

August 20, 2002

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

DOCKETED  
USNRC

August 21, 2002 (5:25PM)

Before the Presiding Officer

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of	)	
	)	
Nuclear Fuel Services, Inc.	)	Docket No. 70-143
	)	SNM License 124
(Blended Low Enriched Uranium Project)	)	

**APPLICANT’S ANSWER TO REQUEST FOR HEARING AND AREAS OF  
CONCERN OF THE OAK RIDGE ENVIRONMENTAL PEACE  
ALLIANCE, THE TENNESSEE ENVIRONMENTAL COUNCIL,  
THE STATE OF FRANKLIN GROUP OF THE SIERRA CLUB, AND  
THE FRIENDS OF THE NOLICHUCKY RIVER VALLEY**

Applicant Nuclear Fuel Services, Inc. (“Applicant” or “NFS”) files this answer to the request for a hearing of the Oak Ridge Environmental Peace Alliance (“OREPA”), the Tennessee Environmental Council (“TEC”), the State of Franklin Group of the Sierra Club (“Sierra Club”), and the Friends of the Nolichucky River Valley (“FONRV”), collectively “Petitioners.”<sup>1</sup> NFS submits this answer pursuant to 10 C.F.R. § 2.1205(g). NFS respectfully requests that the Presiding Officer deny Petitioners’ request for a hearing for lack of standing and for failure to submit an admissible area of concern.

**I. FACTUAL AND LEGAL BACKGROUND**

On February 28, 2002, NFS submitted a request for an amendment to Special Nuclear Material License SNM License 124 to authorize the storage of low-enriched uranium (“LEU”)-bearing materials at the Uranyl Nitrate Building (“UNB”) at NFS’s

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<sup>1</sup> Request for Hearing by Oak Ridge Environmental Peace Alliance, Tennessee Environmental Council, The State of Franklin Group/Sierra Club, Friends of the Nolichucky River Valley (Aug. 8, 2002) (“Request”).

nuclear fuel fabrication and uranium recovery facilities in Erwin, Tennessee.<sup>2</sup> On July 9, 2002, the NRC published a notice in the Federal Register that it was considering the NFS license amendment request and had prepared an Environmental Assessment (“EA”) and had made a Finding Of No Significant Impact (“FONSI”) for the amendment. 67 Fed. Reg. 45,555, 45,558 (2002).<sup>3</sup> The notice stated that interested persons could file a written request for hearing on the license amendment pursuant to 10 C.F.R. § 2.1205(a) by August 8, 2002. Id.

The license amendment is the first of three amendments that will be necessary to support process operations associated with the Blended Low-Enriched Uranium (“BLEU”) Project. Id. The BLEU Project is part of a Department of Energy (“DOE”) program to reduce stockpiles of surplus high enriched uranium (“HEU”) through re-use or disposal as radioactive waste.<sup>4</sup> Re-use of the HEU as LEU is the favored option because it converts nuclear weapons grade material into a form unsuitable for weapons, it allows the material to be used for peaceful purposes, and it allows the recovery of the commercial value of the material. Framatome ANP, Inc. has contracted with NFS to downblend surplus HEU material to an LEU nitrate solution which will be transferred to the UNB. Id.

The UNB will be located on the NFS site in Erwin, Tennessee, and will store LEU solutions prepared at and shipped from the DOE Savannah River site. EA at 1-2. The UNB will also store solutions prepared at the NFS site, if license amendments for such

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<sup>2</sup> Letter from B. Marie Moore, Vice President, Safety and Regulation, NFS, to Director, Office of Nuclear Materials Safety and Safeguards, U.S. NRC (Feb. 28, 2002) (“NFS Letter”).

<sup>3</sup> On March 4, 2002, the NRC published a notice in the Federal Register that it was considering the license amendment and intended to prepare an EA on it and two additional related license amendments proposed by NFS. 67 Fed. Reg. 9,791 (2002).

<sup>4</sup> U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, NMSS, Environmental Assessment for Proposed License Amendments to Special Nuclear Material License No. SNM-124 Regarding Downblending and Oxide Conversion of Surplus High-Enriched Uranium (June 2002) (“EA”) at 1-3.

operations are approved. Id. at 2-5. The solutions will be stored in tanks within a diked area of the UNB. Id.

The EA found that the proposed amendments would not result in significant adverse impacts to the environment. EA at 5-1. Normal operations are not expected to have a significant impact on air quality or water quality. See id. at 5-1 to 5-3. Specifically, discharges from the proposed action are not expected to have a significant impact on the water quality in the Nolichucky River. Id. at 5-2. Radiological impacts of normal operations will be minimal, as the maximally exposed individual is projected to receive no more than 2.2 mrem per year, which is far below the regulatory limit of 100 mrem per year and the ALARA (as low as reasonably achievable) constraint of 10 mrem per year. Id. at 5-5. With respect to potential accidents, the EA found that the safety controls to be employed in plant processes will ensure that the processes are safe. Id. § 5.1.2.

