

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
NUCLEAR FUEL SERVICES, INC.)	Docket No. 70-143-MLA
)	SNM License 124
Blended Low Enriched Uranium Project)	
(Request for Material License Amendment for)	ASLBP No. 02-803-04
Authorization of Storage of Low-Enriched)	
Uranium at the Uranyl Nitrate Building))	

NRC STAFF'S RESPONSE TO MEMORANDUM AND ORDER RAISING QUESTIONS
REGARDING COMPLETENESS OF FEDERAL REGISTER NOTICEINTRODUCTION

Pursuant to the September 11, 2002 Order of the Presiding Officer, the Nuclear Regulatory Commission Staff (Staff) hereby responds to the questions raised in that Order regarding the adequacy of the *Federal Register* Notice issued July 9, 2002 regarding the license amendment application submitted by Nuclear Fuel Services, Inc. (NFS). The Staff submits that the failure to include specific identification of the amendment application was not inadvertent. Although the notice of the Environmental Assessment (EA) and the Finding of No Significant Impact (FONSI) was adequate, the notice of opportunity for hearing was inadequate in that it failed to provide appropriate notice of the license amendment application. To remedy this inadequacy, the Staff will publish a revised Federal Register notice which clearly sets forth the opportunity for hearing on the license amendment application.

BACKGROUND

On February 28, 2002, NFS filed an application for amendment of its license SNM-124 to authorize construction and operation of the Uranyl Nitrate Storage Building at the Nuclear Fuel Services site in Erwin, Tennessee. License Amendment Request to Support the Uranyl Nitrate

Building at the BLEU Complex, February 28, 2002 (ADAMS Accession No. ML020730343). On July 9, 2002, the NRC published in the *Federal Register* a notice that it was considering the amendment to SNM-124 and had prepared an Environmental Assessment (EA) and had made a Finding of No Significant Impact (FONSI) in support of the action. 67 Fed. Reg. 45,555, 45,558 (July 9, 2002). The notice provided that any person whose interest may be affected by this proceeding may file a request for a hearing, in accordance with 10 C.F.R. § 2.1205(d), within 30 days of the date of the notice. In response, several petitioners filed timely hearing requests. Requests for hearing were submitted (1) on August 6, 2002 by David Wallack; (2) on August 7, 2002, by Trudy L. Wallack; (3) on August 8, 2002, by the Oak Ridge Environmental Peace Alliance, Tennessee Environmental Council, the State of Franklin Group/Sierra Club, and Friends of the Nolichucky River Valley, Inc.; (4) on August 8, 2002, by the Blue Ridge Environmental Defense League, Inc.; and (5) on August 8, 2002, jointly by fifteen Tennessee residents.¹

On September 3, 2002, the Chief Administrative Judge of the Atomic Safety and Licensing Board designated a presiding officer to rule on the petitions under 10 C.F.R. Part 2, Subpart L, and conduct any hearing ordered. Designation of Presiding Officer, dated September 3, 2002. On September 11, 2002, the Presiding Officer ordered the Staff to respond to three questions regarding the adequacy of the *Federal Register* Notice issued on July 9, 2002. The Staff received an additional request on behalf of the Presiding Officer via electronic mail on September 17, 2002 relating to the public availability of the license amendment application.

¹ Julia Beach, David Byrd, Tamara Davis Chapman, William Cooper, Brandon Davis, Julia B. Evans, Denne D. Evans, Toni L. Foreman, Linnea Gilmer, JoAnna Hammonds, Whitney Johnson, Gerald M O'Connor, Jr., James Smith, Drew Walsh, and Peter Zars, collectively submitted requests for hearing through the same attorney in Letter from C. Todd Chapman, Esq., to NRC (August 8, 2002).

