RAS 3387

September 12, 2001
DOCKETED 09/12/01

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S RESPONSE TO CONTENTIONS SUBMITTED BY DONALD MONIAK, BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE, GEORGIANS AGAINST NUCLEAR ENERGY, AND ENVIRONMENTALISTS, INC.

INTRODUCTION

On August 13-14, 2001, hearing petitioners Georgians Against Nuclear Energy (GANE), Donald J. Moniak, Blue Ridge Environmental Defense League (BREDL),[1] and Environmentalists, Inc. (EI) submitted contentions in this proceeding. In an unpublished "Memorandum and Order" dated July 17, 2001 (July 17 Order), the Presiding Officer established August 13 as the deadline for submitting contentions. *See* July 17 Order, at 7. In May of 2001, these petitioners made their initial requests for hearing on 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.[2]

---

[1]To date, Mr. Moniak and BREDL have made joint filings.

[2] Issues regarding whether the petitioners have standing to challenge the CAR were discussed by the Staff in its June 25, 2001 answer to the petitioners' initial hearing requests. *See* "NRC Staff's Answer to Hearing Requests of Donald Moniak, Blue Ridge Environmental Defense League, Georgians Against Nuclear Energy, Environmentalists, Inc., and Edna Foster" (June 25 Answer). Pursuant to the July 17 Order, at 7, the petitioners on July 30, 2001, submitted (continued...)

As discussed below, the Staff concludes that GANE Contentions 3, 6, and 9 are admissible in this proceeding. The Staff concludes that the rest of GANE's contentions, all the contentions submitted by Mr. Moniak and BREDL, and all the contentions submitted by EI, should be rejected by the Board. Accordingly, based on this response and the earlier Staff responses regarding questions of standing, the Staff requests the Board to rule that only GANE be allowed to participate as a party, along with DCS and the Staff, in this CAR proceeding.

BACKGROUND

The Nuclear Regulatory Commission (NRC or the Commission) in April 2001 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.* 19,994-96 (April 18, 2001). Therein, the Commission notified all potential parties that, notwithstanding the general applicability of the 10 C.F.R. Part 2 Subpart L procedural rules to the CAR proceeding, the contention requirements of 10 C.F.R. § 2.714 would be used rather than the analogous 10 C.F.R. § 2.1205 "areas of concern" provisions. *See* Notice, at 19,996, cols. 1-2. Specifically, the Commission stated in pertinent part that any petitioners for hearing on the CAR:

> ... will have the burden of showing that the contentions are admissible. In this regard, contentions are expected to focus on the CAR, the December 2000 environmental report, and/or the January 2001 quality assurance plan submitted by DCS. Petitioners will not be permitted to wait for the NRC staff to issue its safety evaluation report or environmental impact statement before formulating contentions.
> ...
> Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. ... Contentions

---

[2](...continued)
supplemental filings on standing, to which DCS and the Staff responded on August 10, 2001.

> shall be limited to matters within the scope of the DCS application for authority to construct a MOX fuel fabrication facility. The contention must be one which, if proven, would entitle the petitioner to relief.[3] A petitioner who fails to file at least one contention which satisfies these requirements will not be permitted to participate as a party.

Notice, at 19,996, cols. 1-2 (footnote and emphasis added).

After the petitioners submitted their hearing requests pursuant to the Notice, the Commission on June 14, 2001, referred the requests to the Atomic Safety and Licensing Board Panel for appointment of a presiding officer. *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).[4] In its referral order the Commission referenced its discussion of contentions in the Notice, added that the contention requirements of 10 C.F.R. § 2.714(a)(1) would be used to evaluate any late-filed contentions, and cited NRC case law on contentions. *See* June 14 Order, at 3, 6-7, and n.2.

DISCUSSION

I. Contention Requirements in NRC Proceedings

Pursuant to 10 C.F.R. § 2.714, a contention must specify the particular issue of law or fact which the hearing petitioner seeks to litigate, and must contain: (1) "a brief explanation of the bases of the contention"; (2) "a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing"; (3)

---

[3] While most of the discussion pertaining to contentions in the Notice concerns the provisions of 10 C.F.R. § 2.714(b)(2), the underlined sentence in the Notice excerpt above reflects the contention requirement found in 10 C.F.R. § 2.714(d)(2)(ii).

[4] This Order establishes a goal of completing the full CAR proceeding (*i.e.*, assuming 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, and references the underlying United States/Russian Federal Plutonium Disposition Agreement -- regarding the mutual reduction of weapons-grade plutonium inventories held by the two nations -- as a reason for completing this proceeding in a timely and efficient manner. *See* June 14 Order, at 7-8.

references to specific documents or other sources of information within the petitioner's knowledge "on which the petitioner intends to rely" in establishing the contention's validity; and (4) sufficient information to show that a genuine dispute exists between the petitioner and the NRC applicant "on a material issue of law or fact." [5] 10 C.F.R. § 2.714(b)(2)(i-iii). Regarding this fourth component of the contention rule, the regulation further specifies that the petitioner must either (a) reference "the specific portions of the application" that the petitioner disputes "and the supporting reasons for each dispute"; or (b) identify each instance where the petitioner "believes that the application fails to contain" relevant information. 10 C.F.R. § 2.714(b)(2)(iii).[6] If the contention pertains to environmental issues, the rule states that the petitioner is to reference "the applicant's environmental report." *Id*. Additionally, the contention must be one which, if proven, would entitle the petitioner to relief. *See* 10 C.F.R. § 2.714(d)(2)(ii). These requirements are not intended to force a hearing petitioner to prove its case at the contention stage of a proceeding.[7] But while a

---

[5] In its 1989 statement of considerations (SOC) discussing changes made to the contention requirements of 10 C.F.R. § 2.714, the Commission stated that disputes under the rule should be considered "material" if their resolution would "make a difference in the outcome of the licensing proceeding." 54 Fed. Reg. 33,168, at 33,172, col.2 (August 11, 1989) (rulemaking amending 10 C.F.R. § 2.714), *aff'd. sub nom. Union of Concerned Scientists v. NRC*, 920 F.2d 50 (D.C. Cir. 1990). Hearing petitioners must make at least "a minimal showing that material facts are in dispute," and that further inquiry is thus appropriate. 54 Fed. Reg., *supra*, at 33,171, col. 3. *See also Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 118 (1995).

[6] The Commission explained in its SOC adopting these provisions that hearing petitioners would thereby be required "to read the pertinent portions" of the application being reviewed by the Staff. 54 Fed. Reg., *supra*, at 33,170, col.2. The Commission also stated there that the "factual support necessary to show that a genuine dispute exists need not be in affidavit or formal evidentiary form" (*id*., at 33,171, col.3), and that the contention rule does not shift the ultimate burden of proof on whether a license should be issued from an NRC applicant to a hearing petitioner. *Id*., at 33,171, col.1.

[7] *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248-49 (1996).

proffered contention may be viewed by a licensing board in a light favorable to the hearing petitioner, if any one of the above requirements is not met the contention must be rejected.[8]

As noted above, the contention requirements at issue were established in 1989, when 10 C.F.R. § 2.714 was amended. The revised contention rule raised "the threshold bar for an admissible contention" in order to "ensure that only intervenors with genuine and particularized concerns participate in NRC hearings," and to help prevent "serious hearing delays caused in the past by poorly defined or supported contentions." *Duke Energy Corp*. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999). To this end, the Commission has stated that the mere referencing of documents "does not provide an adequate basis for a contention." *Baltimore Gas & Electric Co*. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 348 (1998) (citation omitted).

The contention rule serves to put the other parties on notice as to the specific grievances sought to be litigated, and helps ensure that the hearings process will not continue in the absence of a petitioner "able to proffer at least some minimal factual and legal foundation" in support of the contentions asserted. *Oconee, supra*, CLI-99-11, 49 NRC at 334. The Commission noted that in the past, some licensing boards had admitted and litigated contentions "that appeared to be based on little more than speculation," and stated that the revised rule was intended to prevent a contention from being admitted where a petitioner "has no facts to support its position and instead contemplates using discovery or cross-examination as a fishing expedition" to produce supporting

---

[8] *See Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991).

facts. *Id*., at 334-35.[9] The toughened contention rule is designed to focus the hearing process "on real disputes susceptible of resolution in an adjudication," and is meant to preclude consideration of disputes over NRC regulations or policies. *Id*., at 334.

The Commission has also rejected attempts to base environmental and safety contentions solely on Staff requests for additional information (RAIs) -- rather than on the technical details in the applications themselves -- stating that under 10 C.F.R. § 2.714(b)(2), the fact that the Staff has issued RAIs to the applicant does not establish the presence of a material issue of law or fact.[10] The issuance of RAIs does not suggest that an application is incomplete, and applications may qualify for docketing and be sufficiently complete to start the adjudicatory process even though the Staff later sends RAIs to the applicant.[11] Thus, an admissible contention cannot be based solely on RAIs, as these Staff inquiries by themselves do not indicate the presence of any deficiencies in the application. *See Oconee, supra*, 49 NRC at 336. Instead, a contention must identify what deficiencies exist in the application, and explain why the alleged deficiencies raise material safety

---

[9] Similarly, the filing of vague contentions, to be fleshed out later through discovery against the applicant or Staff, is not permitted under the contention rule. *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-942, 32 NRC 395, 427 (1990). Hearing petitioners thus do not have the right to take a wait-and-see approach as to what issues the Staff identifies in its safety review of the application. *See Oconee, supra,* 49 NRC at 338, *citing Union of Concerned Scientists, supra,* 920 F.2d at 53-56. The Commission noted the long-standing interest of Congress in curbing these abuses of the NRC hearing process, stating as follows:

> Congress therefore called upon the Commission to make 'fundamental changes' in its public hearing process to ensure that 'hearings serve the purpose for which they are intended: to adjudicate genuine, substantive safety and environmental issues placed in contention by qualified intervenors.'

Oconee, supra, 49 NRC at 334, *citing* H.R. Rep. No. 97-177, at 151 (1981).

[10] *See Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, at 147 (regarding environmental contentions), and 150 (regarding safety contentions), *reconsideration denied*, CLI-93-12, 37 NRC 355 (1993).

[11] *See Calvert Cliffs, supra,* CLI-98-25, 48 NRC at 349-50. The basic issue in licensing proceedings is the adequacy of the application -- not the Staff's review of it -- and the Staff resolves all safety questions regardless of whether a hearing takes place. *Id*., at 350.

concerns. *Id*., at 337. The extent to which an RAI can support a contention involves a case-by-case determination, but the Commission anticipates "that in almost all instances a petitioner must go beyond merely quoting an RAI to justify admission of a contention into the proceeding." *Id*., at 341.

Finally, to be admissible, a contention must pertain to one or more issues falling within the scope of the matters set forth in the notice of opportunity for hearing. *See Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 51 (1994).

II. Scope of the CAR Proceeding

As stated above, the Notice initiating this proceeding was published in the *Federal Register* on April 18, 2001. The Notice explains that in the summer of 2002, DCS plans to submit a separate request 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. The Notice further specified that any contentions would be expected to focus on the CAR, the December 2000 environmental report, and/or the January 2001 quality assurance plan submitted by DCS, stating in pertinent part as follows:

> The NRC is conducting a detailed review of the CAR, the December 2000 environmental report, and the January 2001 quality assurance plan. The results of the NRC's review of these DCS filings will be documented in a safety evaluation report and an environmental impact statement. As stated in the March 7, 2001, *Federal Register* notice, in the summer of 2002 DCS plans to submit a request for authority to operate the MOX facility and that request would be the subject of a separate notice of opportunity for hearing.
>
> 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 assurance plan, "provide reasonable assurance of protection against natural phenomena and the consequences of potential accidents." 10 CFR 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 CFR 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. In order to authorize operation of a MOX fuel fabrication facility (*i.e*., by granting a 10 CFR Part 70 license), the NRC must find that construction of the facility has been properly completed (*see* 10 CFR 70.23(a)(8)), and that all other applicable 10 CFR Part 70 requirements have been met.

Notice, *supra*, at 19,995 col. 2. The Commission's June 14 Order reiterates this description of the CAR proceeding's scope, and emphasizes that any disputes a hearing petitioner seeks to litigate with DCS must pertain to matters "within the scope of the proceeding." June 14 Order, at 6.

With these points in mind, the Staff addresses the contentions below.

III. GANE's Contentions

In the early morning hours of August 14, 2001, GANE submitted its contentions via electronic mail. *See* "Georgians Against Nuclear Energy Contentions Opposing a License For Duke Cogema Stone & Webster to Construct a Plutonium Fuel Factory at Savannah River Site" (GANE's Contentions).[12] These contentions are discussed below.