Petitioners filed their hearing request on August 8, 2002.<sup>5</sup> Petitioners assert that they are groups “with an interest in protecting the quality of the environment of East Tennessee and the Nolichucky River.” Request at 2. The petitioner groups assertedly have members “who live and/or own property and/or recreate in the area of the NFS Erwin facility and/or the Nolichucky River.” Id. The Request includes five “notices of appearance.” Four are from Dean Whitworth, Will Callaway, Steven A. Broyles, and Ralph Hutchison, who are respectively officers of each of the groups, authorizing the officers to participate on the groups’ behalf. One is from Park Overall, entering an appearance on behalf of all of the groups and authorizing her to sign the hearing request on their behalf. The Request also includes declarations from Park Overall, Dean

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<sup>5</sup> Letter from Park Overall to Secretary, U.S. NRC (Aug. 8, 2002), attached to Request.

Whitworth, Chris Irwin, and Wilhelmina Williams, stating their various memberships in the groups and asserting concerns regarding the NFS facility.

The Request asserts that it “addresses only environmental issues raised by the Environmental Assessment.” Request at 1. It alleges that Petitioners’ health and property interests and their interests in the environment would be injured by the unsafe operation of the NFS Erwin facility. Id. at 2-3. It claims that the NRC should have prepared an environmental impact statement (“EIS”) for the license amendments, that the NRC acted unreasonably when it issued a FONSI for the amendments, and that the NRC should not permit NFS to undertake any new operations or accumulate any additional radioactive material on site until it determines that NFS has sufficient resources to remediate alleged environmental contamination on the site. Id. at 5, 7, 8.

NFS requests that the Request be denied because Petitioners lack standing, in that they do not show that they would suffer any injury in fact from the granting of the license amendments. NFS also requests that the Request be denied because Petitioners have failed to articulate any areas of concern that warrant a hearing on the amendments.

## **II. ANALYSIS**

Under the notice of opportunity for hearing, requests for a hearing on the NFS license amendment are to be evaluated under 10 C.F.R. Part 2, Subpart L. 67 Fed. Reg. at 45,558. Under Subpart L, a petitioner requesting a hearing must demonstrate the timeliness of its request, that it has standing, and that it has areas of concern “germane” to the subject matter of the proceeding. Atlas Corp. (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 422 (1997); 10 C.F.R. §§ 2.1205(e) and (h). The Commission does not permit “notice pleadings” with respect to standing and areas of concern. Shieldalloy Metallurgical Corp. (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 353-54 (1999). Rather, it “insist[s] on detailed descriptions of the Petitioner’s positions on issues going to both standing and the merits.” Id. at 354.

## **A. Petitioners Do Not Have Standing**

In determining whether to grant a petitioner's request to hold a hearing, the Presiding Officer must first determine whether the petitioner meets the judicial standards for standing and must consider, among other factors:

- 1) the nature of the requestor's right under the [Atomic Energy] Act to be made a party to the proceeding;
- 2) the nature and extent of the requestor's property, financial, or other interest in the proceeding; and
- 3) the possible effect of any order that may be entered in the proceeding on the requestor's interest.

10 C.F.R. § 2.1205(h). This is the test for standing familiar in NRC proceedings. See, e.g., Sequoyah Fuels Corp. (Gore, Oklahoma Site Decommissioning), CLI-01-02, 53 NRC 9, 13 (2001). Since the Petitioners are organizations, however, they must also meet the test for organizational standing. See Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994). We show below that Petitioners fail to meet these applicable standards.

### **1. Organizational Standing**

In order to establish standing, an organization must show potential injury to the interests of the organization or its members. Yankee Nuclear, CLI-94-3, 39 NRC at 102 n.10. Injury to an organization's interests must constitute "discrete institutional injury to itself." See International Uranium (USA) Corp. (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001). Injury to general environmental and policy interests is clearly not sufficient. Id.; see International Uranium (USA) Corp. (White Mesa Uranium Mill), LBP-02-03, 55 NRC 35, 39 (2002). If an organization seeks standing through asserted harm to its members' interests (i.e., representational standing), "the organization must show how at least one of its members may be affected by the licensing action, must

identify the member, and must show that the organization is authorized to represent that member.” White Mesa, CLI-01-21, 54 NRC at 250.

Here, the Petitioners do not assert institutional injury. Rather, they claim that they have representational standing, in that they are interested in protecting the quality of the environment and that they have members whose health, property, and environmental interests would allegedly be harmed by the NFS facility. Request at 2-4. Therefore, each group must show that at least one of its members may be affected by the proposed license amendment, it must identify the member, and it must show that the group is authorized to represent the member. White Mesa, CLI-01-21, 54 NRC at 250.

Each Petitioner group has identified at least one group member and has shown that the group is authorized to represent that member. See Declaration of Park Overall ¶ 6 (TEC, OREPA, FONRV); Declaration of Dean Whitworth ¶ 3 (Sierra Club); Declaration of Chris Irwin ¶ 3 (OREPA); Declaration of Wilhelmina Williams ¶¶ 4, 5 (FONRV). As discussed below, however, Petitioners have not shown that the members that they are authorized to represent have standing themselves and thus Petitioners’ Request should be denied.

## **2. Petitioner Groups’ Members Lack Standing**

The Petitioner groups lack standing because their individual members lack standing.

To demonstrate standing in materials licensing cases under Subpart L, a petitioner must allege: (1) an actual or threatened, concrete and particularized injury, that (2) is fairly traceable to the challenged action, (3) falls among the general interests protected by the Atomic Energy Act (or other applicable statute such as the National Environmental Policy Act) and (4) is likely to be redressed by a favorable decision.

