

RAS 5737

February 13, 2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE COMMISSION

February 14, 2003 (3:54PM)

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 MOTION FOR LEAVE TO FILE RESPONSE TO NRC
STAFF AMICUS CLARIFICATION OF RECORD**

Applicant Nuclear Fuel Services, Inc. ("Applicant") hereby respectfully requests permission to file a response to the "NRC Staff's Amicus Clarification of Record," dated February 10, 2003, which the Staff filed in response to the "Petitioner's Emergency Request To Enjoin Construction By NFS of BLEU Project Facilities," dated January 21, 2003, and "Applicant's Opposition To Petitioner's Emergency Request To Enjoin Construction By NFS of BLEU Project Facilities," dated February 5, 2003. The Staff is neither a party to the Applicant's license amendment proceeding, which is currently being held in abeyance by the Presiding Officer, nor has been requested by the Commission to express its view on any issue. Amicus briefs by non-parties are ordinarily not allowed without the permission of the Commission. See Louisiana Energy Services, L.P. (Claiborne Enrichment Center), CLI-97-7, 45 NRC 437, 438-39 (1997); cf. 10 C.F.R. § 2.715(d). Furthermore, the Staff's pleading has the potential to confuse rather than clarify the record regarding the Staff's prior statements concerning its environmental review of the Applicant's license amendment applications that are now or

Template=SECY-041

SECY-02

will shortly be before the NRC. Thus, the Applicant requests permission to file a response.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daryl M. Shapiro". The signature is written in a cursive, flowing style with a horizontal line underneath the name.

Daryl M. Shapiro

D. Sean Barnett

SHAW PITTMAN LLP

2300 N Street, N.W.

Washington, D.C. 20037

(202) 663-8507

Counsel for Nuclear Fuel Services, Inc.

Neil J. Newman

Vice President and General Counsel

Nuclear Fuel Services, Inc.

February 13, 2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

February 13, 2003

DOCKETED
USNRC

February 14, 2003 (3 54PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

**APPLICANT'S RESPONSE TO NRC STAFF'S
AMICUS CLARIFICATION OF THE RECORD**

The Amicus filing by NRC Staff counsel¹ asserts that Nuclear Fuel Services, Inc.'s ("NFS") Opposition to the Friends of the Nolichucky River Valley, *et al* ("Petitioners") injunction request² "mischaracteri[zes]" the environmental review that the NRC technical staff will undertake in connection with the second and third amendment requests relating to the Blended Low-Enriched Uranium ("BLEU") Project. To the contrary, as demonstrated below, NFS' description of the NRC technical staff's environmental review associated with the second and third BLEU Project license amendment requests is taken directly from the NRC's Environmental Assessment for the BLEU Project and subsequent NRC Federal Register notices relating to the BLEU Project. And as explained below, neither NRC Staff counsel nor the NRC technical staff have indicated otherwise. While the NRC Staff counsel's use of the term "mischaracterize" may in fact represent no more than a semantic dispute or misunderstanding of NFS' position, NFS respectfully submits this pleading to avoid any possible concern that NFS has misstated or misunderstood the NRC Staff's position.

¹ NRC Staff's Amicus Clarification of Record, Feb. 10, 2003. ("Amicus filing").

² Applicant's Opposition to Petitioners' Emergency Request to Enjoin Construction by NFS of BLEU Project Facilities, Feb. 5, 2003. ("NFS Opposition").

1. It is without dispute that the NRC's June 2002 *Environmental Assessment for Proposed License Amendments to Special Nuclear Material License No. SNM-124 Regarding Downblending and Oxide Conversion of Surplus High-Enriched Uranium* ("BLEU Project EA") (emphasis added) "assess[ed] the environmental impacts of the proposed license amendments for the NFS portion of the BLEU Project." BLEU Project EA at 1-1.

2. To avoid segmentation of the environmental review, NFS submitted, and the NRC reviewed, environmental documentation for all three proposed BLEU Project license amendments: (1) to construct and operate a Uranyl Storage Building (UNB); (2) to relocate the downblending operations onsite; and (3) to construct and operate an Oxide Conversion Building (OCB) and an Effluent Processing Building (EPB). *Id.* In other words, the NRC technical staff conducted an environmental review for the entire BLEU Project.

3. The BLEU Project EA concluded that, "[i]mplementing the proposed action is not expected to result in significant adverse impacts to the environment." *Id.* at 5-1. The EA also noted that:

As each amendment application is submitted, the NRC staff will do a safety evaluation, which will be the basis for the approval or denial of the requests. As part of the safety evaluation, the NRC will perform an environmental review. If the review indicates that this EA effectively assesses the environmental effects of the proposed action, then no further assessment will be performed. However, if the environmental review indicates that this EA does not fully evaluate the environmental effects, another EA [or environmental impact statement (EIS)] will be prepared in accordance with NEPA. *Id.* at 1-1.³

³ Almost identical language is contained in the NRC's July 9, 2002 Federal Register Notice for the BLEU Project EA and Finding of No Significant Impact ("FONSI") and notice of hearing opportunity for the first BLEU Project license amendment application (67 Fed. Reg. at 45,555), and in the NRC's October 30, 2002 re-notice of the hearing opportunity for the first BLEU Project license amendment request. 67 Fed. Reg. 66,172, 66,173. On January 7, 2003, the NRC noticed receipt and an opportunity for hearing on the second BLEU Project license amendment request and stated that the NRC would, as a result of its

4. Based upon NRC language in the BLEU Project EA and related Federal Register notices, NFS stated in its opposition to Petitioners' injunction request⁴ that the NRC technical staff will review the second and third BLEU Project license amendment requests to determine if the BLEU Project EA adequately assesses the environmental impacts of the proposed amendments. If the BLEU Project EA is adequate, then the NRC technical staff will not conduct further environmental analyses. Nothing represented to NFS by NRC technical staff or NRC Staff counsel is contrary to this expectation.

