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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Presiding Officer

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

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

Applicant Nuclear Fuel Services, Inc. ("Applicant" or "NFS") files this answer to the request for a hearing of the Friends of the Nolichucky River Valley ("FONRV"), the State of Franklin Group of the Sierra Club ("Sierra Club"), the Oak Ridge Environmental Peace Alliance ("OREPA"), and the Tennessee Environmental Council ("TEC") collectively "Petitioners."¹ 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

A. Procedural Background

On February 28, 2002, NFS submitted a request for an amendment to Special Nuclear Material License No. SNM-124 to authorize the storage of low-enriched uranium ("LEU")-bearing materials at the Uranyl Nitrate Building ("UNB") at NFS' nuclear fuel

¹ Request for Hearing by Friends of the Nolichucky River Valley, State of Franklin Group of the Sierra Club, Oak Ridge Environmental Peace Alliance, and Tennessee Environmental Council, (Nov. 27, 2002) ("Request").

fabrication and uranium recovery facilities in Erwin, Tennessee.² The license amendment is the first of three amendments that will be necessary to support process operations associated with the portion of the Blended Low-Enriched Uranium ("BLEU") Project that will be performed at NFS. Id. at 66,173. 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.³ Re-use of the HEU as LEU is the favored option of the DOE program 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.

On July 9, 2002, the NRC Staff published a notice in the Federal Register that it had prepared the EA for the entire project, so as to avoid segmentation of the environmental review, and had made a Finding Of No Significant Impact ("FONSI") for the amendment. Environmental Assessment and Finding of No Significant Impact of License Amendment for Nuclear Fuel Services, Inc. 67 Fed. Reg. 45,555, 45,558 (2002). The Staff also noted that it was in the process of considering the February 28, 2002 license amendment application itself. Id. The Staff noted that it will perform a separate safety evaluation and environmental review for each of the NFS license amendment requests. Id. at 45,555. If the Staff finds that the current EA accurately reflects the effects of the project, then it will perform no further assessment for that request. Id. If it

² 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"); Environmental Statements; Availability, etc.: Nuclear Fuel Services, Inc., Notice of docketing, etc., 67 Fed. Reg. 66,172 (Oct. 30, 2002).

³ 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.

finds that the current EA does not accurately reflect the effects of the project, then it will perform another EA (or potentially an environmental impact statement ("EIS")). Id.

In response to the notice, several petitioners filed requests for a hearing and NFS filed responses opposing the requests. See Memorandum and Order (Raising Questions Regarding Completeness of Federal Register Notice) (Sept. 11, 2002) at 1. One of the petitioners complained that the notice was incomplete. Id. at 2. This ultimately led to the NRC Staff committing to issue a revised notice and the Presiding Officer suspending the proceeding until that point, at which the petitioners would be allowed to amend their petitions or file new petitions as they desired. See Memorandum and Order (Suspending Further Proceedings Pending Issuance of Revised Federal Register Notice) (Sept. 23, 2002) at 2-3.

On October 30, 2002, the NRC Staff published a revised notice of opportunity for hearing. 67 Fed. Reg. at 66,172 (corrected November 12, 2002, 67 Fed. Reg. 68,699). Applicant NFS was concerned that the revised notice remained unclear as to whether the scope of the hearing included only the environmental effects of the instant (first) license amendment request or whether it included the environmental effects of all three amendment requests (i.e., the entire EA) and filed a motion for clarification with the Presiding Officer on November 12, 2002. Applicant's Motion for Clarification of Scope of Proceeding (Nov. 12, 2002). The Presiding Officer ultimately ruled that "the scope of the proceeding is limited to those safety and environmental areas of concern that directly relate to the February 2002 [i.e., first] license amendment application." Memorandum and Order (Ruling on Motion for Clarification of Scope of Hearing) (Nov. 19, 2002).

B. The First License Amendment Application

Pursuant to the first license amendment request and as described in the EA, the UNB will be located on the NFS site in Erwin, Tennessee, and will store LEU nitrate solutions prepared at and shipped to NFS 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 operations are approved. Id. at 2-5. The LEU solutions will be stored in tanks within a diked area of the UNB. Id.

The EA found that none of the proposed amendments would 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 (the BLEU Project) are not expected to have a significant impact on the water quality in the Nolichucky River. Id. at 5-2. With respect to potential accidents, the EA found that the safety controls to be employed in plant processes for the BLEU Project will ensure that the processes are safe. Id. § 5.1.2. The first license amendment will cause only a fraction of the insignificant impacts caused by the BLEU Project as a whole, in that it will result in no discharges of chemical or radiological contaminants to the Nolichucky River and only a small fraction of the total airborne emissions of the project as a whole. See id. at 1-2 (proposed action consists of storage of low-enriched uranyl nitrate in tanks at the UNB); id. Tables 2.2 and 2.3 (UNB airborne emissions will be fraction of BLEU Complex emissions which will be fraction of BLEU Project emissions).