Sequoyah Fuels, CLI-01-02, 53 NRC at 13. The burden of establishing the alleged injuries is on the petitioner. Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility – Decommissioning Plan), LBP-93-4, 37 NRC 72, 81 (1993). Furthermore,

“section 2.1205(e) of [the Commission’s] procedural regulations requires petitioners seeking a hearing to provide a detailed description as to why they have standing.”

Shieldalloy, CLI-99-12, 49 NRC at 354.

“Since a licensing amendment involves a facility with ongoing operations, a petitioner’s challenge must show that the amendment will cause a ‘distinct new harm or threat apart from the activities already licensed.’” White Mesa, CLI-01-21, 54 NRC at 251 (emphasis added). “Conclusory allegations about potential radiological harm from the facility in general, which are not tied to the specific amendment at issue, are insufficient to establish standing.” Id.

To provide standing, asserted harms must be more than “unfounded conjecture;” petitioners must show “a realistic threat . . . of direct injury.” White Mesa, CLI-01-21, 54 NRC at 253. Even in a reactor license amendment case, a petitioner cannot establish standing by simply enumerating the proposed license changes and alleging without substantiation that the changes will lead to offsite radiological consequences.

Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 & 2), CLI-99-4, 49 NRC 185, 192 (1999). Vague or cryptic statements regarding petitioners’ location, their activities, or their potential injuries are clearly insufficient. See Atlas, LBP-97-9, 45 NRC at 426-27. If petitioners claim that there is a potential for injury from accidents, they must show that the accident scenario(s) are credible and that the accident(s) would have a “‘particular and concrete’ impact” at the distances from the facility at which the petitioners are located. Babcock and Wilcox, LBP-93-4, 37 NRC at 84. Similarly, petitioners alleging harm from facility effluents or contamination must explain how the effluents or contamination would have concrete impact upon them. Id. at 84, 92; see Atlas, LBP-97-9, 45 NRC at 426 (alleged radiological contacts must be concretely delineated); see also White Mesa, CLI-01-21, 54 NRC at 252-53. Furthermore, mere potential exposure to small doses of radiation within regulatory limits is not sufficient, as

it does not constitute “distinct and palpable” injury. See Babcock and Wilcox, LBP-93-4, 37 NRC at 87-88.

Unlike nuclear power reactor licensing proceedings, in materials licensing proceedings there is no presumption that a petitioner has standing merely because he or she lives in or frequents a location some distance from a facility. Informal Hearing Procedures for Materials Licensing Adjudications, Proposed Rule, 52 Fed. Reg. 20,089, 20,090 (1989). To show injury-in-fact petitioners “must provide some evidence of a causal link between the distance they reside from the facility and injury to their legitimate interests.” Babcock and Wilcox, LBP-93-4, 37 NRC at 83-84, 87 (rejecting per se standing for petitioners living as close as one-eighth of a mile from and visiting an apartment “within one foot” of the facility).

Similarly, close proximity to a radioactive waste transportation route, alone, is not sufficient to establish standing. Northern States Power Co. (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 43-44 (1990); see International Uranium (USA) Corp. (White Mesa Uranium Mill), CLI-01-18, 54 NRC 27, 31-32 (2001).

Nuclear waste safely and regularly moves via truck and rail throughout the nation under regulations of the NRC and Department of Transportation (49 C.F.R. Parts 100-179). The mere fact that additional radioactive waste will be transported if decommissioning is authorized does not ipso facto establish that there is a reasonable opportunity for an accident to occur [on a route one mile from petitioner’s residence], or for the radioactive materials to escape because of accident [sic] or the nature or the substance being transported.

Pathfinder, LBP-90-3, 31 NRC at 43 (emphasis added). Rather, the petitioner must demonstrate that the subject licensing action “is defective in a manner so as to cause the injuries described.” Id. at 44; see also White Mesa, LBP-02-03, 55 NRC at 45-46 (small increase in truck traffic alone provides no basis for standing).

The fact that Petitioners assert that the NRC should have prepared an EIS for the NFS license amendment, Request at 5, does not obviate the need for Petitioners to



otherwise establish standing. Although having an EIS prepared is a procedural right, “the petitioner must suffer some concrete injury from the proposed agency action, which must still be shown apart from having any interest in having the procedures observed.”

Babcock and Wilcox, LBP-97-9, 45 NRC at 93. Petitioners unable to show concrete injury to legitimate health, safety, or environmental interests “are unable to establish their standing to pursue their concerns about the agency’s compliance with NEPA’s procedural requirements.” Id. at 93-94. As the Supreme Court put it, one living next to the site for the proposed construction of a federally licensed dam has standing to challenge the agency’s failure to prepare an EIS, even though the EIS may not cause the license to be withheld and the dam may not be built for many years. Lujan, 504 U.S. at 572 n.7. However, one living on the other side of the country—who has no concrete interest possibly affected by the dam—has no such right. Id. Individuals can assert procedural rights “so long as the procedures in question are designed to protect some threatened concrete interest of his that is the ultimate basis of his standing.” Id. at 573 n.8.

Here, Petitioners fail to demonstrate standing because they fail to show a realistic threat of direct, concrete, and palpable injury that is fairly traceable to the proposed license amendment. Petitioners impermissibly point to asserted harms connected to past or ongoing operations at the NFS facility and they make only impermissibly vague and speculative claims, lacking in all detail, about potential harm arising from the amendment.