Contention 1: "Lack Of Consideration Of Safeguards In Facility Design"

GANE's first contention states as follows:

> The [CAR] does not contain detailed information on [MOX Facility] design features relevant to the ability of DCS to implement material control and accounting (MC&A) measures capable of meeting or exceeding the regulatory requirements of 10 CFR Part 74, and there is no indication that MC&A considerations were taken into account in the [MOX Facility] design. As a result, the CAR does not provide a basis for NRC to "establish that the applicant's design basis for MC&A and related commitments will lead to an FNMCP (Fundamental Nuclear Material Control Plan) that will meet or exceed the regulatory acceptance criteria in Section 13.2.4 [of the MOX Facility Standard Review Plan (SRP)]," SRP at 13.2.5.2A. Failure to adequately consider MP&A [sic] issues during the [MOX Facility] design phase not only exhibits poor engineering practice but also greatly increases the probability that DCS will not be able to operate the [MOX Facility] in compliance with 10 CFR Part 74 without significant retrofitting (and may not be able to even with retrofitting), and thus that NRC ultimately will deny DCS a license to possess and use [special

---

[12] The Staff notes that GANE's Contentions were not filed by midnight August 13, 2001, in violation of the Board's deadline. *See* July 17 Order, at 5-7. The Staff is not objecting to GANE's Contentions on lateness grounds, but is not thereby waiving its right to assert such objections should any future GANE filings be untimely.

> nuclear material] at the [MOX Facility]. Consequently, Chapter 13.2 of the CAR in its current form is grossly inadequate and should be rejected.

GANE's Contentions, at 2-3.[13] GANE's Contention 1 lacks an adequate legal basis, and raises issues which are outside the scope of this CAR proceeding. For these reasons, as discussed more fully below, the Board should reject this contention.

In support of Contention 1, GANE states that Section 13.2 of the CAR "is grossly deficient" in failing to provide to the NRC necessary information on which the Staff could make conclusions regarding the quality of the DCS design basis in the material control and accounting (MC&A) areas. GANE's Contentions, at 4-5. GANE notes that DCS in Section 13.2 of the CAR states that its Fundamental Nuclear Material Control Plan -- to be submitted by DCS later as part of its application for operating authority -- will meet the performance objectives and MC&A requirements of 10 C.F.R. § 74.51, but that DCS does not provide any details there about how MC&A considerations were integrated into its proposed design for the MOX Facility. *See* GANE's Contentions, at 5.

The NRC regulations containing the MC&A requirements at issue here are found in 10 C.F.R. Part 74, and GANE does not establish that the CAR violates any of these requirements.

---

[13] This contention is said to be supported by the "Declaration of Dr. Edwin S. Lyman in Support of GANE's Contentions," which is attached to GANE's Contentions (and will be referred to hereafter) as GANE's Exhibit 1. *See* GANE's Exhibit 1, at ¶ 5.

GANE's general references to Part 74 do not discuss any of its provisions[14] (*see* GANE's Contentions, at 2-9), and GANE thus fails to identify any disputes with DCS on material legal issues. Instead, GANE concludes that there is a "fundamental flaw" in the licensing process for the MOX Facility, which is improperly partitioned "into construction authorization and operating license phases," and that for MC&A issues "a neat division of the analysis between these two phases is not possible." GANE's Contentions, at 9. This dispute regarding the structure of the adjudicatory process -- involving as it does a challenge to the licensing provisions of 10 C.F.R. §§ 70.23(a)(7), 70.23(a)(8), and 70.23(b) -- is not a valid basis for a contention here, pursuant to 10 C.F.R. § 2.1239. *See also Oconee, supra*, CLI-99-11, 49 NRC at 342 (contentions must focus on the contents of the subject application, as opposed to adjudicatory process issues).

Moreover, MC&A issues are clearly outside the scope of this CAR proceeding. The Notice initiating this proceeding contains no references to 10 C.F.R. Part 74 requirements, and matters not within the scope of issues raised or referenced in the Notice cannot form the basis for admissible contentions. *See River Bend, supra*, CLI-94-10, 40 NRC at 51. The Notice states that contentions are to be limited to "matters within the scope of the DCS application for authority to construct" the proposed MOX Facility. *See* 66 *Fed. Reg.*, *supra*, at 19,996 col. 2. In its referral order, the Commission reiterated that any disputes a hearing petitioner seeks to litigate with DCS

[14] A single citation to 10 C.F.R. § 74.51 (*see* GANE's Contentions, at 5) is the only instance in which GANE even indirectly references the specific requirements of 10 C.F.R. Part 74. But GANE does not discuss this regulation (requiring, in part, the establishment of MC&A systems which meet specified general performance objectives and which contain specified system capabilities (*see* 10 C.F.R. § 74.51(a)-(b)), or establish that it now applies to DCS. The regulations in 10 C.F.R. Part 74 contain no requirements specific to the design of MC&A systems. Once DCS submits an application for authority to operate the proposed MOX Facility, the requirements of Subpart E of 10 C.F.R. Part 74 will be applicable, since such operation would involve the possession and use of "strategic special nuclear material," as defined in 10 C.F.R. § 74.5. *See also* CAR Section 13.2 (committing DCS adherence to 10 C.F.R. Part 74, Subpart E, requirements, as part of its application for operating authority).

must pertain to matters "within the scope of the proceeding." June 14 Order, at 6. Accordingly, the Board should reject Contention 1.

Contention 2: "Lack Of Consideration Of Physical Protection In Facility Design"

GANE's second contention states as follows:

> The DCS [CAR] does not contain detailed information on [MOX Facility] design features relevant to the ability of DCS to implement physical protection measures capable of meeting or exceeding the regulatory requirements of 10 CFR Part 73, and there is no indication that physical protection considerations were taken into account in the [MOX Facility] design. As a result, the CAR does not provide a basis for NRC to "establish that the applicant's proposed design, location, construction technique and material for elements of the physical protection system and related commitments will lead to a physical protection plan that will meet or exceed the regulatory acceptance criteria in Section 13.1.4 [of the MOX SRP]. SRP, § 13.1.5.2A.
>
> Failure to adequately consider physical protection issues during the [MOX Facility] design phase not only exhibits poor engineering practice but also greatly increases the probability that DCS will not be able to operate the [MOX Facility] in compliance with 10 CFR Part 73 without significant retrofitting (and may not be able to even with retrofitting), and thus that NRC ultimately will deny DCS a license to possess and use SNM at the [MOX Facility]. Consequently, Chapter 13.1 of the CAR in its current form is grossly inadequate and should be rejected.

GANE's Contentions, at 10.[15] As discussed below, this contention should be rejected, for reasons similar to those stated above regarding GANE's Contention 1.

First, GANE's Contention 2 lacks an adequate legal basis. The NRC regulations containing the physical protection requirements at issue here are found in 10 C.F.R. Part 73. As GANE notes, DCS in Section 13.1 of the CAR states that its physical security plan will be filed later as part of its application for MOX Facility operating authority, and that its plan will meet 10 C.F.R. Part 73 requirements. *See* GANE's Contentions, at 12. GANE does not establish that the CAR violates any of these requirements, and GANE's general references to Part 73 do not discuss any of its

[15] This contention is said to be supported by input from Dr. Lyman. *See* GANE's Exhibit 1, at ¶ 5.

provisions. *See* GANE's Contentions, at 10-13.[16] The Board should not accept GANE's vague references to Part 73 as being adequate, since the Commission has previously stated in this proceeding that parties must support their assertions "by appropriate and accurate references to legal authority." June 14 Order, at 10. Instead of identifying any disputes with DCS on material legal issues, GANE merely concludes (as it did in Contention 1) that there is a "fundamental flaw" in the licensing process for the MOX Facility, and that for physical protection issues it is not possible to divide the analysis between the construction authorization and operating license phases. GANE's Contentions, at 13. As discussed above, pursuant to 10 C.F.R. § 2.1239, disputes regarding the structure of the adjudicatory process are not properly before this Board. *See also Oconee, supra*, CLI-99-11, 49 NRC at 342 (contentions must focus on the contents of the subject application, as opposed to adjudicatory process issues).

Second, GANE's Contention 2 raises issues which are outside the scope of this CAR proceeding. The Notice initiating this proceeding contains no references to 10 C.F.R. Part 73 requirements, and matters not within the scope of issues raised or referenced in the Notice cannot form the basis for admissible contentions. *See River Bend, supra*, CLI-94-10, 40 NRC at 51. The Notice states that contentions are to be limited to "matters within the scope of the DCS application for authority to construct" the proposed MOX Facility. *See* 66 *Fed. Reg.*, *supra*, at 19,996 col. 2. In its referral order, the Commission reiterated that any disputes a hearing petitioner seeks to

[16] Rather than citing any specific Part 73 regulations, GANE cites Section 13.1.5.2A, p. 13.1-17, of NUREG-1718, the "Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility" (SRP), which states that in performing a safety evalution for construction approval, the Staff should establish that DCS' "proposed design, location, construction technique and material for elements of the physical protection system" will lead to an acceptable physical protection plan. GANE's Contentions, at 12. However, GANE does not discuss a preceding statement in the SRP that DCS "is not expected to submit a physical protection plan for construction approval" (SRP, at p. 13.1-16), or why SRP statements should be regarded as authoritative, rather than the Part 73 regulations.

litigate with DCS must pertain to matters "within the scope of the proceeding." June 14 Order, at 6. Accordingly, for the reasons discussed above, the Board should reject GANE's Contention 2.

Contention 3: "Inadequate Seismic Design"

GANE's third contention states as follows:

> In Sections 1.3.5 through 1.3.7 of the CAR, DCS specifies the design criteria for the MOX Fuel Fabrication Facility to withstand any potential geological hazard. DCS claims that "conservative design criteria" have been established. *Id.* at 1.3.6-23. This assertion is not supported, because DCS has not performed a seismic analysis that is either adequate in scope or adequately documented.

GANE's Contentions, at 13.[17] The Staff concludes that this contention is admissible.

In the portion of the contention bases designated "Likelihood of Significant Seismic Event," GANE identifies specific disputes it has with various items within CAR sections 1.3.5 (geology) and 1.3.6 (seismology). *See* GANE's Contentions, at 14-15. In support of its contention on these points, GANE cites a recent study (a copy of the subject article[18] is attached to GANE's Contentions as Exhibit 5) providing evidence that the frequency of major seismic events in the South Carolina Coastal Plain may be higher than previously thought, and that such events may not be limited to the Charleston seismic zone. *See* GANE's Contentions, at 14-15. GANE also compares data in one of the CAR's seismology tables ("Significant Earthquakes Within 200 Miles of SRS") with information from the U.S. Geological Survey's (USGS) Preliminary Determination of Epicenters (PDE), contending, in part, that the CAR table contains inaccurate and incomplete data

---

[17] This contention is said to be supported by the "Declaration of Peter Burkholder in Support of GANE's Contentions," which is attached to GANE's Contentions (and will be referred to hereafter) as GANE's Exhibit 2. *See* GANE's Exhibit 2, at ¶ 5. Mr. Burkholder is a seismologist. *See id.*, at ¶ 2.

[18] Talwani, *et al.*, "Recurrence Rate of Large Earthquakes in the South Carolina Coastal Plain Base on Paleoliquefaction Data," Journal of Geophysical Research, Vol. 106, April 2001.

from 1974 onwards.[19] *See* GANE's Contentions, at 15-16. GANE's Table 1 lists various seismic events which occurred within 200 miles of the SRS that were allegedly omitted from the CAR. *See* GANE's Contentions, at 16.

In the portion of the contention bases designated "Site Response," GANE identifies other specific disputes it has with DCS on various geology and seismology items. *See* GANE's Contentions, at 16-18. For example, GANE cites CAR Table 1.3.6-7, in which DCS estimates that the "return period" for a specific seismic event at the SRS is 2700 years, whereas the National Seismic Hazard Mapping Project estimates a return period of 1200 years for the same seismic event. *See* GANE's Contentions, at 17-18.

The Staff thus concludes that Contention 3 is admissible, as it identifies with sufficient particularity material disputes between GANE and DCS which merit further inquiry, and adequately puts the other parties on notice as to the specific grievances sought to be litigated. At this time, various seismic design issues remain to be resolved before the necessary probabilistic seismic hazard assessment (PSHA) can be completed for the proposed MOX Facility. What (if any) impact the alternative earthquake scenario proposed by Talwani *et al.* (2001) will have on the PSHA remains to be determined. These open issues are relevant to the topics to be addressed at the upcoming public meeting with DCS, scheduled for September 19-20 in Aiken, South Carolina. *See* the Staff's Meeting Notice, dated August 29, 2001. Accordingly, the Board should admit Contention 3.

[19] For example, regarding an August 2, 1974, seismic event, the CAR reports a maximum magnitude of 4.3, while the USGS PDE lists a magnitude of 4.9 (an energy release four times greater) for the same event. *See* GANE's Contentions, at 16.

.

Contention 4: "Inadequate Licensing Review by NRC Staff"

GANE's fourth contention states as follows:

> The NRC lacks recent, relevant experience necessary to regulate plutonium fuel processing activities and effectively protect the public and environment from harm thereby.

GANE's Contentions, at 18. The Board should reject this contention. In NRC adjudicatory proceedings, the issue for decision is not the adequacy of the Staff's review, but whether the application at issue raises health and safety concerns. *See Curators of the University of Missouri,* CLI-95-8, 41 NRC 386, 395-96 (1995). *See also Calvert Cliffs, supra,* CLI-98-25, 48 NRC at 350.