5. NRC Staff counsel's Amicus filing appears to take issue with the statement in NFS' Opposition in which NFS stated that, "unless NFS changes the project, the [BLEU Project] EA will be the final environmental review for the BLEU Project." *Id.* NFS understands NRC Staff counsel's concern to be an inference that the NRC technical staff would not conduct a separate environmental review for the second and third BLEU Project license amendments. To the contrary, NFS neither stated nor implied that the NRC technical staff would not conduct an environmental review for the second and third BLEU Project license amendment requests. Rather, NFS stated that the NRC Staff's environmental review for the second and third BLEU Project license amendment requests would first consist of a determination of whether the BLEU Project EA adequately assesses the environmental impacts of the proposed amendments. If the BLEU Project EA does, then as the NRC has repeatedly said, no further "assessment" would be performed.⁵ NFS expects

review of the application, document its findings in an Environmental Assessment or an Environmental Impact Statement. 68 Fed. Reg. 796. This Notice did not alter the NRC's previous description of the scope or conduct of its environmental review. Nor has any other NRC document altered the description of the NRC's subsequent environmental review for the second and third BLEU amendment requests.

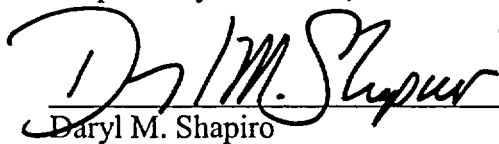
⁴ NFS Opposition at 6.

⁵ In describing the NRC's environmental review for the second and third BLEU Project license amendment requests, NFS quoted language from the BLEU Project EA and related Federal Register Notices in order to accurately represent the NRC Staff's statements.

this to be the case because, as reflected in the second license amendment request, NFS has made no changes to the BLEU Project from its previous submittals or from what the NRC considered in the BLEU Project EA. Nor will NFS make any changes to the BLEU Project in connection with the third and final amendment request relating to the BLEU Project. Thus, the BLEU Project EA will be the NRC Staff's substantive environmental review for the BLEU Project.

6. Based upon the above, to the extent that NRC Staff counsel's Amicus filing suggests that the NRC technical staff will re-perform the environmental analysis contained in the BLEU Project EA for the second and third BLEU Project license amendment requests, absent any new information or changes to the BLEU Project, it is clearly not consistent with the Staff's BLEU Project EA and relevant Federal Register notices.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. M. Shapiro", written over a horizontal line.

Daryl M. Shapiro

D. Sean Barnett

SHAW PITTMAN LLP

2300 N Street, N.W.

Washington, D.C. 20037

(202) 663-8507

Counsel for Nuclear Fuel Services, Inc.

Neil J. Newman

Vice President and General Counsel

Nuclear Fuel Services, Inc.

February 13, 2003

CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Motion for Leave to File a Response to the NRC Staff Amicus Clarification of Record and Applicant's Response to NRC Staff's Amicus Clarification of the Record 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 February, 2003.

*Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Administrative Judge
Alan S. Rosenthal, Presiding Officer
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Fax: 301-415-5599
email: rsnthl@comcast.net; sam4@nrc.gov

Administrative Judge
Richard F. Cole, Special Assistant
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Fax: 301-415-5599
Email: rfa1@nrc.gov

Dennis C. Dambly
Jennifer M. Euchner
David A. Cummings
Office of the General Counsel
Mail Stop: O-15 D21
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Fax: 301-415-3572
Email: dac3@nrc.gov; jme@nrc.gov;

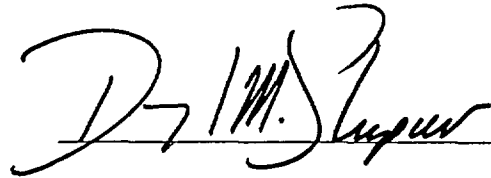
Louis Zeller
Blue Ridge Environmental Defense League
P.O. Box 88
Glendale Springs, NC 28629
Email: BREDL@skybest.com

Diane Curran
Harmon, Curran, Spielberg & Eisenberg,
L.L.P.
1726 M Street, N.W., Suite 600
Washington, D.C. 20036
Fax: 202-328-6918
Email: dcurran@harmoncurran.com

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
Fax: 301-415-1101
Email: hearingdocket@nrc.gov
(original and two copies)

*Kathy Helms-Hughes
P.O. Box 58
Hampton, TN 37658
Email: Khelms@mounet.com

**C. Todd Chapman, Esq.
King, King & Chapman, P.L.L.C.
125 South Main Street
Greeneville, TN 37743
Fax: 423-639-3629

A handwritten signature in black ink, appearing to read "D. M. S. Chapman", written over a horizontal line.

* by U.S. mail only

** by facsimile and U.S. mail only