C. Petitioners' Hearing Request

Pursuant to the Presiding Officer's Order of September 23, Petitioners filed a replacement hearing request on November 27, 2002. Request at 1.⁴ 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 3. The petitioner groups assertedly have members "who live and/or own property and/or recreate in the area of the NFS

⁴ Petitioners new request replaced their original hearing request filed on August 8, 2002. Id.; see 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).

Erwin facility and/or the Nolichucky River.” Id. The Request also includes declarations from Frances Lamberts, Ruth Gutierrez, Trudy Wallack, Park Overall, and Chris Irwin, stating their various memberships in the groups and asserting concerns regarding the NFS facility. See id. at 4 & n.2.

The Request asserts four “areas of concern” allegedly germane to this proceeding: 1) the NRC should have prepared an EIS; 2) the “zone of impact” for the BLEU Project depicted in the EA; 3) decommissioning funding for the UNB; and 4) NFS’ personnel qualifications, proposed equipment and facilities, and proposed operating procedures. Request at 9-14.

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 amendment. NFS also requests that the Request be denied because Petitioners have failed to articulate any areas of concern that warrant a hearing on the amendment.

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 66,173. 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 3-4. 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 of the Petitioners has identified at least one member and has shown that the group is authorized to represent that person. See Declaration of Frances Lamberts ¶ 6 (Sierra Club, FONRV, TEC); Declaration of Ruth Gutierrez ¶ 6 (Sierra Club); Declaration of Trudy Wallack ¶ 11 (FONRV); Declaration of Park Overall ¶ 8 (TEC, OREPA, FONRV); Declaration of Chris Irwin ¶ 3 (OREPA). 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 organizations 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; International Uranium (USA) Corp. (Source Material License Amendment), LBP-01-8, 53 NRC 204, 220, aff’d, CLI-01-18, 54 NRC 27 (2001) (negligible likelihood of exposure significantly above background does not constitute “new or increased harm . . . or risk”).

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); White Mesa, LBP-01-8, 53 NRC at 219; see CLI-01-18, 54 NRC at 31-32. Furthermore, regarding accidents:

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); White Mesa, CLI-01-21, 54 NRC at 252-53 (“speculation about accidents along feed material’s transport routes does not establish standing under our case law”). Rather, the petitioner must demonstrate that the

subject licensing action “is defective in a manner so as to cause the injuries described.” Pathfinder, LBP-90-3, 31 NRC 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 9, does not obviate the need for Petitioners to otherwise establish standing. Although having an EIS prepared may be 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, an individual 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.” Lujan, 504 U.S. 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 point to asserted harms connected to past or ongoing operations at the NFS facility that are not related to the proposed license amendment and they make only impermissibly vague and speculative claims, lacking in all detail, about potential harm arising from the amendment.

a. Frances Lamberts

Ms. Frances Lamberts states that she is a member of the Sierra Club, FONRV and TEC and that she has authorized those groups to represent her in this proceeding on the NFS license amendment request. Lamberts Dec. ¶ 6. She lives in Jonesborough, Tennessee and states that she gets her drinking water from the Jonesborough Water Plant,

which is 8 miles downstream from the NFS plant. Id. ¶ 1-3. Ms. Lamberts states that she believes that increased levels of radiological and chemical contaminants from the NFS plant have the potential to adversely affect her health. Id. ¶ 5. She asserts, citing Table 5.1 of the EA, that downblending operations would cause the levels of several radioactive materials in drinking water to increase and that the receptor used by the EA to estimate the contaminant levels was the Jonesborough Water Plant. Id. ¶ 3. She also asserts that she is concerned, based on claimed contamination caused by previous operations at the NFS plant, that “NFS does not have sufficient control of its operation to ensure that radiological and chemical effluents from the proposed downblending operation can and will be contained properly.” Id. ¶ 4.

While Ms. Lamberts states that she is concerned over BLEU Project emissions affecting the Jonesborough water supply, that does not provide her with standing. First, this license amendment—concerning the construction and storage of uranyl nitrate at the UNB—will result in no discharges of radiological or chemical contaminants to the Nolichucky River. Thus, it will not cause the injury of which Ms. Lamberts complains. Operations at the UNB will consist of the storage of low-enriched uranyl nitrate solution, in 24 tanks plus the storage of natural uranyl nitrate solution in one tank. EA at 2-5; see also id. at 2-1 to 2-4. The UNB will have a berm around the tanks for spill containment. Id. at 2-5. This amendment does not concern any aspect of the project that will result in discharges of contaminants to the river. See EA at 2-11 (effluents to water from BLEU Preparation Facility operations and BLEU Complex treated process water—not UNB); see also id. § 2.1.1 (describing processes). Indeed, the Request admits that “the injury caused by the licensing of the [UNB], which is the sole subject of this proceeding, may be significantly less than the injury caused by the licensing of the entire BLEU Project.” Request at 5 n.4 (emphasis added).