Contention 5: "Incorrect Designation of Controlled Area"

GANE's fifth contention states as follows:

> DCS incorrectly designates the entire Savannah River Site as the controlled area of the MOX Facility. The proposed controlled area does not satisfy the NRC's requirement that a controlled area "means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason," because DCS does not have control over the entire Savannah River Site. As a result of this improper controlled area designation, DOE [sic] improperly characterizes members of the public as MOX Facility workers for purposes of calculating radiological doses to the public during normal operations and accidents. DCS's incorrect assumption about the appropriate controlled area boundary also adversely affects the adequacy of its physical security measures. As a result, the design basis of the MOX facility is not adequate to support approval of construction. Another result is that the Environmental Report incorrectly minimizes the environmental impacts of the MOX Facility on the public, by defining the public in an overly narrow way. *See* Contention 8, *infra.*

GANE's Contentions, at 19-20. The Board should reject this contention. GANE identifies this as one of its safety contentions (*see id.*, at 2), but the only DCS document GANE identifies as a supporting basis for Contention 5 is the December 2000 DCS environmental report. *See id.*, at 20. GANE identifies no evidence supporting its statements that DCS's assumption about the appropriate controlled area boundary adversely affects the adequacy of its physical security measures, and that as a result, the design basis of the MOX Facility does not adequately support

approval of construction. In this regard, GANE references Staff RAIs issued to DCS (*see id.*, at 20-21), but as discussed in Section I, *supra*, the fact that the Staff has issued RAIs to DCS does not establish the presence of a material issue of law or fact. *See Rancho Seco, supra,* CLI-93-3, 37 NRC at 147 and 150. A contention must identify what deficiencies exist in the application, and a hearing petitioner must do more than simply quote from or reference RAIs to justify the admission of a contention. *See Oconee, supra*, CLI-99-11, 49 NRC at 337, and 341. Accordingly, the Board should reject Contention 5.

Contention 6: "Inadequate Safety Analysis"

GANE's sixth contention states as follows:

> The Safety Analysis (SA) submitted as part of the DCS [CAR] is seriously flawed and provides neither a comprehensive assessment of all potential accident consequences nor a credible assessment of all potential accident likelihoods. The SA does not provide information of sufficient detail and quality to enable the NRC to make a determination pursuant to 10 CFR §70.23(b) that "the design bases of the principal structures, systems and components [of the MOX Facility] ... provide reasonable assurance of protection against natural phenomena and the consequences of potential accidents."
>
> In particular, the SA fails to correctly identify and carry out consequence assessments for accident scenarios with "bounding" consequences. The applicant's failure to identify the actual bounding accident scenarios implies that it has underestimated the consequences of these scenarios, and hence may not have applied engineered and/or administrative controls to the extent necessary to meet the performance requirements established in 10 CFR §70.61 and the defense-in-depth requirements of 10 CFR §70.64(b). In addition, the SA incorrectly considers the controlled area boundary of the [MOX Facility] to be coincident with the SRS site boundary when evaluating accident impacts to the public, which leads to projected doses to the public considerably below the correct values.[20] Hence, the CAR SA fails to demonstrate that the [MOX Facility] as designed is likely to be in compliance

[20] The Staff concludes that this underlined portion of Contention 6 is not admissible. The supporting bases discussion for Contention 6 contains no evidence regarding what the "correct values" are for the referenced projected doses, making this portion of Contention 6 too vague to meet the contention rule's requirements. Additionally, this portion of Contention 6 is not admissible for the reasons discussed above in response to GANE's Contention 5 (which also regards the "controlled area" issue).

> with 10 CFR Part 70. NRC should therefore deny authorization of [MOX Facility] construction based on this document.

GANE's Contentions, at 21-22 (footnote added) (emphasis added).[21] With the exception of the underlined portion above, the Staff concludes that this is an admissible contention.

While GANE, in its bases supporting this contention, openly relies to some extent on RAIs the Staff issued to DCS,[22] GANE also provides sufficiently specific additional information establishing the need for further inquiry. For example, GANE contends that a hydrogen explosion in the sintering furnace of the proposed MOX Facility is not adequately analyzed in the CAR, and that a previous safety study (excerpts of which are attached to GANE's Contentions as Exhibit 6) of MOX fuel fabrication plants identified this scenario as one of the dominant risk contributors.[23] Accordingly, the Board should partially admit Contention 6, as discussed above.

Contention 7: "ER Inadequate to Address the Environmental Impacts of Using MOX Fuel in the Catawba and McGuire Reactors"

GANE's seventh contention states as follows:

> The ER is deficient because it does not provide an adequate analysis of the impacts of irradiating MOX fuel in the Catawba and McGuire reactors.

GANE's Contentions, at 27. Notwithstanding that this contention is said to be supported by input from Dr. Lyman (*see* GANE's Exhibit 1, at ¶ 5), the Board should reject Contention 7. Impacts of irradiating MOX fuel are not directly related to the proposed action here, and as discussed in

---

[21] This contention is said to be supported by input from Dr. Lyman. *See* GANE's Exhibit 1, at ¶ 5.

[22] *See, e.g.*, GANE's Contentions, at 23 (DCS did not provide adequate justification for its choice of "bounding" accidents, and did not provide sufficient information to determine the quantitative likelihoods of the accidents it analyzed); and *id.*, at 25 (adequacy of DCS's assumption that the final stage of HEPA filters will maintain their design efficiency during severe fires or explosions).

[23] *See* GANE's Contentions, at 24, *citing* "Status Report on the EPRI Fuel Cycle Accident Risk Assessment," EPRI NP-1128 (Interim Report), published by the Electric Power Research Institute (EPRI), in July 1979, at p. 5-18.

Section I, *supra*, an admissible contention must pertain to one or more issues falling within the scope of the matters set forth in the Notice initiating this hearing on the CAR. *See River Bend, supra*, CLI-94-10, 40 NRC at 51. The Notice did not include within its scope environmental issues pertaining to the possible future use of MOX fuel in reactors. The impacts directly related to such use of MOX fuel will be addressed if and when the NRC receives applications to amend the 10 C.F.R. Part 50 licenses referenced in the contention. Thus, the Board should reject Contention 7.

Contention 8: "Impacts Minimized Through Incorrect Designation of Controlled Area"

In sole support of its eighth contention (set forth below), GANE states that its basis for Contention 5 "is adopted and incorporated by reference herein." GANE's Contentions, at 30. Contention 8 states as follows:

> As discussed above in Contention 5, DCS incorrectly designates the entire Savannah River Site as the controlled area of the MOX Facility. The proposed controlled area does not satisfy the NRC's requirement that a controlled area "means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason," because DCS does not have control over the entire Savannah River Site. As a result of this improper controlled area designation, DOE [sic] improperly characterizes members of the public as MOX Facility workers for purposes of calculating radiological doses to the public during normal operations and accidents. Therefore, the Environmental Report incorrectly minimizes the environmental impacts of the MOX Facility on the public, by defining the public in an overly narrow way.

GANE's Contentions, at 30. The Board should reject Contention 8 for the reasons discussed above regarding GANE's Contention 5. Insofar as DCS application documents are concerned, GANE relies on a single page (4-1) in the December 2000 DCS environmental report. *See* GANE's Contentions, at 20. GANE fails to explain how any DCS statements there about its controlled area designation support GANE's Contention 8. How this DCS designation either (a) improperly characterizes members of the public as MOX Facility workers for purposes of calculating radiological doses to the public during normal operations and accidents; or (b) incorrectly minimizes the environmental impacts of the MOX Facility, is not specified. As discussed in Section I, *supra*,

the fact that the Staff has issued RAIs to DCS on the subject of its controlled area designation does not establish this as being a material issue of law or fact. A contention must identify what deficiencies exist in the application, and a hearing petitioner must do more than simply quote from or reference RAIs to justify the admission of a contention. *See Oconee, supra*, CLI-99-11, 49 NRC at 337, and 341. Accordingly, the Board should find that Contention 8 is not admissible.

Contention 9: "Inadequate Cost Comparison"

GANE's ninth contention states as follows:

> The Environmental Report does not provide any discussion of the costs of the proposed MOX Facility, or make a comparison to the costs of other alternatives.

GANE's Contentions, at 31. The Staff concludes that Contention 9 is admissible, for the reasons discussed below.

GANE clarifies in its supporting basis discussion that its contention is based on the DCS environmental report's failure to consider the economic benefits and costs of the proposed action, and that the report accordingly fails to meet all the requirements of 10 C.F.R. § 51.45(c). *See* GANE's Contentions, at 31. In reviewing the DCS environmental report, the Staff notes that DCS referenced economic costs at page 3 of the report's Executive Summary section, but that DCS does not thereafter discuss such costs.[24] The Staff therefore concludes that GANE has established a valid legal basis supporting its Contention 9, and that Contention 9 is admissible. In submitting environmental contentions at this early stage of the proceeding, petitioners are obligated to focus on an applicant's environmental report, and any un-corrected deficiencies therein may be sufficient

[24] The failure to do so may thus have been a simple oversight on DCS' part, since the DOE had discussed its economic cost analyses as part of its record of decision pertaining to the disposition of surplus weapons-grade plutonium (*see* 65 Fed. Reg. 1608, at 1617 cols. 1-2 (January 11, 2000)), and this information was available to DCS when it submitted its December 2000 environmental report. GANE indicates these economic cost analyses may have been superseded by a DOE draft report dated March 30, 2001 (*see* GANE's Contentions, at 31 and n. 26), but this new information was presumably not available to DCS at the time it submitted its environmental report.

to support contentions regardless of the fact that the Staff may later cure such deficiencies in draft or final environmental impact statements.[25] *See Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1049 (1983).

Contention 10: "Inadequate Discussion of Transportation Impacts"

GANE's tenth contention states as follows:

> The transportation of plutonium pits and plutonium oxides to Savannah River Site threatens life and health along every transportation corridor, including the State of Georgia which provides the most likely entranceway to South Carolina from the western states from which the plutonium shipments are expected to originate. Inadequate analysis of environmental impacts resulting from transportation has been performed in the 1999 Special Plutonium Disposition Environmental Impact Statement of the U.S. Department of Energy. This inadequacy has not been remedied by [the DCS] Environmental Report at Section 1.2.6 which declares it "[r]elies on SPD EIS (DOE 1999)."
>
> NEPA requires that all foreseeable impacts be analyzed. This licensing process should not be allowed to proceed until this substantial defect is cured.

GANE's Contentions, at 31-32. The Board should not admit this contention. GANE's one brief reference above to Section 1.2.6 of the DCS environmental report reflects GANE's lack of familiarity with the subject report, which discusses transportation issues in Section 5.4 and Appendix E. GANE's contention and its supporting bases instead rely on comments made by the State of Georgia to DOE in 1998-99 -- before the DCS environmental report even existed. *See* GANE's Contentions, at 32-41. Alleged deficiencies in DOE's NEPA process are not within the scope of issues raised or referenced in the Notice initiating this CAR proceeding, and Contention 10 is therefore not admissible. *See River Bend, supra*, CLI-94-10, 40 NRC at 51. Accordingly, the Board should reject Contention 10.

---

[25] The Staff, pursuant to 10 C.F.R. § 51.71(d), will be considering the economic costs of the proposed MOX Facility as part of its environmental impact statement being prepared for the proposed action. *See* the Staff's "Scoping Summary Report" for the proposed MOX Facility (August 2001), at 17.

Contention 11: "ER Fails to Address the Waste Stream from Aqueous Polishing"

GANE's eleventh contention states as follows:

> [The DCS] ER understates the impacts of the waste stream from aqueous polishing to remove gallium, doesn't acknowledge problems with the same process in Europe,[26] [and] adds to [the] burden of radioactive waste at SRS without designing a plan for managing the waste as required under NEPA.

GANE's Contentions, at 41 (footnote added). This is not an admissible contention, as the supporting basis' sole reference to relevant DCS statements in the environmental report fails to establish the presence of any material dispute between DCS and GANE.

The portion of the contention stating that the environmental report "understates the impacts of the waste stream from aqueous polishing to remove gallium" is actually inconsistent with GANE's supporting basis statement that DCS "acknowledges that the greatest volume and radioactivity of waste in the plutonium fuel fabrication process" will result from the use of the aqueous polishing process to remove gallium and other impurities from the weapons-grade plutonium. GANE's Contentions, at 41(emphasis added), *citing* (and accurately paraphrasing) page 3-7 of the DCS environmental report. Additionally, the portion of the contention stating that no plan exists for managing the subject liquid waste streams is also contradicted by GANE's supporting basis discussion. *See* GANE's Contentions, at 42 (referencing the DCS plans to use DOE's high-level waste tanks in the SRS F-Area Tank Farm). Accordingly, the Board should rule that Contention 11 is not admissible.

Contention 12: "SPD EIS and ER are deficient in their failure to analyze malevolent acts of terrorism and insider sabotage"

GANE's twelfth contention states as follows:

> GANE contends that a license must not be given for construction and subsequently for operation of a plutonium fuel factory at the Savannah River Site which is situated on the border of Georgia on the Savannah River because it is vulnerable to

[26] In its supporting basis discussion, GANE does not identify any aqueous polishing problems in Europe.