**a. Park Overall**

Ms. Park Overall states that she is a member of TEC, OREPA, and FONRV and has authorized those groups to represent her in a proceeding on the NFS amendment. Overall Dec. ¶ 6. Her principle residence is in North Hollywood, California, but she owns a farm in Afton, Tennessee, where she lives part of each year, “sometimes for as long as two months.” Id. ¶¶ 1-2. Her farm is on the banks of the Nolichucky River,

“about 31 miles” downstream from the NFS Erwin facility. Id. ¶ 3. Ms. Overall states that she is “concerned that if [she is] ever able to swim or fish in the Nolichucky River again, [her] health will be affected by chemical and radioactive effluents from the NFS-Erwin plant.” Id. ¶ 5. She is “concerned about the effects of increased pollution from the Erwin plant on the quality of [her] drinking water,” because the town of Afton assertedly gets its water from the river. Id. Finally, she states that she is “concerned about the effects of an increase in the NFS’s plant’s effluent to the Nolichucky River on [her] property values.” The Request asserts that Ms. Overall is “concerned about the effect of chemical and radioactive contamination of the river on plants and wildlife, which she enjoys,” Request at 4, but her declaration contains no such statement.<sup>6</sup> See Overall Dec.

Ms. Overall lacks standing for a number of reasons. First, she states that she is “concerned,” in a number of respects, about potential contamination of the river from the NFS plant, but she never discusses in any respect any contamination of the river that would occur under the NFS plant license amendment. “Concern” over possible harm, alone, is not a showing of a realistic threat of direct injury. See White Mesa, CLI-01-21, 54 NRC at 253; Atlas, LBP-97-9, 45 NRC at 424 (rejecting petition claiming only that amendment request was “adverse” to petitioner’s health and safety).<sup>7</sup> While Ms. Overall states that her farm is located 31 miles downstream from the NFS plant, distance alone is not sufficient to establish the likelihood of concrete and palpable harm. Rather, Ms. Overall “must show, in accordance with section 2.1205(g), what particular impact the

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<sup>6</sup> It is generally the practice in NRC proceedings for petitioners to make factual averments by notarized affidavit or declaration. See Atlas, LBP-97-9, 45 NRC at 427 n.4. While sworn affidavits are not required, “petitioners to intervene are required . . . to provide some form of substantiating evidence for their factual assertions regarding standing.” Shieldalloy, CLI-99-12, 49 NRC at 356. The statements in Petitioners’ Request that are not in their individual declarations are not so substantiated here.

<sup>7</sup> Ms. Overall’s concern over potential harm should she resume fishing and swimming in the river sometime in the future, Overall Dec. ¶ 4, is not sufficient to establish standing because it is not imminent. Lujan v. Defenders of Wildlife, 504 U.S. 555, 564 (1992). She states that she has not done so since she was a child because of sedimentation in the river and she does not show that the sedimentation will diminish in the foreseeable future.

planned licensing action will have upon [her] legitimate (e.g., health, safety, or environmental) interests.” Babcock and Wilcox, LBP-93-4, 37 NRC at 83-84; see also Shieldalloy, CLI-99-12, 49 NRC at 355 (standing claims must be supported by “requisite detail”). Hence, she must “provide some evidence of a causal link” between the distance between her farm and the facility and injury to her interests. Babcock and Wilcox, LBP-93-4, 37 NRC at 84. She has provided no such link here. In addition, merely claiming that “effluents” from the plant would cause her harm, without describing in any respect their nature and extent and the nature and extent of the harm they will allegedly cause also renders her claim inadequate to establish standing. Id. at 84, 92. Finally, Ms. Overall does not relate even her concern over potential harm to the license amendment, as opposed to the past or ongoing operations of the facility. That is also fatal to her claim of standing. White Mesa, CLI-01-21, 54 NRC at 251.

The Request claims that the plant “produces hazardous and radioactive effluents” and “poses a hazard of accidental releases to the human environment of substances that may be hazardous to petitioners’ health and safety and to the environment.” Request at 3. First, this claim is inadequate because it is not tied to the license amendment application as opposed to past or ongoing operations. White Mesa, CLI-01-21, 54 NRC at 251. Second, it is inadequate because it does not explain in any way what the allegedly hazardous effluents are or how they pose any sort of threat to the river. “[A] petitioner who wants to establish ‘injury in fact’ for standing purposes must make some specific showing outlining how the particular radiological (or other cognizable) impacts from the nuclear facility or materials involved in the licensing action at issue can reasonably be assumed to accrue to the petitioner.” Atlas, LBP-97-9, 45 NRC at 426. Because the Request makes no specific showing, it is insufficient to establish standing for Ms. Overall or any of the other petitioners.

In a similarly vague fashion, the Request claims that the handling of HEU and hazardous chemicals “poses hazards of explosions and accidental chemical and radiological releases that could have adverse impacts on workers, the public, and the environment.” Request at 5. This is insufficient, first, because the Request does not tie the alleged potential for harm from accidents to the license amendment application. White Mesa, CLI-01-21, 54 NRC at 251. Mere mention of HEU is insufficient, in that the NFS plant currently processes scrap materials containing HEU to recover uranium. EA at 1-1. The claims are also insufficient because they are simply unexplained conjecture. White Mesa, CLI-01-21, 54 NRC at 253. More specifically, the Request does not show that any accident scenarios are credible—indeed, it does not even identify any scenarios—or that the accidents would have a “‘particular and concrete’ impact” upon Ms. Overall, based upon her stated residence 31 miles down river from the NFS plant. Babcock and Wilcox, LBP-93-4, 37 NRC at 84.