The Request asserts, however, that the Presiding Officer “should look to the effects of the entire BLEU Project in evaluating petitioners’ standing to challenge the licensing of the UNB” because NFS would not operate the UNB unless it obtained a license for the entire project. Id. On the contrary, the Presiding Officer has ruled that “the scope of the proceeding is limited to those safety and environmental areas of concern that directly relate to the February 2002 license amendment application.” Memorandum and Order (Ruling on Motion for Clarification of Scope of Hearing) (Nov. 19, 2002). The project actions that will result in increased—but very small—emissions to the Nolichucky River will be the subject of the second and third license amendment requests, which will cover the actual downblending operations and the conversion of uranyl nitrate to uranium dioxide. See EA at 2-11 (effluents to water); see also id. § 2.1.1 (describing processes). Petitioners may seek hearings on those amendments when the opportunities for such are noticed by the NRC. Petitioners may not, however, assert their standing to obtain a hearing on this license amendment request on the basis of project actions that will be licensed under later license amendment requests.⁵

Ms. Lamberts states that she is concerned, because of contamination caused by previous operations at the NFS plant, that NFS does not have sufficient control of its operation to ensure that radiological and chemical effluents from the proposed downblending operation can and will be contained properly. Lamberts Dec. ¶ 4; see also Request at 5-6 (asserting potential injury from unplanned or uncontrolled releases). Concern over past NFS facility operations completely unrelated to the BLEU Project and to this license amendment, however, does not provide Ms. Lamberts with standing. NRC case law is very clear that to demonstrate standing “a petitioner’s challenge must show

⁵ This case is unlike Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403 (2001) cited by Petitioners (Request at 5 n.4) in that the project actions that provided petitioners with standing there did not need to be licensed in a subsequent NRC licensing proceeding the way the second and third phases of the BLEU Project will be licensed here.

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. Moreover, allegations about contamination caused by past, unrelated operations do not support a conclusion that any unplanned or uncontrolled releases of contaminants will occur during the BLEU Project. In NRC licensing proceedings the Commission will not assume that license applicants will violate applicable regulations. See GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 207 (2000). Furthermore, if a petitioner asserts a potential for injury from accidents, e.g., contaminant spills or uncontrolled releases, she must show that the accident scenario(s) are credible and that the accident(s) would have a “‘particular and concrete’ impact” upon her. Babcock and Wilcox, LBP-93-4, 37 NRC at 84, 92; see also Atlas, LBP-97-9, 45 NRC at 426 (alleged radiological contacts must be concretely delineated). “Unfounded conjecture” about potential spills or uncontrolled releases clearly does not constitute “a realistic threat . . . of direct injury” that is necessary to demonstrate standing. White Mesa, CLI-01-21, 54 NRC at 253. Here, Ms. Lamberts only refers to past contamination; neither her declaration nor Petitioners’ Request provides any scenario at all by which material stored at the UNB pursuant to this license amendment could be released and somehow have some particular and concrete impact upon her. Therefore, Ms. Lamberts’ claim about past NFS operations does not provide her with standing to challenge this license amendment for the BLEU Project.

In addition to being outside the scope of this proceeding, Ms. Lamberts’ concern over the impact on the Jonesborough water supply from activities that will be licensed under the second and third license amendments also does not provide her with standing because emissions from those activities will be a very small fraction of what is permissible under applicable regulations and NFS’ permits. As shown in the EA, Table 5.1, the total dose from water effluent to the maximally exposed individual (who is

assumed to be using water at the nearest point of water use, the Jonesborough Water Plant), is conservatively estimated to be only 2.06 mrem per year. EA at 5-5 to 5-6. This is only two percent of the annual public dose limit of 100 mrem per year in 10 C.F.R. Part 20. Id. at 5-5.⁶ It is also only roughly half a percent of the annual average individual whole body dose from natural radiation in the United States. See id. at 3-12 (360 mrem/yr). Under NRC case law, mere potential exposure to small doses of radiation within regulatory limits does not constitute “distinct and palpable” injury. See Babcock and Wilcox, LBP-93-4, 37 NRC at 87-88. Stated differently, a negligible likelihood of radiation exposure significantly above background does not constitute the “new or increased harm . . . or risk” that is necessary to provide a petitioner with standing. International Uranium, LBP-01-8, 53 NRC at 220. The miniscule increase above background that will result from BLEU Project discharges to the river—even for the maximally exposed individual—is simply insufficient to cause the palpable harm necessary to provide Ms. Lamberts with standing. In conclusion, neither Ms. Lamberts’ declaration nor the Request show a likelihood that she will suffer injury-in-fact if this license application amendment is granted. Therefore, she lacks standing and the groups she has authorized to represent her in the proceeding (Sierra Club, FONRV and TEC) cannot derive standing from her.

b. Ruth Gutierrez

Ms. Ruth Gutierrez states that she is a member of the Sierra Club and she has authorized that group to represent her in this proceeding. Gutierrez Dec. ¶ 6. Like Ms.