> malevolent acts such as terrorism and insider sabotage which could create an unacceptable beyond design basis accident. DOE did not analyze terrorism or insider sabotage in its Special Plutonium Disposition Environmental Impact Statement published in 1999. Neither did DCS in its 2000 Environmental Report which, while dismissing out-of-hand as inconsequential many credible scenarios, did not even acknowledge the real possibility of terrorism and insider sabotage (see Section 5.5 of the [DCS] Environmental Report). This deficiency may be terminal to this licensing effort. In any event, malevolent acts must be analyzed as a foreseeable environmental impact under NEPA. Lack of analysis of the malevolent acts scenario leads to failure to design safeguards and failure to plan for emergency response and mitigation measures.[27]

GANE's Contentions, at 45 (footnote added). The Board should reject this contention. Other than GANE's general reference above to Section 5.5 of the DCS environmental report, the contention and its supporting bases focus solely on comments made by the State of Georgia to DOE in 1998-99 -- before the DCS environmental report even existed. *See* GANE's Contentions, at 45-48. Alleged deficiencies in DOE's NEPA process are not within the scope of issues raised or referenced in the Notice initiating this CAR proceeding, and Contention 12 is therefore not admissible. *See River Bend, supra*, CLI-94-10, 40 NRC at 51.

Contention 12 also lacks an adequate legal basis, as GANE provides no support for its general assertion above that "malevolent acts must be analyzed as a foreseeable environmental impact under NEPA." Under the long-established rule-of-reason line of NEPA decisions, federal agencies need only address reasonably foreseeable environmental impacts arising from a proposed action,[28] and GANE does not establish that terrorist acts (involving the proposed MOX Facility or related materials) fall within the realm of "reasonably foreseable" events .

---

[27] GANE offers no further discussion or evidence that a lack of environmental analysis of the results of terrorist acts will lead to any failures to adequately design safeguards, or to any other inadequacies regarding plans for emergency responses and mitigation measures.

[28] *See Scientists' Institute for Public Information, Inc. v. AEC*, 481 F.2d 1079, 1092 (D.C. Cir. 1973).

Contention 13: "ER Lacks Probability Calculations"

GANE's thirteenth and final contention states as follows:

> The [DCS] Environmental Report does not satisfy NEPA or the NRC's regulations because it contains an inadequate assessment of the probability and consequences of accidents.

GANE's Contentions, at 48. For the reasons discussed below, the Board should reject Contention 13 as being too vague and general.

As a basis for this contention, GANE states that the environmental report "fails to provide quantitative estimates of accident probabilities" (*id*., at 49), but the contention and its supporting discussion neither identifies the allegedly deficient portions of the environmental report,[29] nor specifies what accident scenarios (if any) GANE is referencing.

The legal analysis GANE offers in support of Contention 13 is also deficient. *See* GANE's Contentions, at 49-50. GANE states that in not quantifying the probability of accidents, the environmental report violates 10 C.F.R. § 51.45 (*see* GANE's Contentions, at 49), but this regulation contains no requirements specific to accident analyses.[30] Moreover, the two Commission decisions GANE cites are not relevant here. In *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-90-4, 31 NRC 333 (1990), the Commission found that more information was needed regarding the probability of a specific accident scenario raised in the proceeding (regarding a cladding fire in a reactor's spent fuel pool), and that in the absence of such information it was not in a position to either "endorse or reject" an appeal board holding that accidents with a probability of 10^{-4} per reactor year are remote and speculative and thus need not

---

[29] The Staff notes that Section 5.5 and Appendix F (both titled "Facility Accidents") of the DCS environmental report together total 27 pages of material.

[30] GANE cites 10 C.F.R. § 51.45(d), which does not contain any analysis requirements. The Staff believes that GANE intended to cite 10 C.F.R. § 51.45(c) instead, which only states, in pertinent part, that environmental report analyses shall "to the fullest extent practicable, quantify the various factors considered" in the analyses.

be evaluated under NEPA. *Id.*, 31 NRC at 335.[31] In a follow-up decision, the Commission clarified that "low probability is the key to applying NEPA's rule of reason test to contentions that allege that a specified accident scenario" would involve significant environmental impacts that must be evaluated. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-90-7, 32 NRC 129, 131 (1990) (emphasis added). By contrast here, as stated above, GANE has not identified any specific accident scenario to be evaluated under NEPA.

Accordingly, the Board should find that GANE's Contention 13 is inadmissible.

IV. Moniak/BREDL Contentions

In the early morning hours of August 14, 2001, Mr. Moniak submitted contentions on behalf of himself and BREDL via electronic mail. *See* "Blue Ridge Environmental Defense League and Donald Moniak Response and Objections to the Proposed MFFF," and the ten groups of related contentions (Moniak/BREDL's Contentions).[32] Mr. Moniak and BREDL proffer no expert opinions in support of any of these contentions. The Staff has concluded that none of the Moniak/BREDL Contentions are admissible. Each set of contentions are discussed individually below.

Contention 1: "Gross Violations of Radioactive Waste Management Rules"

The first group of contentions submitted by Mr. Moniak and BREDL[33] states as follows:

> 1A. The Applicant proposes to transfer radioactive waste from the proposed facility to a contiguous, but unlicensed, facility (the Department of Energy's Savannah

---

[31] Thus, contrary to what GANE states, the Commission there did not reverse the appeal board's ruling, but instead remanded the proceeding and directed the appeal board to gather more information about the accident scenario at issue.

[32] The Staff notes that these contentions were not filed by midnight August 13, 2001, in violation of the Board's deadline. *See* July 17 Order, at 5-7. Additionally, Section I of the document, titled "Introduction," was not received by electronic mail until August 16, 2001. The Staff is not objecting to the Moniak/BREDL Contentions on lateness grounds, but is not thereby waiving its right to assert such objections should any future Moniak/BREDL filings be untimely.

[33] The page numbers of the BREDL/Moniak Contentions are not internally consistent in all places. In citing to this document, the Staff will use the page numbers which appear on the hard copy distributed within the NRC.

> River Site F-Tank Area) for processing, storage, and disposal, a violation of basic NRC regulations governing handling and disposal of radioactive waste.
>
> 1B. The applicant submitted contradictory and therefore inaccurate reports.
>
> 1C. Applicant failed to identify numerous adverse impacts of radioactive waste generation in the Environmental Review.
>
> 1D. DOE committed gross violations of the National Environmental Protection Act during the decision making process by knowingly publishing false, misleading and inaccurate information in legal NEPA documents**.**
>
> 1E. The applicant's analysis and report is dominated by deficiencies.

Moniak/BREDL's Contentions, at thirteenth page (no page number). For the following reasons, the Staff concludes that these are not admissible contentions. The Staff views Contention 1E as being the most significant one in this group, and it is therefore addressed first.

The general legal basis asserted for Contention 1E -- "All parts of NEPA" -- is inadequate. Moniak/BREDL's Contentions, at 14. The Board should not accept such vague specifications of applicable law, since the parties here were warned by the Commission that their contentions must be supported "by appropriate and accurate references to legal authority." June 14 Order, at 10. Moreover, as discussed below, the five examples of "deficiencies" relied upon as factual bases for Contention 1E are inadequate (*see* Moniak/BREDL's Contentions, at 20), because they either describe DCS discussions in an incomplete fashion, fail to provide any evidence of adverse health, safety, or environmental consequences arising from the alleged deficiencies, or fail to establish the presence of a dispute with DCS on a material issue of law or fact.

The first claimed deficiency regards a DCS statement at page 10-3 of the CAR that "evaporator bottoms contain [concentrated][34] wastes for disposal." Mr. Moniak states that DCS "failed to define the disposal route" for these wastes. Moniak/BREDL's Contentions, at 20, ¶ f.i.

---

[34] Mr. Moniak omitted the word "concentrated" from the quoted DCS material. The CAR statement at issue comes at the end of CAR Section 10.1.4, describing how various waste streams will be minimized as part of the radiation safety program described in CAR Section 10.1.

Contrary to the charge that DCS did not thereafter discuss how this waste would be disposed, the CAR, at page 10-4, states that these evaporator bottoms "are expected to contain liquid high-alpha-activity waste," and would therefore be transferred into the SRS waste system for disposal with other high-alpha-activity streams. *See* CAR Section 10.1.4.1.1. The Staff thus does not regard this basis as providing support for Contention 1E.

The second claimed deficiency regards the lack of any provision in the CAR for sampling the "stripped uranium stream." Moniak/BREDL's Contentions, at 20, ¶ f.ii, *citing* page 10-5 of the CAR. Mr. Moniak presents no evidence regarding the importance of taking such samples, and identifies no adverse health or safety consequences which might arise from not taking such samples. The Staff thus does not regard this second factual basis as providing support for Contention 1E.

The third claimed deficiency regards (1) Mr. Moniak's reference to a DCS claim (at page 10-1 of the CAR) that its MOX Facility design "precludes the release of radioactive liquid effluents into the environment," and his reference to a subsequent DCS statement (at page 10-9 of the CAR) that since there are "no radioactive liquid effluents, liquid effluent monitoring is not necessary;" and (2) Mr. Moniak's statement that "10 C.F.R. 70" requires that licensees "specify the quantity of each of the principal radionuclides released to *unrestricted* areas in liquid and gaseous effluents." Moniak/BREDL's Contentions, at 20, ¶ f.iii (emphasis in original).[35] This basis does not articulate any claim sufficient to support Contention 1E, both because "10 C.F.R. 70" does not adequately specify any applicable regulation, and because there is no apparent connection between the alleged requirement to specify quantities of radio-nuclides released to unrestricted areas, and the DCS statements Mr. Moniak quotes from the CAR. Thus, the Staff does not regard this third factual basis as providing support for Contention 1E.

---

[35] This contention basis ends with the following incomplete sentence: "The pipeline carrying waste during the previous six months of operation."

As the fourth claimed deficiency, Mr. Moniak states that "in Section 10 of the CAR," DCS defines the "High Alpha Liquid Transfer Line" as being within the set of the MOX Facility's principal structures, systems, and components, but that DCS provides no details "defining the design requirements for this component." Moniak/BREDL's Contentions, at 20, ¶ f.iv. Due to the vague citation to the CAR's Section 10 (which contains approximately 15 pages of text), the Staff is uncertain which portion of Section 10 Mr. Moniak may be relying on, but the Staff notes that a design basis reference to the subject waste transfer line is provided in CAR Table 5.6-1. Thus, the charge that DCS provides "no details" regarding the line's design requirements is not entirely accurate. Moreover, Mr. Moniak provides no evidence that the subject line's description as "a double-walled stainless steel pipe," containing a leak detection system, and designed to withstand "the effects of the design basis earthquake" (page 10-12 of the CAR), inadequately protects public health or safety. The Staff thus does not regard this fourth factual basis as providing support for Contention 1E.

As the fifth and final factual basis for Contention 1E, Mr. Moniak references the DCS discussion in its environmental report regarding the need for DOE to upgrade the F-Area infrastructure, in part by building the above-referenced liquid waste transfer pipeline to connect the proposed MOX Facility to the "F-Area Outside Facility."[36] Mr. Moniak states that this upgrade (presumably a reference to building the above-referenced pipeline) "has never been analyzed under NEPA," and would involve "an unlicensed operator being responsible for the design and construction" of DCS's major component "for avoiding radioactive waste spills." Moniak/BREDL's Contentions, at 20, ¶ f.v, *citing* page 1-3 of the DCS environmental report. Mr. Moniak's statement

[36] The Staff was previously aware of the potential need for DOE to upgrade the F-Area infrastructure, and anticipated environmental impacts from any such infrastructure upgrades needed to handle waste from the proposed MOX Facility will be addressed in the related environmental impact statement being prepared by the Staff. *See* the Staff's "Scoping Summary Report" for the proposed MOX Facility (August 2001), at 20 (Infrastructure discussion).

that the pipeline's construction has never been analyzed under NEPA is not accurate. DCS stated in its July 12, 2001 response to Staff environmental RAI number 20 that the pipeline's route is anticipated to run south from the southwest corner of the MOX Facility site to an existing utility corridor on the north side of the existing F-Area perimeter roadway, thence west to a point north of the F Canyon, and then south to the F-Area Outside Facility. The width of the disturbed area for the pipeline's right-of-way is expected to be less than 25 feet, resulting in a total disturbed land area of less than 1.5 acres. *See* DCS July 12, 2001 RAI responses, at 21. Mr. Moniak has not established the presence of a material dispute with DCS pertaining to the information provided in this DCS RAI response. The Staff thus does not regard this fifth factual basis as providing support for Contention 1E.

Following Contention 1E, Mr. Moniak's related request for relief states in pertinent part that the basis for the proposed action here is thus "in a state of irreparable noncompliance with NEPA; therefore the NRC is obligated to return the decision back to the responsible agency" (*i.e.*, the DOE). Moniak/BREDL's Contentions, at 20. As noted above, the general legal basis for Contention 1E -- "All parts of NEPA" -- is inadequate. Mr. Moniak establishes no legal basis requiring the NRC to obtain further DOE input on NEPA-related matters pertaining to the proposed MOX Facility. Moreover, as discussed above, none of the above-described factual bases for Contention 1E adequately support the contention.

Accordingly, for the reasons stated above, the Board should find that Contention 1E is not admissible.