The Request asserts that “NFS-Erwin has a long history of contaminating the environment,” Request at 5, and requests that the NRC not permit any further operations at the facility until the NRC has investigated the extent of the contamination on the site and determined whether NFS has sufficient resources to clean it up, id. at 8. This claim is insufficient to establish standing because it is vague and is not related to the license amendment application. “Conclusory allegations about potential radiological harm from the facility in general, which are not tied to the specific amendment at issue, are insufficient to establish standing.” White Mesa, CLI-01-21, 54 NRC at 251.

The Request also claims that the potential adverse environmental impacts of transporting “five tons of liquid bomb-grade uranium” to the NFS plant are “significant.” That, without more, is simply far too vague to establish standing. See Atlas, LBP-97-9, 45 NRC at 424 (rejecting petition alleging only that amendment request was “adverse” to

petitioner's health and safety); see also Pathfinder, LBP-90-3, 31 NRC at 43-44 (there is no presumption of potential harm arising from radioactive materials transportation).

The Request claims that the adverse impacts of transportation "include . . . the consequences of a terrorist attack or sabotage." Request at 6. First, that claim is insufficient to establish standing because it is not redressable in this proceeding. One, the transportation of radioactive materials is not cognizable as a safety issue in this proceeding on the NFS facility license amendment. The amendment only concerns the authorization of the construction and operation (storage of LEU) of the Uranyl Nitrate Building at the NFS facility, not transportation of materials to and from the facility. 67 Fed. Reg. at 45,555. Two, the effects of terrorism are not cognizable as environmental impacts under NEPA in NRC proceedings. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-01-37, 54 NRC 476, 487 (2001), review pending, CLI-02-03, 55 NRC 155 (2002); Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831, 851 (1973). Therefore, the question of the vulnerability to terrorism of material shipments to or from the NFS facility is outside the scope of the proceeding. Thus, claims as to such vulnerability are not redressable and hence cannot establish standing. Cf. Shieldalloy, CLI-99-12, 49 NRC at 356.

Second, the claim is insufficient because the Request does not describe in any way how the material shipments to the plant are vulnerable or what the effects of an attack would be, i.e., it does not show how the radiological impacts of an attack could reasonably be assumed to affect Petitioners. See Atlas, LBP-97-9, 45 NRC at 426. Indeed, the Request does not even state where the Petitioners are located relative to the transportation routes for the material. In conclusion, neither Ms. Overall's declaration nor the factual claims in the Request show the potential that she will suffer injury-in-fact if the license application amendment is granted. Therefore, she lacks standing and the

groups she has authorized to represent her in the proceeding (TEC, OREPA, and FONRV) cannot derive standing from her.

**b. Dean Whitworth**

Mr. Dean Whitworth states that he is a member of the State of Franklin Group of the Sierra Club and has authorized that group to represent him in a proceeding on the NFS amendment. Whitworth Dec. ¶ 3. He lives in Butler, Tennessee<sup>8</sup> and states that he “frequently visit[s] the banks of the Nolichucky River, downstream of the Nuclear Fuel Services . . . plant, for the purposes of picnicking, wading, and recreational gold panning.” Id. ¶¶ 1, 2. Mr. Whitworth claims that he is “concerned that additional pollution of the stream that has been proposed by NFS will pose unacceptable harm to [him], [his] family, and friends.” Id. ¶ 2.

Mr. Whitworth’s declaration does not show the realistic potential for him to suffer direct injury from the proposed license amendment and therefore it does not establish his standing. Significantly, his declaration does not say how close he comes to the NFS plant. Simply being “downstream” of the plant is not sufficient to establish standing. See Atlas, LBP-97-9, 45 NRC at 426-27 (rejecting petition for using vague terms such as “near,” “close proximity,” “in the vicinity”). To establish standing, Mr. Whitworth must show what “particular impact” the licensing action will have upon his interests. Babcock and Wilcox, LBP-93-4, 37 NRC at 83-84. Thus, he must “provide some evidence of a causal link” between the distance between the plant and the location he frequents and injury to his interests. Id. at 84. In addition, failure to describe the nature and extent of the asserted “additional pollution” and the nature and extent of the harm it will allegedly cause also renders his claim inadequate to establish standing. Id. at 92.

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<sup>8</sup> Butler, Tennessee is approximately 25 miles from the NFS facility.

Mr. Whitworth's claims about the potential harm that would be suffered by his family and friends cannot establish standing because one cannot establish standing on the basis of potential harm to others (with the possible exception of minor children). Atlas, 45 NRC at 426 n.2 (citing Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 474 n.1 (1978)); Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989). Because Mr. Whitworth does not mention any minor children or describe the potential harm to them, this claim cannot establish his standing.

In addition to his own declaration, like the other Petitioners, the Request fails to articulate an injury-in-fact sufficiently to establish the standing of Mr. Whitworth. See Section II.A.2.a, supra. Therefore, neither Mr. Whitworth's declaration nor the factual claims in the Request show the potential that he will suffer injury-in-fact if the license application amendment is granted. Therefore, he lacks standing and the Sierra Club cannot derive standing from him.