⁶ Petitioners describe the emissions to the river in terms of a percentage increase, e.g., “5.8 million %” for plutonium. Lamberts Dec. ¶ 3. Such characterization may make eye-catching newspaper headlines, but it is irrelevant to whether the Petitioners will suffer injury from the project. By Petitioners’ logic, the emission of one molecule of a contaminant into a river could be described as an “infinite percent” increase if the facility were emitting no such contaminants previously. Nonetheless, one molecule clearly would not represent a threat to anyone or anything.

Lamberts, Ms. Gutierrez lives in Jonesborough, Tennessee and states that she gets her drinking water from the Jonesborough Water Plant, 8 miles downstream from the NFS plant. Id. ¶ 1-3. In language nearly identical to Ms. Lamberts', Ms. Gutierrez states that she believes that increased levels of radiological and chemical contaminants from the NFS plant have the potential to adversely affect her health and that of her family. See id. ¶¶ 3-5. She also states that she is concerned that the value of her property will decrease because of public perception that increased contaminant levels in the Jonesborough water supply will pose a health risk. Id. ¶ 5.

Since Ms. Gutierrez's claims of injury are nearly identical to those of Ms. Lamberts, she does not have standing for the same reasons as Ms. Lamberts, as shown above. Nor does her concern over the possible decline in value of her property because of public perceptions of health risks arising from contaminants in the water supply provide her with standing. First, allegations of impacts on property values arising from public fear of radiation or nuclear facilities cannot provide standing because they do not give rise to injury within the zone of interests of the Atomic Energy Act or NEPA. Sequoyah Fuels, CLI-01-2, 53 NRC at 13. The Commission has held that the "NRC's administration of the Atomic Energy Act will not include psychological effects from the fear of radiation." Babcock and Wilcox Co. (Pennsylvania Nuclear Services Operations, Parks Township, PA), LBP-94-12, 39 NRC 215, 218-19 (1994) (citing Metropolitan Edison Co. (Three Mile Island Unit 1), CLI-82-6, 15 NRC 407 (1982)). The Supreme Court has held that the NRC need not consider psychological effects under NEPA. Id. at 219 n.7. (citing Metropolitan Edison Co. v. People Against Nuclear Energy, 460 U.S. 766 (1983)). Thus claims of potential property value depression based on public attitude cannot serve as a basis for holding an NRC hearing. Id. at 219. Second, this license amendment will result in no discharges to the Nolichucky River and hence it will not cause any increase in contaminants in the Jonesborough water supply that the public

might fear. Third, Ms. Gutierrez's claim is purely conjectural. She offers nothing to show what the public perception of the project will be and how that would affect her property values. Conjectural injury cannot provide a basis for standing. White Mesa, CLI-01-21, 54 NRC at 253. Therefore, Ms. Gutierrez lacks standing and the Sierra Club cannot derive standing from her.

c. Trudy Wallack

Ms. Trudy Wallack states that she is a member of FONRV and has authorized that group to represent her in this proceeding. Wallack Dec. ¶ 11. Ms. Wallack lives in Greeneville, Tennessee, on the banks of the Nolichucky River, "about 20 to 25 miles" downstream from the NFS plant. Id. ¶¶ 1-2. She states that she and her family swim and boat in the river and she is concerned that they will be exposed to increased levels of radiological and chemical effluents from the NFS plant. Id. ¶¶ 4, 7. She also claims that she is concerned, based on contamination caused by previous operations at the NFS plant, that radiological and chemical effluents from the proposed operations will not be contained properly. Id. ¶ 6. She states that she does not canoe or raft just below the NFS plant because she is concerned about exposure to effluents from the plant and that she is further discouraged from canoeing or rafting there by the prospect of increased discharges from the plant. Id. ¶ 8. She claims that but for those concerns she would canoe and raft in the waters below the NFS plant. Id. Ms. Wallack also states that she frequently drinks from the Greeneville municipal water supply, which is obtained from the Nolichucky River, and that she eats food raised in or with Nolichucky River water. Id. ¶ 9. Finally, she claims that she is concerned that flooding could cause unplanned discharges from the NFS plant and that a flood could cause her property to become contaminated by radiological discharges from the plant, which could adversely affect her health or her property value. Id. ¶ 10.