Regarding Contention 1A, Mr. Moniak identifies no health, safety, or environmental problems which may arise if the plan to transfer radioactive waste from the proposed MOX Facility to the DOE's F-Tank Area is implemented. Instead, the basis for Contention 1A is limited to Mr. Moniak's legal argument that the planned transfer would automatically constitute a violation of

10 C.F.R. § 20.2001. *See* Moniak/BREDL's Contentions, at 14.[37] However, the cited 10 C.F.R. Part 20 provision references 10 C.F.R. Part 70 requirements, under which a licensee may transfer special nuclear material to DOE if such action is not prohibited by its Part 70 license. *See* 10 C.F.R. § 70.42(b)(1). If DCS is ultimately granted a license authorizing operation of the proposed MOX Facility, appropriate license conditions will govern any transfer of radioactive wastes from the facility to the DOE's SRS F-Tank Area. Because no factual basis, and no adequate legal basis, are stated in support of Contention 1A, the Board should reject it.

The support for Contention 1B (that DCS submitted contradictory and therefore inaccurate reports) is similarly inadequate. Mr. Moniak quotes -- but provides no citation to -- the DCS environmental report as stating that "the greatest impact of operations at the Mixed Oxide Fuel Fabrication Facility will be the amount of waste generated", and contrasts this with a quotation from part of a sentence on page 10-3 of the CAR containing the words "Very small amount of generatedwaste that is transferred to SRS." Moniak/BREDL's Contentions, at 15.[38] Mr. Moniak contends that these two statements constitute a violation of the 10 C.F.R. § 70.9 requirement that all information provided to the Commission by a license applicant "shall be complete and accurate in all material respects." The Staff disagrees, and concludes that Contention 1B is not admissible. Looked at in isolation, the two statements quoted above could be viewed as contradictory, but

---

[37] In support of Contention 1A, Mr. Moniak also cites the 10 C.F.R. Part 70 definition of *Contiguous sites* (*see* Moniak/BREDL's Contentions, at 14), but fails to show why this definition would legally prohibit DCS from using DOE's adjacent SRS F-Tank Area.

[38] Mr. Moniak further states as a basis (it is not clear which contention it is supposed to support) that DCS provided a false baseline in claiming that since 36 million gallons of liquid waste already exists at SRS, there is no harm in adding another million gallons, and that the DCS statement that the anticipated radioactive waste stream "represents a small increase in the amount of waste currently in the tank farm" constitutes a "gross violation" of 10 C.F.R. § 70.9. Moniak/BREDL's Contentions, at 15 ¶ c. Regardless of which contention this relates to, it is not a valid basis because it does not identify either the DCS document at issue, or the page number containing the quoted material, thus failing to meet the specificity requirements of 10 C.F.R. § 2.714(b)(2)(ii-iii).

when the CAR statement is read in context it is clear that Mr. Moniak's legal argument has no validity. The CAR statement at issue comes at the end of CAR Section 10.1.4, describing how various waste streams will be minimized as part of the radiation safety program described in CAR Section 10.1. The CAR, at pages 10-4 and 10-5, immediately goes into greater detail in describing the various liquid waste streams, and cannot fairly be read as contradicting any statements in the DCS environmental report. *See* CAR Sections 10.1.4.1 and 10.1.4.1.1. Using Mr. Moniak's method in formulating Contention 1B, any two documents submitted in support of an NRC license application could be shown to "contradict" one another.

The bases for Contention 1C (that DCS in its environmental report failed to identify adverse impacts of radioactive waste generation, in violation of 10 C.F.R. § 51.45 requirements)[39] all relate to past actions and alleged failures of various DOE initiatives taken at the SRS site as a whole. *See* Moniak/BREDL's Contentions, at 15-18, ¶¶ d. i-vi (including two sections both designated as d. vi). Mr. Moniak establishes no relationship between any of these alleged DOE actions and any impacts that may result if DCS is authorized to take the proposed action at issue here. As discussed in Section III, *supra*, regarding GANE's Contentions 10 and 12, DOE actions do not raise issues within the scope of those set forth in the Notice initiating this CAR proceeding, and thus cannot be used to support contentions here. Accordingly, the Board should reject Contention 1C.

For similar reasons, the Board should reject Contention 1D (alleging errors in DOE's NEPA process), because its supporting factual bases focus exclusively on alleged actions taken by DOE. *See* Moniak/BREDL's Contentions, at 18-20, ¶¶ e. i-x. As discussed above regarding GANE's Contentions 10 and 12, any DOE errors occurring during its NEPA process do not raise issues

---

[39] NRC applicants in their environmental reports must identify the adverse impacts <u>of the proposed action</u> on the environment. *See* Moniak/BREDL's Contentions, at 14, *quoting* 10 C.F.R. § 51.45(b)(1) (emphasis added). Mr. Moniak and BREDL focus on past actions taken by a non-applicant, and thus fail to show that the DCS environmental report violated any 10 C.F.R. § 51.45 requirements.

within the scope of those set forth in the Notice initiating this CAR proceeding. Thus, the Board should rule that Contention 1D is not admissible.

Accordingly, for the reasons stated above, the Board should reject Contentions 1A-1E.

Contention 2: "NRC Violations of NEPA"

The second group of contentions submitted by Mr. Moniak and BREDL states as follows:

> 2A. NRC failed to implement NEPA early in the process by issuing a timely notice of intent to prepare an Environmental Impact Statement, and by failing to consult with the [Defense Nuclear Facilities Safety Board (DNFSB)] as an expert agency,[40] resulting in an unfair bias in the scope of the proceedings that benefits the Applicant.
>
> 2B. NRC and Applicant collaborated to identify the scope of the Environmental Report outside of NEPA provisions, resulting in segmentation of the NEPA process, which again benefits the Applicant in ways contrary to NEPA.
>
> 2C. NRC began a defacto NEPA staff review before any time schedule for such review was published.
>
> 2D. NRC changed its criteria for Environmental Justice issues under NEPA without informing the public, which more than anything raises doubts about the NRC staff's independence in this process.

Moniak/BREDL's Contentions, at "Page 1 of 30" (footnote added). As indicated above, this group of contentions focuses on alleged deficiencies in the Staff's NEPA process, and does not even contain any citations to the DCS environmental report. Prior to the issuance of the Staff's draft environmental impact statement for the proposed MOX Facility, any NEPA-related contentions here must be based on the DCS environmental report (as supplemented by the July 12, 2001 RAI responses submitted by DCS). *See* 10 C.F.R. § 2.714(b)(2)(iii). Mr. Moniak and BREDL are thus obligated to identify disputes they have with DCS on material issues of law or fact. For this reason, and as discussed further below, the Board should find that contentions 2A-2D are not admissible in this proceeding.

---

[40] Congress created the DNFSB to oversee the safety of DOE's nuclear facilities.

In addition to the basic failure to identify any disputes with DCS, contentions 2A-2D fail to establish any violations of the NRC's 10 C.F.R. Part 51 requirements. Mr. Moniak and BREDL claim that the time and date of the NRC's decision to issue an environmental impact statement (EIS) "is unknown and unclear" (Moniak/BREDL's Contentions, at 23), and that the notice of intent (NOI) to prepare an EIS (required by 10 C.F.R. § 51.26) was not issued in a timely manner. *See* Moniak/BREDL's Contentions, at 25. The requisite NOI for the proposed MOX Facility was issued in early March of 2001 (*see* 66 Fed. Reg. 13794-97 (March 7, 2001)) in accordance with 10 C.F.R. § 51.26. Mr. Moniak and BREDL fail to acknowledge the March 7 NOI, and do not show how this NOI fails to "provide a clear record of a decision to prepare an EIS." Moniak/BREDL's Contentions, at 25.[41] Mr. Moniak and BREDL similarly fail to establish any basis for their charge that the Staff "began a de-facto scoping process that excluded public participation." *Id*. As described in the Staff's August 2001 "Scoping Summary Report" for the proposed MOX Facility, at 1-2, the Staff conducted scoping meetings (all of which were attended by Mr. Moniak) in April-May of 2001,during which public comments on potential environmental impacts of the proposed MOX Facility were solicited.[42]

---

[41] Mr. Moniak and BREDL state that such a record of decision is required by 10 C.F.R. § 51.25 (*see* Moniak/BREDL's Contentions, at 25), but 10 C.F.R. § 51.25 contains no such provision.

[42] Further arguments made by Mr.Moniak and BREDL similarly do not support the admission of contentions 2A-2D. They cite correspondence between the NRC and DCS prior to the March 7 NOI (*e.g*., the Staff's May 3, 2000 letter, the DCS response dated June 15, 2000, and the Staff's subsequent response dated December 11, 2000), in arguing that the Staff improperly defined the scope of the MOX Facility EIS in a manner beneficial to DCS, and that concurrence issues apparently arose within the NRC. *See* Moniak/BREDL's Contentions, at 25-27. Mr.Moniak and BREDL therefore request that the CAR hearing "include expanded discovery and deposition of NRC staff to determine the full extent of NRC's NEPA violations." *Id*., at 29. As discussed in Section I, *supra*, under the contention rule the Commission does not approve the use of discovery as part of a "fishing expedition" to produce supporting facts. *Oconee, supra*, CLI-99-11, 49 NRC at 334-35. Similarly, the filing of vague contentions, to be fleshed out later through discovery against the applicant or Staff, is not permitted under the contention rule. *See Seabrook, supra,* ALAB-942, 32 NRC at 427.

The shallow nature of these contentions is pointed out by one of the requests for relief made by Mr. Moniak and BREDL, wherein the Board is requested to order that all comments submitted by DCS to the Staff "be regarded as scoping comments outside of NEPA," and that these comments should accordingly "be stricken as undue influence on the process." Moniak/BREDL's Contentions, at 29. Mr. Moniak and BREDL have simply made these comments part of the adjudicatory record here, and now ask that the Board strike them from the record. Accordingly, for the reasons discussed above, the Board should reject contentions 2A-2D.

Contention 3: "Conflicts of Interest"

The third group of contentions submitted by Mr. Moniak and BREDL states as follows:

> 3A. NRC has a Conflict of Interest in this proceeding because it has received, receives, and pursues receiving DOE funding to support licensing activities for the Russian MOX program---funding pursued even after the Energy ReOrganization Act of 1974 was amended (see Contention Group 2).
>
> 3B. NRC hired as its NEPA contractor an organization–Argonne National Laboratory--with obvious conflicts of interest in this proceeding to conduct the EIS.
>
> 3C. The Applicant has a clear conflict of interest in terms of being involved with U.S. foreign/nonproliferation policy and also having a vested interest in parallel efforts in Russia that originated prior to U.S. involvement in the Russian plutonium disposition program. See attachment.

Moniak/BREDL's Contentions, at 31. Similar to the second group of contentions, this third group of contentions largely focuses on allegedly illegal actions of the Staff, and does not contain any citations to the documents submitted by DCS in support of the CAR. As discussed above regarding the second group of contentions, Mr. Moniak and BREDL are obligated to identify disputes they have with DCS on material issues of law or fact (*see* 10 C.F.R. § 2.714(b)(2)(iii)), and

contentions 3A-3B are therefore not admissible in this proceeding.[43] As discussed below, the Board should also find that contention 3C is not admissible.

No legal basis is stated in support of contention 3C, and the only support of any sort for this contention is a vague reference to an unspecified "attachment." The Commission has previously stated in this proceeding that parties must support their assertions "by appropriate and accurate references to legal authority and factual basis." June 14 Order, at 10. Accordingly, in the absence of any stated basis supporting contention 3C, the Board should reject it.

Contention 4: "Qualifications"

The fourth group of contentions submitted by Mr. Moniak and BREDL states as follows:

> 4A: The NRC lacks the necessary expertise in the field of industrial-scale plutonium processing to adequately determine whether public health and safety will be protected and to issue a license assuring this.
>
> 4B: Shortages in critical skills threatens to weaken NRC's future ability to protect public health and our environment.

Moniak/BREDL's Contentions, at 35. These contentions are quite similar to GANE's Contention 4 discussed in Section III, *supra*, and should be rejected for the same reasons. As stated above, the issue for decision in NRC adjudicatory proceedings is not the adequacy of the Staff's review, but whether the application at issue raises health and safety concerns. *See University of Missouri, supra*, CLI-95-8, 41 NRC at 395-96; *see also Calvert Cliffs, supra,* CLI-98-25, 48 NRC at 350. The bases stated in support of contentions 4A and 4B do not cite, or otherwise identify, any deficiencies

---

[43] Even if contentions 3A-3B were somehow found to meet the 10 C.F.R. § 2.714(b)(2)(iii) requirement, an adequate legal basis for these contentions is not stated. Contention 3A is said to be supported by the "Energy Reorganization Act." Moniak/BREDL's Contentions, at 31. The Board should not accept such a vague specification of allegedly applicable law. While the statement that contention 3B is supported by Section 2 of the "Atomic Energy Act of 1954" is a bit more specific, Mr. Moniak and BREDL fail to show how using the Argonne National Laboratory as the Staff's NEPA contractor violates Section 2's provision that funds of the United States "may be provided for the development and use of atomic energy under conditions which will provide for the common defense and security and promote the general welfare."

in the documents submitted by DCS in support of the CAR. Accordingly, the Board should refuse to admit contentions 4A and 4B in this proceeding.