**c. Chris Irwin**

Mr. Chris Irwin states that he is a member of OREPA and has authorized that group to represent him in a proceeding on the NFS amendment. Irwin Dec. ¶ 3. He lives in Knoxville, Tennessee<sup>9</sup> and states that he "boat[s] and hike[s] along the Nolichucky on a regular basis, but [he] restrict[s] [his] activities to the area upstream of the [NFS] plant." Id. ¶¶ 1, 2. Mr. Irwin claims that he "would boat and hike in the area downstream of the Erwin plant, but [he is] concerned about the effects on [his] health of radioactive and chemical effluents that NFS emits from the plant." Id. ¶ 2. He also claims that, "[i]f NFS is allowed to increase its radioactive and chemical effluents from the plant, this will

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<sup>9</sup> Knoxville, Tennessee is located approximately 90 miles from the NFS site.

discourage [him] even further from hiking or boating downstream of the Erwin plant.”

Id.

Mr. Irwin’s declaration does not show the potential for him to suffer injury in fact from the proposed license amendment and hence it does not establish his standing. Like Mr. Whitworth, his declaration does not say how close he comes to the NFS plant. Simply being “upstream” of the plant is not sufficient to establish standing. See Atlas, LBP-97-9, 45 NRC at 426-27 (rejecting petition for using vague terms). To establish standing, Mr. Irwin must go beyond general assertions and show in detail what “particular impact” the licensing action will have upon his interests. See Babcock and Wilcox, LBP-93-4, 37 NRC at 83-84; see also Shieldalloy, CLI-99-12, 49 NRC at 354 (requiring detail).

Mr. Irwin’s claim about potentially hiking and boating downstream of the NFS plant is also inadequate because it does not show the imminent potential for harm. Lujan v. Defenders of Wildlife, 504 U.S. 555, 564 (1992). He claims that he does not now conduct activities downstream of the NFS plant because of concerns over effluents from the plant. Irwin Dec. ¶ 2. He claims no intent to conduct activities downstream in the future, only that additional effluents would further discourage him from conducting activities downstream. Id. This claim does not even rise to the level of the respondents’ “some day” intention to return to an area where they could have suffered harm that the Supreme Court squarely rejected as the basis for standing in Lujan. See 504 U.S. at 564. Therefore, it cannot provide Mr. Irwin with standing here.

In addition to his own declaration, like the other Petitioners, the Request fails to articulate an injury-in-fact sufficiently to establish the standing of Mr. Irwin. See Section II.A.2.a, supra. Therefore, neither Mr. Irwin’s declaration nor the factual claims in the Request show the potential that he will suffer injury-in-fact if the license application



amendment is granted. Therefore, he lacks standing and OREPA cannot derive standing from him.

**d.      Wilhelmina Williams**

Ms. Wilhelmina Williams states that she is a member of FONRV and has authorized that group to represent her in a proceeding on the NFS amendment. Williams Dec. ¶¶ 4, 5. She lives in Chuckey, Tennessee.<sup>10</sup> Id. ¶ 1. She also states that she has a home that is part of an area owned by her parents “on the Cliffs of the Nolichucky River” that lies “about 20 miles” downstream of the NFS plant. Id. ¶ 3. She claims that she is concerned that her health and safety and the health and safety of her family and neighbors “may be damaged” by chemical and radioactive effluents from the NFS plant. Id. ¶ 5. She asserts that “increased pollution” from the NFS plant could damage “the ecological assets of this beautiful rural area.” Id. She is concerned that “any additional contamination from the Erwin Plant may have a detrimental effect on Chuckey’s water quality,” in that the town obtains its water from the Nolichucky River. Id. She asserts that “the agricultural industry could be damaged because food grown in the valley, watered directly from the river, . . . will be contaminated.” Id. She claims that “[t]he Class A soil could be damaged from the heavy metals deposited from the water and air.” Id. She asserts that “220,000 annual tourists,” who visit historical and archaeological sites on the river “will be affected by chemical and radioactive effluents from the NFS-Erwin plant.” Id. Finally, she claims that “[her] property values will be jeopardized.” Id.

Ms. Williams’ declaration does not show a realistic threat of direct injury from the proposed license amendment, see White Mesa, CLI-01-21, 54 NRC at 253, and hence it does not establish her standing. Like Ms. Overall, Ms. Williams states that her other home is located about 20 miles downstream from the NFS plant and she is concerned

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<sup>10</sup> Chuckey, Tennessee is located approximately 12 miles (20 miles down river) from the NFS site.

about water quality impacts. Distance alone, however, is not sufficient to establish the likelihood of concrete and palpable harm to her. Rather, Ms. Williams must show what “particular impact” the proposed amendment will have upon her interests and “provide some evidence of a causal link” between the distance between her home and the NFS facility and injury to her interests. Babcock and Wilcox, LBP-93-4, 37 NRC at 83-84. In addition, merely claiming that “chemical and radioactive effluents” from the plant would cause her harm, without describing in any respect their nature and extent and the nature and extent of the harm they will allegedly cause also renders her claim inadequate to establish standing. Id. at 92.<sup>11</sup> In the same vein, Ms. Williams’ mere statement of concern over harm to her property values, without more, is simply too vague to establish her standing. See Atlas, LBP-97-9, 45 NRC at 424. Nor is the claim tied to the proposed amendment as opposed to the effects of the existing facility. Finally, Ms. Williams does not say how often and for how long she visits her property on the cliffs of the Nolichucky. Her stated residence is in Chuckey, Tennessee. Owning land some distance from a plant and visiting it only occasionally is not sufficient to establish standing. Washington Public Power Supply System (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 336, 338 (1979).