Ms. Wallack raises no claim that would provide her with standing. First, this amendment—concerning the UNB and the storage of uranyl nitrate—will not result in any contaminant discharges to the Nolichucky River. Therefore, it will not cause any of the impacts to the river that Ms. Wallack asserts. She claims that flooding could cause unplanned discharges from the NFS plant and contaminate her property, but she provides no explanation of how a flood would affect the NFS facility and cause material stored in the UNB to be washed into the river. She does not show how high the floodwaters would have to be to affect the UNB and whether such a flood would even be possible. A petitioner has the burden to show that she will suffer injury from a proposed action. Babcock and Wilcox, LBP-93-4, 37 NRC at 81. If she asserts a potential for injury from an accident like a flood, she must show that the flood scenario is credible and that the flood would have a “‘particular and concrete’ impact” upon her. See Babcock and Wilcox, LBP-93-4, 37 NRC at 84; White Mesa, CLI-01-21, 54 NRC at 253 (petitioner must show “realistic threat . . . of direct injury”). Ms. Wallack has not done so.

Second even regarding the BLEU Project as a whole, Ms. Wallack has not shown that she is likely to be injured. Ms. Wallack lives farther downstream (20 to 25 miles) than Ms. Lamberts and Ms. Gutierrez (8 miles). Compare Wallack Dec. ¶ 2 with Lamberts Dec. ¶ 3. Moreover, she concedes that she gets her water at home from a well rather than the river. Wallack Dec. ¶ 9. Thus, she is even less likely to be harmed by NFS’ minimal emissions into the river than Ms. Lamberts and Ms. Gutierrez.⁷ Her claim of potential injury to her property values, to the extent that it stems from public fear, is

⁷ Ms. Wallack states that she is also concerned over potential harm to family members visiting her home. Wallack Dec. ¶¶ 4,7. That cannot establish standing because one cannot establish standing on the basis of potential harm to others. 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).

the same as Ms. Gutierrez's claim and hence it does not provide her with standing because it lies outside the zone of interests of the Atomic Energy Act and NEPA.

Ms. Wallack asserts that she does not canoe or raft on the river below the NFS plant because she is concerned about the effects of exposure to plant effluents but that she would canoe or raft there if the plant emitted no effluents. Wallack Dec. ¶ 8. This claim cannot provide her with standing because it is related to current or past plant operations, not the requested license amendment. White Mesa, CLI-01-21, 54 NRC at 251. She claims that the potential for additional effluents from the BLEU Project "further discourages" her from canoeing or rafting. Wallack Dec. ¶ 8. But that claim cannot provide her with standing because if she does not canoe or raft there now, then she will not canoe or raft there regardless of whether the first amendment is granted. Thus, the potential "further discouragement" assertedly arising from the project will have no real impact on her. See Shieldalloy, CLI-99-12, 49 NRC at 356.⁸ Finally, "concern" over possible harm, alone, simply 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). Thus, Ms. Wallack's claims do not show that she has standing here and the FONRV cannot derive standing from her.

⁸ To the extent that Ms. Wallack implies that somehow the other operations at the NFS plant emitting effluent into the river might end in the future, leaving only the effluents from the BLEU Project, her claim does not provide her with standing because it does not show the imminent potential for harm. Lujan v. Defenders of Wildlife, 504 U.S. 555, 564 (1992). She claims no intent to go canoeing near the plant in the future, only that additional effluents would further discourage her. That 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 Ms. Wallack with standing here.

d. 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 this proceeding. Overall Dec. ¶ 6. Her principle residence is in Agua Dulce, 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 does not swim in or boat on the Nolichucky River now because it has become heavily sedimented, but she is concerned that if the sedimentation were ever cleaned up she would not be able to swim or fish there because of contamination from the NFS plant. Id. ¶¶ 6-7. She is also concerned about impacts on the quality of her drinking water, in that the town of Afton draws its water from the Nolichucky. Id. ¶ 7. She states that she is concerned about the impacts of effluents from the plant on her property values. Id. Finally, she asserts that she is concerned about the effects of chemical and radioactive contamination of the river on plants and wildlife, which she enjoys. Id.

Ms. Overall lacks standing for a number of reasons. First, this amendment will not result in any discharges of radiological or chemical contaminants to the Nolichucky River. Therefore, it will not cause any of the impacts to the river or potentially to her that Ms. Overall asserts. Second, even regarding the BLEU Project as a whole, she has not shown that she is likely to be injured by the project. She claims that she is concerned about effects on her drinking water supply, but her farm is 31 miles downstream of the NFS Plant. Overall Dec. ¶ 3. Thus, she is even less likely to be harmed by the BLEU Project’s minimal emissions into the river than are Ms. Lamberts, Ms. Gutierrez, and Ms. Wallack, all of whom live upstream from her.

