4. Even if these additional concerns are attributed specifically to Mr. and Mrs. Jocoy, Mr. Riley, and Ms. Minerd, none of these individuals have standing in their own right which would support EI's claim for representational standing here. As discussed in Section III. A. 2, *supra*, even if it is assumed that the above individuals live or work next to routes over which MOX fuel would be transported, concerns over such activity would not establish interests within the scope of the CAR proceeding. Likewise, as discussed in Sections III. B. 2 and C. 2, *supra*, even if it is assumed that the above individuals live or work within 15 miles from the Catawba and McGuire reactors, concerns over using MOX fuel in those reactors would not establish interests within the scope of the CAR proceeding. Similarly, as discussed in Sections III. C. 11 and C. 12, *supra*, even if it is assumed that the above individuals live or work next to routes over which plutonium would be transported, or have concerns regarding possible terrorist activities, such facts would not establish interests that are within the scope of the CAR proceeding. As discussed above, an organization must first show that one or more of its members have standing in their own right in order to establish its representational standing. Since the purported interests of neither Mr. and Mrs. Jocoy, Mr. Riley, nor Ms. Minerd fall within the scope of the CAR proceeding, EI cannot successfully base its claim for representational standing on their membership status.

The other two EI members identified are J.S. McMillan and Edward Giusto. Mr. McMillan is said to reside in Allendale, SC, about 20 miles "from the Savannah River Site." EI's Petition, at 5. Mr. Giusto is also said to live about 20 miles "from the Savannah River Site," in Augusta, GA.

Id. As indicated in Section III. A, *supra*, regarding Mr. Moniak, and Section III. C, *supra*, regarding Ms. Bloomfield, the interests of individuals living in the general area of the proposed MOX Facility may be sufficient to support standing in this proceeding. However, both Mr. Moniak and Ms. Bloomfield have submitted their signed statements that they live within 20 miles of the proposed MOX Facility, as opposed to the more general EI assertions of their two members' proximity to the "Savannah River Site." Accordingly, should EI wish to pursue its claim for representational standing based on the potential interests of Mr. McMillan, Mr. Giusto, or both of them, EI should be required to submit one or more signed affidavits from them establishing the following facts: (1) the distance in miles from their homes to the site of the proposed MOX Facility; (2) that they are members of EI; (3) that they authorize EI to represent them in this proceeding; (4) whether they use the Savannah River (or water therefrom) for any purposes; and (5) the degree to which they eat food grown on their own land, or drink milk produced on their land.

The Staff reminds EI that filing one or more acceptable affidavits as outlined above will only be the first step in seeking to participate in the CAR proceeding. EI must also file one or more admissible contentions. *See* Notice, *supra*, 66 Fed. Reg. at 19,996, col. 2.

E. Mrs. Foster's Request for Hearing

Mrs. Foster's hearing petition, received on May 18, 2001, reflects a lack of any effort to comply with the requirements set forth in the Notice. Her two-sentence petition does not establish her individual standing, since no interests are identified which could be affected in any way by the Staff's approval of the CAR. As stated above, the Staff requests that her hearing petition now be denied.

CONCLUSION

For the reasons stated above, the Staff concludes that (1) with respect to Mr. Moniak, he has identified interests to support his individual standing; (2) with respect to BREDL, it has not established its standing; (3) with respect to GANE, it has representational standing if Ms. Bloomfield's affidavit is adequately supplemented; (4) with respect to EI, it does not have organizational standing, and would only have representational standing if one or more requisite affidavits as described above are submitted; and (5) with respect to Mrs. Foster, she has not established her standing.

Respectfully submitted

/RA/

John T. Hull
Counsel for NRC Staff

Dated this 25th day of June 2001
in Rockville, MD

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of	)	
	)	
DUKE COGEMA STONE & WEBSTER	)	Docket No. 70-3098
	)	
(Savannah River Mixed Oxide Fuel Fabrication Facility)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER TO HEARING REQUESTS OF DONALD MONIAK, BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE, GEORGIANS AGAINST NUCLEAR ENERGY, ENVIRONMENTALISTS, INC., AND EDNA FOSTER" have been served upon the following persons this 25th day of June, 2001, by electronic mail, and by U.S. mail, first class (or as indicated by an asterisk (*) through the Nuclear Regulatory Commission's internal distribution); or as indicated by double asterisks (**), solely by express overnight mail.

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John T. Hull ***/RA/***
Counsel for NRC Staff

Dated at Rockville, Maryland
this 25th day of June 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of	)	
	)	Docket No. 070-03098
DUKE COGEMA STONE & WEBSTER	)	
	)	
Mixed Oxide Fuel Fabrication Facility (Construction Authorization Request)	)	

NOTICE OF APPEARANCE

In accordance with 10 C.F.R. §§ 2.713(b) and 2.1215(a), the undersigned attorney gives notice and enters his appearance in the above-captioned matter, as counsel representing the staff of the Nuclear Regulatory Commission. The following information is provided:

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Respectfully submitted,

/RA/

John T. Hull
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Dated at Rockville, Maryland
this 25th day of June 2001