DISCUSSION

I. Was the Staff's Failure to Include Information Regarding the License Amendment Application Inadvertent?

The *Federal Register* Notice published on July 9, 2002 was intended to notice the EA and FONSI and contained the appropriate information for that notice. The notice of opportunity for hearing, however, should not have been published with the notice of the EA and FONSI. Rather, the notice of opportunity for hearing and the notice of the license amendment application should have been published upon receipt and docketing of the license amendment application. The Staff did not publish the notice of the license amendment application and the notice of opportunity for hearing upon receipt and docketing of the application, instead including the notice of opportunity for hearing with the notice of the EA and FONSI. The notice of opportunity for hearing contained within that notice, however, did not notice the proposed action, failed to provide the necessary information with regard to the license amendment application, and failed to identify the scope of the opportunity for hearing. Thus, while the failure to include identification information regarding the license amendment application in the *Federal Register* Notice published on July 9, 2002 was not truly inadvertent, it was the unintended consequence of an inappropriate notice.

II. How Can the Absence of Information Regarding the Application Be Justified In Light of Burden Placed on Requestors?

The Staff agrees with the Presiding Officer that the information regarding the license amendment application could have assisted the requestors in developing germane areas of concern. The revised notice of opportunity for hearing will describe the proposed action and identify all related information, documents and references. The scope of the opportunity for hearing will be limited to the licensing action requested in the license amendment application.

III. If the *Federal Register* Notice Is Deemed to Be Defective, What Remedy Is Available?

The Staff will publish an appropriate *Federal Register* Notice to properly notice the license amendment application and the notice for opportunity for hearing. As noted above, this revised

notice will include all related information, documents, and references to the license amendment application.

Regarding the remedy for the current hearing requestors, the Staff notes that each filed a timely request for a hearing based on the July 9, 2002 *Federal Register* Notice. The Staff does not believe that these requestors should be required to file an additional request for hearing in response to the revised *Federal Register* Notice. These requestors, however, may need or choose to supplement their original hearing requests once they have had the opportunity to review the pertinent documents described in the revised notice in order to properly address the scope of the opportunity for hearing. The notice will provide that any new parties who wish to file a request for a hearing based on the revised *Federal Register* Notice will have 30 days from the date of publication of the notice to file their request. The scope of any such request is limited to the action proposed by the license amendment application.²

IV. Is the entire license amendment application available for public inspection?

The original license amendment application was filed by NFS on February 28, 2002 (ADAMS Accession No. ML020730343). This application contains proprietary information which cannot be released for public inspection. Upon the Staff's request, NFS submitted a non-proprietary version of the application on May 9, 2002, which is available for full public inspection (ADAMS Accession No. ML021350445). NFS also submitted a revised license amendment application on August 23, 2002. (ADAMS Accession No. ML022610016). In addition, all other documents related to or referenced in the license amendment application or the EA, including Requests for Additional Information and the NFS response to those requests, are also available for public inspection.

² In the Staff's view, its intended course can be accomplished without affecting the jurisdiction of the Presiding Officer since it simply rectifies a deficiency regarding the notice of the very same matter now before the Presiding Officer.

CONCLUSION

In conclusion, the Staff recognizes that the July 9, 2002 *Federal Register* Notice was inadequate in that it failed to properly notice the opportunity for a hearing. In order to remedy this defect, the Staff will publish a revised notice to properly notice both the license amendment application and the opportunity for hearing.

Respectfully submitted

/RA/

Jennifer Euchner
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/RA/

David Cummings
Counsel for NRC Staff

Dated at Rockville, Maryland
this 19th day of September, 2002

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for Authorization of Storage of Low-Enriched)	ASLBP No. 02-803-04
Uranium at the Nitrate Building))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO MEMORANDUM AND ORDER RAISING QUESTIONS REGARDING COMPLETENESS OF FEDERAL REGISTER NOTICE" in the above-captioned proceeding have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), or by electronic mail as indicated by a double asterisk (**) on this 19th day of September, 2002.

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SUPPLEMENTAL CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO MEMORANDUM AND ORDER RAISING QUESTIONS REGARDING COMPLETENESS OF FEDERAL REGISTER NOTICE" in the above-captioned proceeding have been served on the following by deposit in the United States mail on this 19th day of September, 2002.

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