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. The sedimentation is not related to NFS in any way.

Finally, Ms. Overall's concern over the effects of chemical and radioactive contamination of the river on plants and wildlife, Overall Dec. ¶ 7, is insufficient to provide her with standing because she has not shown that the emissions as a result of the requested license amendment will have any impact on plants or wildlife. "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. Rather, Ms. Overall "must show, in accordance with section 2.1205(g), what particular impact the 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"). Thus, Ms. Overall's claims do not show that she has standing and the TEC, OREPA, and FONRV cannot derive standing from her.

e. 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, Tennessee⁹ 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

⁹ Knoxville, Tennessee is located approximately 90 miles from the NFS site.

NFS is allowed to increase its radioactive and chemical effluents from the plant, this will discourage [him] even further from hiking or boating downstream of the Erwin plant.”

Id.

Like Ms. Wallack’s claim about potentially canoeing on the river just below the NFS plant, Mr. Irwin’s declaration does not show the potential for him to suffer injury from the proposed license amendment and hence it does not establish his standing. First, because he states that he is currently discouraged from hiking near the river downstream from the NFS plant, Mr. Irwin’s claim is related to current or past operations, not the requested license amendments. White Mesa, CLI-01-21, 54 NRC at 251. A claim that potential additional effluents from the BLEU Project would “further discourage” him cannot provide him with standing because if he does not hike there now, then he will not hike there regardless of whether the amendment is granted. Thus, the potential “further discouragement” assertedly arising from the project will have no real impact on him. Second, this license amendment will result in no additional effluents to the river, so Mr. Irwin’s claim of concern also cannot provide him with standing because it has no factual support. See Shieldalloy, CLI-99-12, 49 NRC at 356. Thus, Mr. Irwin’s declaration do not 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.

f. 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 9. The Request asserts that the EA disregarded the significant impacts of the project but it provides no basis to believe that the EA is wrong and that thus “the concern is at least worthy of further exploration.” White Mesa, LBP-02-06, 55 NRC at 153.

a. Potential Accidents or Unplanned Releases

The Request claims that the BLEU Project involves the potential for accidents involving HEU and/or hazardous chemicals and that the EA “lacks a reasonable factual basis for making . . . a determination” that accidents are unlikely and that the planned processing will be safe. Request at 10. The Request claims that this is so because the NRC has not yet reviewed the second and third license amendment requests. Id. It also claims that such impacts “have not been addressed in any other EIS” and criticizes the EA for relying on an EA prepared by the NRC to support NFS’ license renewal in 1999. Id. at 12.

Petitioners’ concern is invalid, first, because this proceeding concerns the first license amendment request, not the second and third. Memorandum and Order (Ruling on Motion for Clarification of Scope of Hearing) (Nov. 19, 2002). Areas of concern must be “germane to the subject matter of the proceeding.” 10 C.F.R. § 2.1205(h). Thus a claim premised on the alleged inadequacy of the NRC’s consideration of the second and third amendment requests is not germane.

Second, Petitioner’s concern is also invalid because their assertion that the EA lacks a factual basis for its finding that accidents are unlikely is wrong. The EA states, regarding tank storage of processing solutions, which covers the storage of uranyl nitrate at the UNB under this license amendment:

Based on the information furnished in the NFS reports and summarized above (Refs. 2, 5, 8), the safety controls to be employed in the processing for tank storage of process chemicals appear to be sufficient to ensure planned storage will be safe.

EA at 5-9.¹⁰ The cited references are: B.M. Moore, Nuclear Fuel Services, Inc., Letter to U.S. Nuclear Regulatory Commission, “Supplemental Environmental Report for Licensing Actions to Support the BLEU Project,” November 9, 2001; B.M. Moore,

¹⁰ The EA draws similar conclusions regarding the other stages of the BLEU Project. EA at 5-9, 5-10.

Nuclear Fuel Services, Inc., Letter to U.S. Nuclear Regulatory Commission, “Additional Information to Support an Environmental Review for BLEU Project,” January 15, 2002; B.M. Moore, Nuclear Fuel Services, Inc., Letter to U.S. Nuclear Regulatory Commission, “NFS Responses to NRC’s Request for Additional Information to Support an Environmental Review for the BLEU Project,” March 15, 2002. EA at 5-16. The Request does not mention these references; indeed, it does not even mention section 5.1.2, “Evaluation of Potential Accidents,” where the EA discusses the basis for its conclusions that accidents do not represent a potential significant impact on the environment. Nor does the Request posit any accident scenarios that the EA has allegedly overlooked. See Request at 9-10. Petitioners have ignored the analysis in the EA; thus their concern cannot be deemed “worthy of further exploration.” See White Mesa, LBP-02-06, 55 NRC at 153. Petitioners’ complaint is no more than a “notice pleading” that the Commission has rejected as insufficient to state a valid area of concern. Shieldalloy, CLI-99-12, 49 NRC at 353-54.