Ms. Williams’ claim regarding potential damage to “the ecological assets of this beautiful rural area,” is also too vague to show that she would be “‘personally and individually’ injured” so as to establish her standing. See Shieldalloy, CLI-99-12, 49 NRC at 356; Atlas, LBP-97-9, 45 NRC at 426-27. Ms. Williams does not describe the ecological assets or say where they are. Nor does she describe the harm that would accrue to them or how it would result from the license amendment. She also does not show how harm to the ecology of the area would result in harm to her.

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<sup>11</sup> Similar to Mr. Whitworth, Ms. Williams’ claims about potential harm to family members and neighbors and tourists in the area cannot provide her with standing. Atlas, 45 NRC at 426 n.2; see supra.

Ms. Williams concern over damage to the agriculture industry is too remote and generalized to establish her standing. See Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1449 (1982); Boston Edison Co. (Pilgrim Nuclear Power Station), LBP-85-24, 22 NRC 97, 98, aff'd on other grounds, ALAB-816, 22 NRC 461 (1985). Furthermore, she does not show in any respect how unspecified "heavy metals," Williams Dec. ¶ 5, would come to enter the air or water as a result of the license amendment or how any emissions from the plant would cause palpable harm to the soil or the food. Nor does she show how any harm would accrue specifically to her. In addition to her own declaration, like the other Petitioners, the Request fails to articulate an injury-in-fact sufficiently to establish the standing of Ms. Williams. See Section II.A.2.a, supra. Therefore, neither Ms. Williams' declaration nor the factual claims in the Request show the realistic potential that she will suffer injury-in-fact if the license application amendment is granted. Therefore, she lacks standing and FONRV cannot derive standing from her.

**e. Conclusion**

As discussed above, none of the identified members of the Petitioner groups have standing. Therefore, none of the groups have standing and their petition should be denied.

**B. Petitioners Have Not Proffered an Admissible Area of Concern**

To obtain a hearing under Subpart L, a petitioner must also "describe in detail" "areas of concern" about the licensing activity in question. 10 C.F.R. § 2.1205(e)(3); see Shieldalloy, CLI-99-12, 49 NRC at 354. Areas of concern must be "germane to the subject matter of the proceeding." 10 C.F.R. § 2.1205(h). If the proceeding concerns a license amendment, germane areas of concern are limited to activities to be authorized by the amendment and do not include those authorized by the underlying license. See

Energy Fuels Nuclear, Inc. (Source Materials License No. SUA-1358), LBP-94-33, 40 NRC 151, 153-54 (1994).

Areas of concern must have some factual basis. “Prior to acceptance of an area of concern, there must at least be a reference to some authority giving rise to the concern.”

Molycorp., Inc. (Washington, Pennsylvania), LBP-00-10, 51 NRC 163, 175 (2000).

“‘Information and belief’ is patently inadequate.” Id. Concerns must be particularized in some respect and show some significance so as to “appear that the concern is at least worthy of further exploration.” See International Uranium (USA) Corp. (White Mesa Uranium Mill), LBP-02-06, 55 NRC 147, 153 (2002).

The concerns advanced by Petitioners here are inadmissible because they are devoid of particularity and factual basis, and in some respects, are not germane to the license amendment.

### **1. Preparation of an EIS**

Petitioners’ first concern is that the EA prepared by the NRC Staff is inadequate because the impacts of the three NFS license amendments are significant and thus warrant the preparation of an EIS. Request at 5. The Request claims without any detail or factual support that the handling and processing of HEU along with hazardous chemicals poses hazards of explosions and accidental releases that “could have significant impacts.” Id. This is simply too vague to be worthy of further exploration. The Request also does not state how the concern is related to the license amendment. As noted above HEU-containing material is currently processed at the NFS facility. See EA at 1-1.

The Request asserts that “NFS-Erwin has a long history of contaminating the environment, thus raising significant questions about whether it can operate under the amended license in a manner that protects the environment.” Request at 5. Yet the Request is completely unparticularized and does not show that the alleged contamination is related in any way to activities that would be conducted under the amendment.

The Request claims with no further detail or support whatsoever that “the potential adverse environmental impacts of transporting five tons of liquid bomb-grade uranium to the NFS-Erwin site are significant.” Request at 6. This is nothing more than “information and belief” that is patently inadequate to support an admissible concern. Molycorp, LBP-00-10, 51 NRC at 175. The request asserts that one possible effect of transporting the material to the NFS facility is the consequences of a terrorist attack. Id. As noted above, however, the effects of terrorist attacks are not cognizable as issues under NEPA in NRC proceedings. Private Fuel Storage, LBP-01-37, 54 NRC at 487; Shoreham, ALAB-156, 6 AEC at 851. Therefore, the issue of terrorism cannot be germane to the proceeding.