Contention 5: "Unresolved Issue of Authority of Applicant to Apply for and Hold License"

The fifth group of contentions submitted by Mr. Moniak and BREDL states as follows:

> 5A. Because DOE functions as the financial assurance entity, will own the MFFF, it should either be the applicant or a co-applicant for the Construction License.
>
> 5B. DOE is not an historically reliable source of financing.
>
> 5C. The DOE contract with Applicant is a limiting factor in the ability of Applicant to meet NRC license requirements and perform work safely, and therefore is a safety issue to be examined in this proceeding.
>
> 5D. The Applicant is financially obligated to pay the costs of deactivation above and beyond DOE's allowance of $10 million, but has yet to provide financial assurance.
>
> 5E. The Applicant is presently liable to being held in Breach of Contract, which adds further uncertainty to the project.

Moniak/BREDL's Contentions, at 38. For the reasons discussed below, the Board should reject contentions 5A-5E.

An adequate legal basis for these contentions is not stated. In this regard, Mr. Moniak and BREDL state only that (a) they have an understanding "that this is an example of a very specific law in NRC's mandate, The Yucca Mountain does provide precedence for direct licensing of DOE"; and (b) "10 CFR70. Financial Assurance provisions." Moniak/BREDL's Contentions, at 38. The Board should not accept such a vague specification of allegedly applicable law. As noted above, the Commission has previously stated in this proceeding that parties must support their assertions "by appropriate and accurate references to legal authority and factual basis." June 14 Order, at 10.

The factual basis offered in support of Contentions 5A-5E is equally deficient, as for the most part it simply repeats previous efforts by Mr. Moniak and BREDL in this proceeding to show

that provisions of a contract entered into between the DOE and DCS have relevance here.[44] *See* Moniak/BREDL's Contentions, at 39-41. As before, Mr. Moniak and BREDL fail to articulate what bearing these contract provisions have to any issues to be litigated in this proceeding. The only new assertions made by Mr. Moniak and BREDL in support of Contentions 5A-5E are (1) vague references to "reports in nuclear trade journals" stating that "the National Security Council does not favor the MOX option because of increased costs"; and (2) equally vague references to "a legally required cost-report on plutonium disposition" which the DOE allegedly "withheld from Congress and the Public," showing that "the costs of MOX had risen dramatically, even greater than reported to Congress in DOE's FY2002 Budget request." Moniak/BREDL's Contentions, at 40-41.[45] Even assuming that the DOE acted improperly as alleged, Mr. Moniak and BREDL fail to explain why DCS should be held accountable for DOE's actions here. In failing to do so, Mr. Moniak and BREDL also fail to provide adequate support for their contention that DOE should either be the CAR applicant or co-applicant with DCS.

Accordingly, for the reasons discussed above, the Board should find that contentions 5A-5E are not admissible in this proceeding.

Contention 6: "Compliance Reporting"

The sixth contention submitted by Mr. Moniak and BREDL states as follows:

> Contention 6A [there is no Contention 6B]: The applicant failed to identify and describe its environmental and safety compliance record to NRC. The ER submitted by DCS in December 2000 failed to describe the regulatory compliance history of

---

[44] *See* "Blue Ridge Environmental Defense League and Donald Moniak Additional Filings on Standing," dated July 30, 2001, at 4 and 7. These points were addressed in the "NRC Staff's Response to Supplemental Filings on the Issue of Standing," dated August 10, 2001, at 6-7 and nn. 6-7.

[45] This same cost report is said to provide "a clear case of DOE's duplicitous behavior," citing as examples that DOE "subtracted 213 million for HEU Sales from the cost of MOX," and that DOE "subtracted the exact same credit from the cost of HEU disposition, thus double-dipping into the public till to the grand scale of half a billion dollars." Moniak/BREDL's Contentions, at 41. No page numbers or other information about the subject report is provided.

> the licensee [sic]. Instead, DCS described the regulatory compliance history of the Savannah River Site Operating Contractor Westinghouse Savannah River Site. WSRC has not submitted a license application to the NRC. Duke Cogema Stone and Webster submitted the license application yet failed to define their own compliance history both here and abroad.

Moniak/BREDL's Contentions, at 42.[46] The Board should reject this contention. No factual basis supporting Contention 6A is stated (other than the text quoted above), leaving the Board and parties to guess at what DCS "compliance history both here and abroad" Mr. Moniak and BREDL view as significant and relevant to this proceeding.

As a legal basis for Contention 6A, Mr. Moniak and BREDL quote the full text of 10 C.F.R. § 51.45(d), but they fail to show that its provisions require an NRC applicant in DCS's position (*i.e.*, a newly formed legal entity with no history apart from that of its component parts) to provide any "disclosure of the environmental, safety, and health compliance records of all major and minor partners in DCS." Moniak/BREDL's Contentions, at 42. Moreover, as the Staff has previously discussed in this proceeding (*see* June 25 Answer, at 35, ¶ 9), topics such as the compliance history of COGEMA and the other companies who decided to form the DCS consortium are outside the scope of this proceeding.

Because no adequate factual or legal basis supporting Contention 6A is stated, the Board should reject it.

Contention 7: "Reactor Impacts"

The seventh contention submitted by Mr. Moniak and BREDL concerns nuclear reactor safety issues related to the potential future use of MOX fuel in commercial nuclear power plants

---

[46] The Staff notes this is the first of two pages designated as page 42.

(*see* Moniak/BREDL's Contentions, at 42)[47] and should be rejected for the same reasons discussed in Section III, *supra*, regarding GANE's Contention 7. As stated there, an admissible contention must pertain to one or more issues falling within the scope of the matters set forth in the Notice initiating this proceeding. *See River Bend, supra,* CLI-94-10, 40 NRC at 51. Accordingly, the Board should reject BREDL's Contention 7.

Contention 8: "Department of Energy NEPA Violations (outside of Waste Management at MFFF)"

The eighth group of contentions submitted by Mr. Moniak and BREDL states as follows:

> 8A. DOE has failed to implement most of the decisions in the ROD for the November 1996 *Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement* (S&D PEIS). Specifically, DOE has failed to upgrade plutonium pit storage facilities at Pantex Nuclear Weapons Plant, and more immediately to this issue, has failed to provide for long-term storage of non-pit plutonium at SRS.
>
> 8B. DOE irreparably biased the SPDEIS towards MOX through the premature solicitation of a MOX contractor. The 1998 DOE Request for Proposals (RFP) for *MOX Fuel Fabrication and Irradiation services* (Solicitation Number DE-RP0298CH10888 and subsequent amendments) in which DOE requested consortiums of fuel fabricators, engineering firms, and nuclear reactor operators to submit proposals for *"design, licensing, construction, operation, and eventually decontamination and decommissioning of a MOX [fuel fabrication] facility as well as irradiation of the MOX fuel in existing domestic, commercial reactors should the decision be made by DOE in the SPD EIS ROD to go forward with the MOX progra*m."
>
> 8C. DOE has abandoned its Record of Decision for the SPDEIS and has failed to issue a supplemental EIS to evaluate the impacts of major changes in addition to the liquid radwaste stream at the [MOX Facility]:
>
> - feedstock requirements for the [MOX Facility] caused by delays in the [Plutonium Pit Disassembly Conversion Facility];
> - impacts on U.S. ability to meet agreements with Russia due to suspension of the [Plutonium Immobilization Plant];

[47] The Staff notes this is the second of two pages designated as page 42, and that as stated therein, this contention was prepared by Lou Zeller of BREDL rather than by Mr. Moniak. The title "Reactor Impacts," and its designation as Contention 7, are based on a covering electronic mail message received from Mr. Moniak in the early morning hours of August 14, 2001.

- Failure to implement long-term plutonium storage alternatives at SRS;
- increased requirements at the [Plutonium Pit Disassembly Conversion Facility] resulting from [MOX Facility] acceptance criteria

8D: The Plutonium fuel/MOX option greatly increases the risk of plutonium theft, diversion, and reuse and DOE greatly underestimated the risk of nuclear explosives being developed from reactor plutonium. [sic] in its NEPA process.

8E: DOE failed to identify the dual-use nature of both the [Plutonium Pit Disassembly Conversion Facility] and the [MOX Facility], and both facilities have the potential to be converted into use for plutonium pit fabrication.

8F: DOE's analysis failed to identify or greatly understated the real hazards of plutonium processing.

Moniak/BREDL's Contentions, at 70, citing as their legal basis the "entirety of NEPA." In addition to the inadequacy of this legal basis, the Board should reject Contentions 8A-8F because they focus exclusively on alleged inadequacies in NEPA evaluations performed by the DOE, and lack any reference to filings made by DCS in support of the CAR. As discussed in Section III, *supra*, regarding GANE's Contention 10, alleged deficiencies in DOE's NEPA process are not within the scope of issues raised or referenced in the Notice initiating this CAR proceeding. To be admissible here, contentions must pertain to issues within the Notice's scope. *See River Bend, supra*, CLI-94-10, 40 NRC at 51. Accordingly, the Board should rule that Contentions 8A-8F are not admissible.

Contention 9: "Inadequate Radiological Protection of Public"

The ninth group of contentions submitted by Mr. Moniak and BREDL states as follows:

Contention 9A: Applicant used inappropriate control area boundaries and therefore mischaracterized members of the public as occupationally exposed workers.

Contention 9B: The applicant failed to submit an Emergency Management Plan for the [MOX Facility] because of the inappropriate definition of a control area.

Moniak/BREDL's Contentions, at 72. The Board should rule that both Contention 9A and Contention 9B are inadmissible, but each raises slightly different issues and the Staff accordingly addresses them separately below.

In their factual basis discussion for Contention 9A, Mr. Moniak and BREDL provide no evidence that the DCS definition of its control area boundary for the proposed MOX Facility mis-characterizes members of the public as occupationally exposed workers, or how such a mis-characterization might constitute a health and safety problem. Merely quoting 10 C.F.R. Part 20 definitions of "public dose" and "occupational dose" (*see* Moniak/BREDL's Contentions, at 73) does not sufficiently show how or why the substantive provisions of 10 C.F.R. Part 20 might be applicable here. The Board and parties are thus left to guess at what specific health and safety problem Mr. Moniak and BREDL seek to litigate.[48]

Contention 9B -- that DCS did not submit an emergency management plan for the proposed MOX Facility "because of the inappropriate definition of a control area" -- is similarly unsupported.[49] The sole basis for this contention is that DCS felt that an emergency management plan was not necessary because DCS "intends to prove that off-site doses in the case of an accident will be less than 1 rem." Moniak/BREDL's Contentions, at 73. Mr. Moniak and BREDL do not identify any DCS document in this regard, but merely cite a DOE document (*Site Selection for Surplus Plutonium Disposition Facilities at the Savannah River Site)* concerning the potential radiological consequences of a design basis earthquake occurring at the site of the proposed MOX Facility. Moreover, Mr. Moniak and BREDL do not establish any link between this DOE document and the

---

[48] Mr. Moniak and BREDL make no references to RAIs issued by the Staff to DCS on the subject of an appropriate control area boundary for the proposed MOX Facility, but as discussed in Section I, *supra*, the fact that the Staff has issued such RAIs to DCS does not establish the presence of a material issue of law or fact. *See Rancho Seco, supra,* CLI-93-3, 37 NRC at 147 and 150.

[49] As previously stated by the Staff in this proceeding (*see* June 25 Answer, at 14 n.22), pursuant to Section 14.5.1 of the "Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility," NUREG-1718, DCS is not expected to submit an emergency plan as part of its CAR; and at the time DCS applies for an operating license, an emergency plan is not required if DCS can demonstrate that the maximum dose to a member of the public offsite due to a release of radioactive materials would not exceed the limits specified in 10 C.F.R. § 70.22(i)(1)(i-ii).

need to properly define a control area. Accordingly, the Board should reject Contention 9A and Contention 9B.

Contention 10: "Lack of Complete and Accurate Information"

The tenth and final group of contentions submitted by Mr. Moniak and BREDL states as follows:

> Contention 10A. Applicant failed to submit detailed information sufficient for fact checking and analysis of the proposal.
>
> Contention 10B. Applicant's Construction Authorization Request is filled with "dead-end" references.
>
> Contention 10C. Applicant has displayed a clear intent to minimally cooperate with NRC.

Moniak/BREDL's Contentions, at 74.[50] For the reasons discussed below, the Board should reject these contentions.

Mr. Moniak and BREDL set forth several factual bases pertaining to Contentions 10A-10C. *See* Moniak/BREDL's Contentions, at 74-77. But Mr. Moniak and BREDL fail to provide adequate citations in support of their bases,[51] and fail to specifically identify therein any inadequacies in documents submitted by DCS to the Staff in support of the CAR. For example, Mr. Moniak and BREDL state that unspecified requirements applicable to the proposed MOX Facility are not adequately defined because DCS, in unspecified "documents submitted to NRC," makes erroneous assumptions concerning the plutonium oxide feedstock to be used. *Id*., at 75, ¶ d (i). Mr. Moniak and BREDL accuse DCS of using "an inflated background radiation value for the Aiken County Area" (*id*., at 76-77, ¶ g), but identify neither the DCS document at issue, nor the source of their

---

[50] The sole legal basis supporting these contentions is a reference to 10 C.F.R. § 70.9(a), which requires that any information submitted to the NRC for licensing purposes "be complete and accurate in all material respects." Moniak/BREDL's Contentions, at 74.