The Request’s complaint about the EA’s reliance on the 1999 NFS license renewal EA, Request at 12 (citing EA at 1-1), provides no more basis for a valid concern. The only point for which this EA cites the 1999 EA is that the NRC evaluated the existing conditions and operations at the NFS site in 1999. EA at 1-1 (citing Ref. 9). This EA states that it includes the impacts of the proposed BLEU Project and any cumulative impacts. Id. Information regarding the environmental effects of the BLEU Project used in the preparation of this EA was taken from the DOE BLEU Project EIS and the environmental information provided to the NRC by NFS. Indeed, contrary to what the Request implies in criticizing the 1999 EA for not “address[ing] the different characteristics of the proposed action,” Request at 12, there was no reason for the 1999 EA to have assessed the impacts of the BLEU Project because it did not exist. In a similar vein, regardless of whether the impacts of this license amendment were considered

in another EIS (see Request at 12), they were considered in this EA. Thus, the Request's complaint is simply unrelated to this proceeding.¹¹

b. NFS' Alleged Failure to Comply with Requested Amendments

The Request asserts that the NRC's rationale supporting its FONSI is that NFS will not violate its "permit." Request at 10. It then claims that because there is soil and groundwater contamination at the NFS site and NFS has allegedly "reported and/or been cited . . . for violations of its permit," there is "a serious risk that NFS will continue to pollute the environment." Id. at 11. This is not a valid basis for concern because this claim is completely unparticularized. See Shieldalloy, CLI-99-12, 49 NRC at 354 (citing 10 C.F.R. §§ 2.1211(b), 2.714(a)(2)). It does not say how the proposed actions, either under this license amendment or the second and third amendments will pollute the environment or how (or why) NFS would "violate its permit." It also does not show that the alleged contamination at the NFS site is related in any way to activities that would be conducted under the 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, LBP-94-33, 40 NRC at 153-54. Thus the effects of past operations at NFS (and whether they were or were not considered in other EISs) are irrelevant to this proceeding.

c. Potential Terrorist Threats

The Request claims that because the BLEU Project will involve the transportation, storage, handling, and processing of "tons of HEU," it will be an attractive target for terrorists or insane individuals who might seek to harm the facility or steal HEU to use in a nuclear weapon. Request at 11; see also id. at 13. After the attacks of September 11,

¹¹ Whether the preparation of an EIS would impose additional requirements on the NRC (e.g., evaluation of alternatives, environmental cost-benefit analyses, see Request at 12-13), is irrelevant because Petitioners have not shown that an EIS is required for this license amendment (or the BLEU Project).

2001, such an attack is allegedly foreseeable. Id. at 11. Thus, an EIS should be prepared to address that risk. Id.

This is not a valid concern because 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); Limerick Ecology Action v. NRC, 869 F.2d 719, 743-44 (3d Cir. 1989).¹² Therefore, the question of the vulnerability to terrorism of the NFS facility is not germane to this proceeding and cannot give rise to a valid concern. 10 C.F.R. § 2.1205(h).¹³

2. Geographic Zone of Impact

Next, the Request claims that the geographic zone of impact of the BLEU Project should include Greene County, Tennessee, which is contiguous with Unicoi county (where the NFS plant is located) and downstream from the NFS plant. Request at 13 (citing EA Fig. 3.1). Because effluent discharges into the Nolichucky River will pass through Greene County, it should be “considered to constitute an affected area.” Id.

This concern is not valid. First, this license amendment, concerning only the construction and storage of low-enriched uranyl nitrate at the UNB, will result in no discharges to the Nolichucky. Therefore, it will not affect Greene County in any way.

¹² To the extent that the Request seeks to raise a concern over an attack by “insane individuals” as distinguished from terrorists, Request at 11, the federal courts have held that the effects of third party criminal acts are also outside the scope of NEPA. Glass Packaging Institute v. Regan, 737 F.2d 1083, 1091-94 (D.C. Cir.), cert. denied, 469 U.S. 1035 (1984). Moreover, the Request provides absolutely no basis for believing that an attack by insane individuals is the least bit credible. See Molycorp, LBP-00-10, 51 NRC at 175.

¹³ Contrary to the Petitioners’ claim, Request at 11 n.8, the NRC has not rejected terrorism as a licensing issue solely because attacks are not foreseeable. For example, the Appeal Board in Shoreham held that for policy reasons, under NEPA’s “rule of reason,” wartime sabotage was not an appropriate issue to consider in facility licensing. ALAB-156, 6 AEC at 851.