Next, the Request goes on to claim what must be included in an EIS. See Request at 6-7. Those issues are not germane to this proceeding because they are irrelevant where the agency has issued a FONSI on the basis of an EA.

## **2. Finding of No Significant Impact**

Next, the Request claims that the NRC Staff had insufficient information regarding the NFS license amendments when it issued the EA and the FONSI. Request at 7. The Request asserts that NFS had not submitted its second and third license amendments when the Federal Register notice on the EA was published and that “it [did] not appear” that the NRC Staff had reviewed the safety of any of the three amendments. Id. The Request asserts that without the other amendment applications, the NRC could not have concluded that the amendments would cause no significant environmental impact. Id. at 8.

This concern is not germane because it is essentially unripe with respect to the second and third amendments and wrong with respect to the first. At the outset, the NRC clearly had the first license amendment at the time it published the EA. See EA at 1-2. The NRC Staff performed its EA for all three license amendments to avoid segmentation

of the environmental review. 67 Fed. Reg. at 45,555. The basis for the NRC's assessment was environmental documentation provided by NFS. Id. As each license amendment is submitted, the NRC will perform a separate safety evaluation and an environmental review. If the review indicates that the EA does not fully evaluate the environmental effects of the amendment, then a supplemental EA or an EIS will be prepared. Id. Thus, there is currently no way to assess whether the EA accurately represents the amendments that have yet to be submitted. If the Petitioners wish to challenge any subsequent NRC decision with respect to the new amendments and the EA (or any supplemental EAs or EISs) they may do so when they are submitted. Now, however, there is simply no way to evaluate Petitioners' concern.

### **3. Past Environmental Contamination**

Finally, the Request asserts that the NRC should not allow NFS to undertake any new operations or accumulate any more radioactive material on site until the NRC has completed "a comprehensive site investigation" into the extent of environmental contamination that NFS has allegedly caused, the cost of cleaning it up, and whether NFS has sufficient resources to do so. Request at 8. It asserts that such a measure is necessary to assess the cumulative impacts of the additional operations at the NFS facility as well as the impacts if NFS goes bankrupt and is unable to operate the facility safely. Id. at 9.

This concern is not germane because it essentially relates to past operations at the NFS plant. The concern does not show in any way that the activities under the license amendment will contribute to contamination of the environment and hence will have impacts cumulative with past operations. Petitioners are merely speculating baselessly with the intent of litigating over past contamination that may have occurred at the NFS facility. Such speculation should provide no basis for an admissible concern.

### III. CONCLUSION

For the foregoing reasons, the Presiding Officer should deny Petitioners' request for a hearing on the license amendment.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Daryl Shapiro", written over a horizontal line.

Daryl Shapiro

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Vice President and General Counsel

Nuclear Fuel Services, Inc.

(301) 770-4255

Dated: August 20, 2002

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

In the Matter of	)	
	)	
NUCLEAR FUEL SERVICES, INC.	)	Docket No. 70-143
	)	
(Special Nuclear Material License)	)	

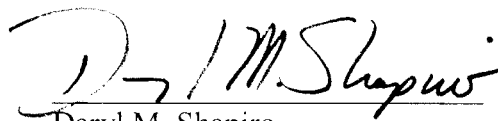
**CERTIFICATE OF SERVICE**

I hereby certify that copies of the "Applicant's Answer To Request For Hearing And Areas Of Concern Of The Oak Ridge Environmental Peace Alliance, The Tennessee Environmental Council, The State Of Franklin Group Of The Sierra Club, And The Friends Of The Nolichucky River Valley" were served on the persons listed below by deposit in the U.S. mail, first class, postage prepaid, this 20th day of August, 2002.

*Office of the Secretary U.S. Nuclear Regulatory Commission 11555 Rockville Pike One White Flint North Rockville, MD 20852-2738 Attention: Docketing and Service Branch (original and two copies)	C. Todd Chapman, Esq. King, King & Chapman, P.L.L.C. 125 South Main Street Greeneville, TN 37743
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Louis Zeller Blue Ridge Environmental Defense League P.O. Box 88 Glendale Springs, NC 28629	Park Overall 4843 Arcola Avenue North Hollywood, CA 91601
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Trudy L. Wallack 2210 W. Allens Bridge Road Greeneville, TN 37743	David Wallack 2210 W. Allens Bridge Road Greeneville, TN 37743
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Daryl M. Shapiro

\* Also served by overnight delivery



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August 20, 2002

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
11555 Rockville Pike  
One White Flint North  
Rockville, MD 20852-2738  
Attn: Docketing and Service Branch

**Re: Applicant's Answer To Request For Hearing And Areas Of Concern Of The Oak Ridge Environmental Peace Alliance, The Tennessee Environmental Council, The State Of Franklin Group Of The Sierra Club, And The Friends Of The Nolichucky River Valley**

Dear Ms. Vietti-Cook:

Enclosed for filing is the original and two copies of applicant Nuclear Fuel Services, Inc. ("NFS") "Answer To Request For Hearing And Areas Of Concern Of The Oak Ridge Environmental Peace Alliance, The Tennessee Environmental Council, The State Of Franklin Group Of The Sierra Club, And The Friends Of The Nolichucky River Valley." Please stamp and return the file copy in the enclosed self-addressed stamped envelope.

Respectfully submitted,



Daryl M. Shapiro

Enclosures