[51] The only documents cited by Mr. Moniak and BREDL in support of Contentions 10A-10C are ones authored by BREDL, and no attempt is made to establish that the information stated in these BREDL documents is based on any particular expertise held by BREDL's authors.

related claim that "Aiken County has some of the lowest Radon levels in the region." *Id*., at 77. Similarly, Mr. Moniak and BREDL state that DCS "failed to identify the historic deep boreholes in the area" (*id*., at 76, ¶ f), but they do not specify the source of information which DCS allegedly ignored. Even in cases where Mr. Moniak and BREDL do include a citation, the reference is often too vague to adequately put the other parties on notice as to the source of the information. *See, e.g.*, *id*., at 77, ¶ m (alleging a DCS failure to report that liquid radioactive waste streams containing silver are not accepted at tank farms located at the SRS, and citing "WSRC-TR-2000-0-0410").[52]

In further support of Contentions 10A-10C, Mr. Moniak and BREDL rely on the fact that the Staff issued an RAI to DCS containing 239 questions, stating that the CAR is thus "characterized primarily by lack of detail." Moniak/BREDL's Contentions, at 74, ¶ b.[53] But Mr. Moniak and BREDL fail to identify any health and safety issues arising from the CAR's alleged lack of adequate detail.[54] Moreover, as discussed in Section I, *supra*, the fact that the Staff has issued RAIs to DCS does

---

[52] This contention basis was added to the tenth group of Moniak/BREDL contentions by an electronic mail message received from Mr. Moniak in the early morning hours of August 14, 2001. The Staff notes that this contention basis m. is not part of the hard copy of the Moniak/BREDL's Contentions document distributed internally within the NRC.

[53] Mr. Moniak and BREDL later proffer other bases referencing HEPA filters, tornado history, and "SSC's for Crane Operations" (Moniak/BREDL's Contentions, at 77, ¶¶ i, j, and l, respectively), without acknowledging that these issues were raised by the Staff in the RAIs issued to DCS.

[54] An example of Mr. Moniak and BREDL's failure to adequately identify any deficiencies in the CAR is the statement that the design of the proposed MOX Facility conflicts with the DOE's 3013 Standard (a technical standard for the long-term stabilization and storage of plutonium oxides and metal). *See* Moniak/BREDL's Contentions, at 75, ¶ c. This contention basis simply repeats an allegation made in the Moniak/BREDL initial hearing request, which the Staff previously addressed. *See* June 25 Answer, at 14 and n. 21 (discussing Basis 6.(j)(v) of Mr. Moniak's initial hearing request). In its May 29 answer (at page 18) to the Moniak/BREDL initial hearing request, DCS denied the allegation, stating that the DOE Standard 3013 is incorporated into the MOX Facility's design specifications. But Mr. Moniak and BREDL in their contentions here do not discuss or otherwise make reference to the MOX Facility's design specifications as set forth in the CAR. The only substantive difference between Basis 6.(j)(v) of Mr. Moniak's initial hearing request and the contention basis at issue here is a reference to pages 1.6 to 1.7 of a BREDL document, "Plutonium, the Last Five Years."

not establish the presence of a material issue of law or fact. *See Rancho Seco, supra,* CLI-93-3, 37 NRC at 147 and 150. A contention must identify what deficiencies exist in the application, and a hearing petitioner must do more than simply quote from or reference RAIs to justify the admission of a contention. *See Oconee, supra*, CLI-99-11, 49 NRC at 337, and 341.

Accordingly, for the reasons discussed above, the Board should reject Contentions 10A-10C.

V. EI's Contentions

On August 13, 2001, Ruth Thomas submitted 15 contentions on behalf of EI. *See* "Amendment To Petition To Intervene" (EI's Contentions).[55] The sole legal basis provided by EI for the contentions as a group is that they all "relate to the NEPA while a majority of them also relate to the Atomic Energy Act." EI's Contentions, at 6.[56] The factual bases for the contentions are limited to what each individual contention states, with the exception of Contentions M, O, P, and U, which are said to be supported by a map depicting estimates of airborne routes ("puff paths") taken by tritium gas in 1974 following an accidental release from the SRS. *See* EI's Contentions, at 6,[57] and "Map 1" attached to EI's Contentions. EI proffers no expert opinions in support of any

[55] The 15 EI contentions are designated by Ms. Thomas with letters G-U. EI references contentions A-F as having been filed as part of its initial hearing request dated May 18, 2001. *See* EI's Contentions, at 2. Pursuant to the terms of the June 14 Order and the July 17 Order, the Staff does not view EI's contentions A-F as being properly before the Board now for consideration. However, should the Board choose to consider EI's contentions A-F, the Board should reject them because they do not contain any specific references or citations to any DCS documents submitted in support of the CAR, and thus do not establish the presence of any material disputes between EI and DCS. The failure to establish any such disputes renders the contentions inadmissible under 10 C.F.R. § 2.714(b)(2)(iii).

[56] Many of the individual contentions also contain general references to NEPA. As discussed above regarding the BREDL/Moniak Contentions 5A-5E, the Board should not accept vague specifications of allegedly applicable law. Parties here must support their contentions "by appropriate and accurate references to legal authority." June 14 Order, at 10.

[57] EI's Contentions, at 6, also reference a Contention W which is said to be supported by the above-described map, but no such contention was submitted.

of its contentions. The Staff has concluded that none of EI's Contentions are admissible. Each of the 15 EI contentions are set forth in full below, and are discussed individually.

EI's Contention G states as follows:

> [DCS's] evaluation of the health effect to the local population from routine operation of the MOX Facility is invalid due to the lack of attention being given to relevant evidence contained in the transcripts of Allied General's proposed uranium and plutonium recovery facility (docket 50-332) and in other sources of information which have been tested by cross-examination and are thereby capable of resolving some of the confusion over what information is factual and what is not.

EI's Contentions, at 2. On grounds of vagueness, the Board should refuse to admit this contention. The DCS document containing the allegedly invalid evaluation is not identified. The relevance of unspecified evidence from the Allied General proceeding is not established. EI does not state what the other referenced "sources of information" are.

EI's Contention H states as follows:

> [DCS's] evaluation of the health effects to local populations, including E.I. members, is invalid because the assumptions made in regard to the use of HEPA filters in Appendix F, Section F.5 and F.6 do not meet the guidelines of the NRC.

EI's Contentions, at 2. While this contention cites specific sections of the DCS environmental report and is thus a bit more specific than Contention G, it still falls well short of being an admissible contention. The Staff assumes that one of the assumptions EI is referencing is the leak path factor (LPF) used by DCS in Appendix F, Section F.5 of its environmental report. What other assumptions EI may be referencing regarding HEPA filters is not clear. Nor does the reference to the "guidelines of the NRC" adequately put the parties on notice as to what NRC statements EI may be relying on.[58] Accordingly, the Board should reject Contention H.

---

[58] Some of the Staff RAIs issued to DCS pertain to the use of HEPA filters, but even though EI is apparently generally aware of at least the Staff RAIs pertaining to NEPA issues (*see* EI Contention L), Contention H does not reference any RAIs. Similarly, subjects referenced in EI Contentions I, J, L, N, O, Q, R, T, and U are also raised by the Staff in RAIs issued to DCS, but EI does not state whether it is relying (in whole or in part) on these RAIs. In any event, as discussed above regarding the BREDL/Moniak Contentions 10A-10C (and elsewhere), the fact that the Staff (continued...)

EI's Contention I states as follows:

> The Applicants, in their CAR and Environmental Report (ER), fail to adequately consider the long-term effects of the MOX Facility. For example the impacts of decontamination and decommissioning of the MOX Facility are omitted. (See Section 5.6.1 of [the] CAR).

EI's Contentions, at 2. Like Contentions G and H, this contention is too vague to be admissible. The only long-term effects specified by EI which DCS allegedly failed to adequately consider are the impacts of decontaminating and decommissioning the MOX Facility, but the CAR section cited by EI in support has no apparent connection with the topic of this contention. Moreover, since EI is contending that a required discussion of impacts was omitted, it is incumbent upon EI to identify at least some evidence of what the omitted discussion should have included. Merely stating that DCS failed to "adequately consider the long-term effects of the MOX Facility" does not meet the specificity requirements of the contention rule. *See* 10 C.F.R. § 2.714(b)(2)(ii-iii). Accordingly, the Board should reject EI's Contention I.

EI's Contention J states as follows:

> [DCS's] evaluation of the detrimental impact on the health of local residents, including E.I. members, is invalid due to inadequate consideration being given to the cumulative effect of nuclear operations having taken place at the SRS since the 1950's.
>
> Note: the failure to collect the data, evidence and records needed to perform a full scale health study does not mean that an adverse effect to local residents from exposure to routine and accidental releases over the years has not caused harm to people's health and lives. Although a Dose Reconstruction Project has been going on for some time, money for this study has been cut.

EI's Contentions, at 2. No specific document -- whether authored by DCS or others -- is identified by EI here, and its Contention J should thus be rejected by the Board. Stating that a health impact evaluation is invalid "due to inadequate consideration being given to the cumulative effect of

---

[58](...continued)
has issued RAIs to DCS on a particular topic does not by itself establish the presence of a material issue of law or fact sufficient to support either an environmental contention or a safety contention. *See Rancho Seco, supra,* CLI-93-3, 37 NRC at 147 and 150.

nuclear operations having taken place at the SRS since the 1950's" is too vague to adequately support a contention in the absence of any specific description of the impacts these cumulative effects have allegedly produced. EI provides no evidence of "harm to people's health and lives," either from the referenced "Dose Reconstruction Project," or elsewhere. Accordingly, the Board should find that Contention J is not admissible.

EI's Contention K states as follows:

> The piece-meal approach taken in the overall project of disposing of excess weapons plutonium by removing the pits from nuclear bombs to recover some of the plutonium to fabricate into mixed oxide fuel has resulted in one of the numerous examples of the Applicants failing to comply with the National Environmental Policy Act (NEPA).

EI's Contentions, at 2. In addition to being too vague, Contention K should be rejected because "the overall project of disposing of excess weapons plutonium" can only be read as a reference to actions taken by the DOE, matters which are outside the scope of the Notice initiating this proceeding. As discussed above regarding Moniak/BREDL Contention 7, an admissible contention must pertain to one or more issues falling within the scope of the matters set forth in the Notice. *See River Bend, supra,* CLI-94-10, 40 NRC at 51. Whether the DOE complied with NEPA is not an issue properly before this Board. Accordingly, the Board should find that Contention K is not admissible.

EI's Contention L states as follows:

> The NRC staff has pointed out a number of examples of [DCS's] failure to comply with NEPA. Some relate to leaving out consideration of alternatives, others address the Applicants not including adequate information, such as those related to the SRS site and the problems presented in terms of cumulative effects.

EI's Contentions, at 3. In addition to being too vague, Contention L should be ruled as inadmissible because, as noted above regarding EI's Contention H, the mere fact that the Staff has issued RAIs to DCS on a particular topic does not by itself establish the presence of a material issue of law or fact sufficient to support an environmental contention.

EI's Contention M states as follows:

> [DCS's] evaluation of the possible and actual detrimental effects to South Carolina residents from the proposed MOX Facility, in terms of environmental harm, damaged health, safety problems, financial and business losses, is invalid because full consideration has not been given to South Carolina's unique situation of having all of the fresh MOX fuel shipments taking place within its border. [sic] (except for the few miles between the S.C. State line and the McGuire nuclear plant) [sic] This defect in both the CAR and the [DCS environmental report] is of particular significance in relation to the terrorist issue. Depending on the outcome of any terrorist activities, the results could be catastrophic. In addition, there would always be the on-going condition of attracting terrorist groups to South Carolina. This in itself would have an adverse impact on business interests, particularly tourism.
>
> The National Academy of Sciences (NAC), in its study Management and Disposition of Excess Weapons Plutonium (1995), warns that "If significant quantities of fresh fuel could be mobilized so as to become airborne as particulate matter, the resulting public health risks would be substantial." (Page 340)

EI's Contentions, at 3. On grounds of vagueness, the Board should refuse to admit this contention. EI contends that DCS's evaluations of "environmental harm, damaged health, safety problems, financial and business losses" are all invalid, and that these defects in the CAR and the environmental report are of "particular significance in relation to the terrorist issue." But EI does not specify where, in either the CAR or the environmental report, the allegedly defective evaluations may be found.[59] Moreover, while EI posits that potential outcomes of terrorist activities could be "catastrophic," the likelihood of any such events is not discussed. Accordingly, the Board should reject Contention M.

---

[59] Instead, the only specific cite is to a single sentence in a 1995 National Academy of Sciences report. EI provides no evidence on either the probability of fresh MOX fuel becoming airborne, or the mechanisms which could cause this to occur. What would be a "significant" quantity of fresh MOX fuel under such a scenario is not stated. EI also fails to show that its "Map 1" attachment is relevant to this contention. As stated above, this map depicts estimates of airborne routes tritium gas took following an accidental release in 1974. But EI does not establish that the airborne "particulate matter" referenced in the 1995 National Academy of Sciences report would behave in ways similar to the 1974 tritium gas release, or whether the 1995 report even mentions the 1974 incident.