Second, the concern is invalid for lacking in all basis of fact. The area that the Request describes as the “geographic zone of impact of the BLEU Project,” Request at 13 (citing EA Fig. 3-1), is in fact the “Region of Influence” for the NFS facility. EA Fig. 3-1. The four-county Region of Influence was used in the EA to analyze demography, socioeconomics, and environmental justice. See id. at 3-4; id. Table 3.3. It was not used to analyze impacts from discharges into the Nolichucky River and Petitioners cite nothing to suggest that it was. In fact, the EA assesses the impact of the project on the river from the perspective of the maximally exposed individual (radiological impacts) and the actual discharges into the river at the plant (non radiological impacts). EA §§ 2.1.3.2, 5.1.1.2. Thus, there is no authority or other factual basis making this concern worthy of further exploration. See Molycorp, LBP-00-10, 51 NRC at 175; White Mesa, LBP-02-06, 55 NRC at 153.

3. Decommissioning Funding

The Request asserts that NFS has not “publicly demonstrated that it has made adequate arrangements to fund the decommissioning of the Uranyl Nitrate Storage Building at the end of the facility’s life, and thus has not demonstrated compliance with 10 C.F.R. § 70.23(a)(5) or § 70.25.” Request at 13-14. The Request claims that consideration of the adequacy of financial assurance for decommissioning should account for NFS’ liability for cleaning up existing contamination at the site and that the NRC should not allow the expansion of operations at NFS until it has assurance that NFS has the resources to clean up both existing contamination and any contamination resulting from the operation of the UNB. Id. at 14.

This concern should be rejected because Petitioners have not asserted any deficiency in NFS’ decommissioning funding arrangements for this amendment or the BLEU Project. They claim that NFS has not “publicly demonstrated” its compliance with the regulations, but NFS has submitted its decommissioning funding information to the

NRC on a proprietary basis. Petitioners have made no effort to obtain the information from NFS. Without ever having seen the information, Petitioners have no grounds for asserting that the information is inadequate. Thus, this concern should be rejected.

4. Compliance with Safety Regulations

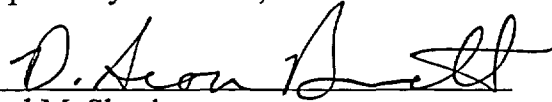
The Request claims that “NFS has not demonstrated that it can and will comply with 10 C.F.R. §§ 70.23(a)(2), (3), or (4).” Request at 14. Those sections concern applicant qualifications by training and experience, the applicant’s proposed equipment and facilities, and the applicant’s proposed safety procedures. 10 C.F.R. §§ 70.23(a)(2), (3), and (4). The Request claims that NFS has a “long history of contaminating the soil and groundwater at the NFS site” and is alleged to have caused off-site contamination. Id. NFS has been cited for “violations of its permit.” Id. These incidents allegedly reflect inadequacies in management, procedures, and equipment. Id.

This concern is invalid because it is not particularized in any way. It does not describe in any respect the ways in which the Petitioners believe that the NFS license amendment application(s) do not meet the Commission’s requirements. Thus, it does not even rise to the level of “notice pleading” that the Commission has rejected as insufficient to state a valid area of concern. Shieldalloy, CLI-99-12, 49 NRC at 353-54. Furthermore, concerns over past or ongoing operations are not valid with respect to proceedings on license amendment applications. Energy Fuels Nuclear, LBP-94-33, 40 NRC at 153-54; 10 C.F.R. § 2.1205(g).

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 black ink, appearing to read "D. Sean Barnett", written over a horizontal line.

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Dated: December 13, 2002

CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Answer To Request By The Friends Of The Nolichucky River Valley, The State Of Franklin Group Of The Sierra Club, The Oak Ridge Environmental Peace Alliance, And The Tennessee Environmental Council To Hold Proceeding In Abeyance; Applicant's Answer To Request For Hearing Of The Friends Of The Nolichucky River Valley, The State Of Franklin Group Of The Sierra Club, The Oak Ridge Environmental Peace Alliance, And The Tennessee Environmental Council; Applicant's Answer To Request For Hearing And Areas Of Concern Of The Blue Ridge Environmental Defense League; and Applicant's Answer To Declaration Of Kathy Helms-Hughes were served on the persons listed below by electronic mail or by facsimile and deposit in the U.S. mail, first class, postage prepaid, this 13th day of December, 2002.

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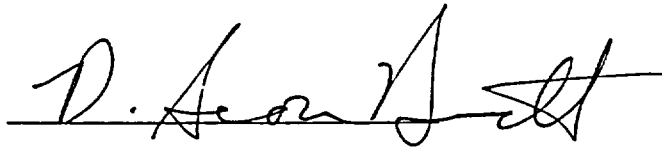
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A handwritten signature in black ink, appearing to read "D. Aaron J. Zell", written over a horizontal line.

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