EI's Contention N states as follows:

> [DCS's] evaluation of the health effect to the local population from routine operation of the MOX Facility is invalid because its [environmental report] fails to give adequate attention to the pathways by which groundwater could become contaminated due to such unsuitable geological conditions of the SRS area as having a shallow water table or as a result of SRS activities in the past. Neither the [DCS environmental report] or their CAR discuss U.S. Department of Interior's 1967 study, Geology and Ground Water of the SRP and Vicinity, SC or the [National Academy of Sciences] report by the Committee on Geologic Aspects of Radioactive Waste Disposal (May 1966) both were prepared for the Atomic Energy Commission. Neither the DOE nor DCS have complied with NEPA in regard to fully considering alternatives to locating the MOX Facility at the SRS or the alternatives that offer more benefits and fewer costs for disposing of excess weapons plutonium.

EI's Contentions, at 3-4. Contention N may be read as containing three contentions. For the reasons discussed below, the Board should reject this contention.

To properly support a contention that DCS's environmental report "fails to give adequate attention to the pathways by which groundwater could become contaminated," EI must do more than generally reference the environmental report. The report's Section 4.4, titled "Hydrology," is clearly relevant to the EI charge at issue here, yet the contention is silent as to why Section 4.4 is inadequate. This failure denies the parties proper notice of what alleged inadequacies EI seeks to litigate. Moreover, the reference to "SRS activities in the past" makes it unclear whether EI is even focusing here on potential future impacts from the proposed MOX Facility.

EI is even more vague in the last part of its Contention N, in stating that DCS failed to comply with NEPA by not "fully considering alternatives to locating the MOX Facility at the SRS." Several different sections of the DCS environmental report discuss alternatives, but EI gives no hint as to which of these sections it finds faulty. Additionally, as discussed above regarding EI's Contention K, its charge that the DOE failed to comply with NEPA concerns issues falling outside the scope of the matters set forth in the Notice, and are therefore issues not properly before this Board.

EI also fails to establish why the fact that neither the DCS environmental report nor the CAR discusses two federal government studies (published in 1966 and 1967) constitutes a dispute on

a material issue between EI and DCS. Absent any showing that these studies contain unique and relevant safety or environmental information that should now be considered, this middle part of Contention N is deficient under 10 C.F.R. § 2.714(b)(2)(iii).

Accordingly, for all of the reasons set forth above, the Board should reject Contention N in its entirety.

EI's Contention O states as follows:

> The Applicants fail to explain fully what equipment is required in terms of overcoming the accidents, leaks, worker exposures or exposure to the public, etc., such as those that have happened at facilities where plutonium and uranium are present. (Nuclear Fuel Services in West Valley, New York, SRS, Westinghouse plant on Bluff Road in Columbia, SC and facilities in other countries, including COGEMA facilities in France, etc.)

EI's Contentions, at 4. This EI contention is too vague to be admissible. The DCS document (or documents) which allegedly failed to adequately explain the required equipment is not specified. The relevance of incidents at other facilities containing plutonium and uranium is not established. EI also fails to show that its "Map 1" attachment (depicting estimates of airborne routes tritium gas took following an accidental release at SRS in 1974) is relevant to this contention. Accordingly, the Board should reject Contention O.

EI's Contention P states as follows:

> The Applicants do not explain the extent to which existing evidence from COGEMA's experience with operations similar to those proposed for the MOX Facility at the SRS has been factored into their evaluation of health effects to local populations as a result of normal operation conditions or during accidents. The presentations in the [DCS environmental report] and CAR and listings of the references used support the conclusion that it is assumptions and theoretical modeling which are the major basis for the Applicants' predictions regarding health effect and other impacts from the MOX facility.

EI's Contentions, at 4. The Board should not admit this contention. While EI's references to the presentations "and listings of the references used" in the DCS environmental report and CAR indicate that EI has reviewed these documents, EI fails to specify with which portions of these DCS documents it takes issue. This failure denies the parties proper notice of what alleged

inadequacies EI seeks to litigate, since the bases for EI's conclusion (that the DCS predictions on what health effects and other impacts the MOX Facility would produce rests on "assumptions and theoretical modeling") cannot be properly checked and examined.

Moreover, even if EI's conclusion is assumed to be valid, EI does not explain how its advocated reliance on "existing evidence from COGEMA's experience" (involving operations similar, but not identical to, those which would be used at the proposed MOX Facility) would avoid using the same type of predictions and assumptions it now criticizes DCS for relying on. EI also fails to show that its "Map 1" attachment (depicting estimates of airborne routes tritium gas took following an accidental release at SRS in 1974) is relevant to this contention. Accordingly, for the reasons stated above, the Board should reject Contention P.

EI's Contention Q states as follows:

> The Applicants, in Section 4.4 Hydrology of the [DCS environmental report], have failed to demonstrate that radionuclides leaked from the MOX Facility or some related operation could not migrate downward to the aquifers. The Applicants are depending on the liquid effluent system of the Department of Energy's (DOE). This system has not been through the NRC's licensing process.

EI's Contentions, at 5. While this contention is a bit more specific than many of the other EI contentions discussed above, the Board should reject it. Section 4.4 of the DCS environmental report contains approximately eight full pages of text, none of which is cited or quoted by EI. As discussed in Section I, *supra*, to be admissible a contention must contain, *inter alia*, cites to the specific portions of the application in dispute and the supporting reasons for each dispute, or the contention must identify each instance where the petitioner thinks that the application does not contain relevant information. *See* 10 C.F.R. §2.714(b)(2)(iii). Moreover, in discussing this requirement, the Commission has stated that the mere referencing of documents "does not provide an adequate basis for a contention." *Calvert Cliffs, supra,* CLI-98-25, 48 NRC at 348 (citation omitted). Accordingly, the Board should find that Contention Q is not admissible.

EI's Contention R states as follows:

> There is no section in either the [DCS environmental report] or CAR which identifies the specific benefits and costs of fabricating MOX fuel nor of the overall plan of disposing of excess weapons plutonium by means of the MOX proposal. Consideration of alternatives in terms of how each compares to the MOX fuel option is therefore impossible. This defect and the lack of consideration of what happens before the MOX fabrication operation and what happens following are among the numerous examples of the Applicants disregarding the intent and provisions of the NEPA.

EI's Contentions, at 5. This contention is too vague to be admissible. For example, with respect to the anticipated costs of fabricating MOX fuel, Section 5 of the DCS environmental report contains 56 pages of text pertaining to such environmental costs. With respect to the consideration of alternatives, Sections 1 and 6 of the DCS environmental report discuss various alternatives. To state an admissible contention, EI must do more than make blanket criticisms of DCS documents, and must do more than generally reference NEPA. Accordingly, the Board should reject Contention R.

EI's Contention S states as follows:

> The Applicants in their [environmental report] do not take into consideration that children and babies suffer more damage from exposure to radiation than do adults (*See* 5.2.10.1 Radioactive doses to the public). This along with numerous other defects in the Applicants reports make their evaluations of health impacts from the MOX facility invalid.

EI's Contentions, at 5. The Board should reject this contention. Contention S appears to be based on the fact that one of the assumptions made regarding anticipated radiation doses produced by normal operations of the proposed MOX Facility was that the surrounding population is composed entirely of adults. *See* page 5-15 of the DCS environmental report (third bullet). But EI cites no authority, and provides no evidence or supporting discussion that this one assumption makes the entire DCS evaluation of MOX Facility health impacts invalid. Accordingly, the Board should reject Contention S.

EI's Contention T states as follows:

> The Applicants in their [environmental report] (Section 5.2.10.2) fail to take into consideration that there are members of the public who spend time/or travel within the SRS boundaries, including persons who belong to E.I.

EI's Contentions, at 5. This vague contention should be rejected. The relationship between Section 5.2.10.2 of the DCS environmental report (titled "Radiation Doses to Site Workers") and members of the public who travel or otherwise spend time within the SRS boundaries is not explained or specified. Thus, no disputes between EI and DCS are even identified in this contention. Accordingly, the Board should rule that Contention T is not admissible.

EI's Contention U states as follows:

> The lack of coverage on the subject of fires and their potential for spreading radioactive particulate matter is a flaw which makes the Applicants' evaluations of safety and health impacts invalid. This ties in with the deficiencies regarding emergency planning and considerations of such local concerns as those associated with residents not being informed or trained about what to do during accidents. Even volunteer firemen may not have the background or equipment to protect those along the fallout route, whether from the MOX Facility or on a highway over which radioactive shipments travel. In the case of transportation accidents, there is the problem of not having monitoring stations and other types of equipment to help in determining the path which a release of gases or radioactive particulate matter may take.

EI's Contentions, at 5-6. EI's final contention may be read as containing three contentions. For the reasons discussed below, the Board should rule that Contention U is not admissible.

The first part of this contention appears to reference the CAR in stating that DCS's evaluations of safety and health impacts are invalid due to the alleged "lack of coverage on the subject of fires and their potential for spreading radioactive particulate matter." In fact, Chapter 7 and Section 11.4.8 of the CAR address the subject of fires. In the absence of proper citations to these (or any other) parts of the CAR or the DCS environmental report, this first portion of Contention U fails to adequately identify any disputes between EI and DCS.

The last portion of Contention U is equally vague. EI states that the lack of monitoring stations and other types of unspecified equipment creates a problem "in determining the path which a release of gases or radioactive particulate matter may take" in the event of transportation

accidents. Such accidents are discussed in Section 5.4 of the DCS environmental report. EI cites neither this section, nor any of the references therein (*see, e.g*, Appendix E of the DCS environmental report), and thus fails to adequately identify any disputes between EI and DCS relevant to transportation accidents.[60]

Similarly, the middle portion of Contention U fails to state a valid contention. EI provides no cites regarding alleged emergency planning deficiencies contained in the CAR, the DCS environmental report, or any other DCS document. As previously stated by the Staff in this proceeding (*see* June 25 Answer, at 14 n.22), pursuant to Section 14.5.1 of the "Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility," NUREG-1718, DCS is not expected to submit an emergency plan as part of its CAR; and at the time DCS applies for an operating license, an emergency plan is not required if DCS can demonstrate that the maximum dose to a member of the public offsite due to a release of radioactive materials would not exceed the limits specified in 10 C.F.R. § 70.22(i)(1)(i-ii). EI's vague reference to emergency planning deficiencies fails to meet the contention rule's specificity requirements.

Accordingly, for the reasons stated above, the Board should reject Contention U in its entirety.

CONCLUSION

[60] Even if this portion of Contention U is read together with EI's Contention M, a valid contention is not stated. EI provides no evidence or discussion on the probability of either weapons-grade plutonium, fresh MOX fuel, or spent MOX fuel becoming airborne as the result of a transportation accident. EI's "Map 1" attachment (depicting estimates of airborne routes tritium gas took in 1974 following an accidental release from a plant located at the SRS) is not shown to be relevant to transportation accidents. EI further fails to provide any evidence that -- assuming weapons-grade plutonium, fresh MOX fuel, or spent MOX fuel became airborne following a transportation accident -- such material would behave in ways similar to the 1974 tritium gas release.

For the reasons stated above, the Staff concludes that (1) with respect to GANE, its Contentions 3, 6, and 9 are admissible, and the remainder are not admissible; (2) with respect to the contentions submitted by Mr. Moniak and BREDL, none of them are admissible; and (3) with respect to EI's Contentions, none of them are admissible. Accordingly, based on this response and the earlier Staff responses regarding questions of standing, the Staff requests the Board to rule that only GANE be allowed to participate as a party, along with DCS and the Staff, in this CAR proceeding.

Respectfully submitted,

/RA/

John T. Hull
Counsel for NRC Staff

Dated at Rockville, Maryland
this 12th day of September, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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 RESPONSE TO CONTENTIONS SUBMITTED BY DONALD MONIAK, BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE, GEORGIANS AGAINST NUCLEAR ENERGY, AND ENVIRONMENTALISTS, INC." have been served upon the following persons this 12th day of September, 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.

Administrative Judge *
Thomas S. Moore, Chairman
U. S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, D.C. 20555

Administrative Judge *
Charles N. Kelber
U. S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, D.C. 20555

Administrative Judge *
Peter S. Lam
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, D.C. 20555

Donald J. Moniak
Blue Ridge Environmental Defense League
P.O. Box 3487
Aiken, SC 29802
(E-mail: **donmoniak@earthlink.net)**

Office of Commission Appellate Adjudication*
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, DC 20555-0001
(E-mail: **hrb@nrc.gov)**

Glenn Carroll
Georgians Against Nuclear Energy
P.O. Box 8574
Atlanta, GA 30306
(E-mail: **atom.girl@mindspring.com)**

Donald J. Silverman, Esq.
Marjan Mashhadi, Esq.
Alex S. Polonsky, Esq.
Morgan, Lewis & Bockius, LLP
1800 M Street, NW
Washington, DC 20036-5869
(E-mail:
dsilverman@morganlewis.com;
mmashhadi@morganlewis.com;
apolonsky@morganlewis.com)

Ruth Thomas, President **
Environmentalists, Inc.
1339 Sinkler Road
Columbia, SC 29206

Edna Foster **
120 Balsam Lane
Highlands, NC 28741

Office of the Secretary *
ATTN: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-15D21
Washington, D.C. 20555

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

Dated at Rockville, Maryland
this 12th day of September, 2001