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C O U N S E L O R S   A T   L A W

DOCKETED  
USNRC

May 9, 2003

May 12, 2003 (2:19PM)

Administrative Judge Thomas S. Moore, Chairman  
Administrative Judge Peter S. Lam  
Administrative Judge Charles N. Kelber  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

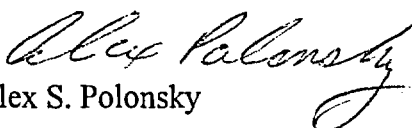
Re: DCS's Motion for Summary Disposition on Contentions 1 and 2;  
*Duke Cogema Stone and Webster* (Savannah River Mixed Oxide Fuel  
Fabrication Facility), Docket No. 70-3098- ML.

DCS hereby files the attached Motion for Summary Disposition on Contentions 1 and 2.  
Attached to the Motion are:

- a Statement of Material Facts on Which No Genuine Issue Exists (Tab A),
- three Affidavits of DCS' experts (Messrs. Kenneth D. Bristol, Donald Joy, and Scott Johnson) (Tabs B through D),
- relevant pages of the deposition transcript of Dr. Ed Lyman (Tab E); and
- a Certificate of Service (Tab F).

The Motion and its attachments, with the exception of the Statement of Material Facts, are exempt from public disclosure pursuant to 10 CFR § 2.790(d) because these documents contain information concerning DCS's physical protection and material control and accounting programs for special nuclear material, which is not otherwise designated as Safeguards Information or classified as National Security Information or Restricted Data. Accordingly, these documents should not be placed on ADAMS or in the NRC's Public Document Room, and DCS is only serving them on individuals (outside of the NRC) who have executed the Board's June 29, 2001 Protective Order. In addition, we have spiral bound the pleading to avoid the separation of pages containing § 2.790(d) information.

Sincerely,

  
Alex S. Polonsky

cc: Certificate of Service

Philadelphia Washington New York Los Angeles Miami Harrisburg Pittsburgh  
Princeton Northern Virginia London Brussels Frankfurt Tokyo

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SECY-02

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD**

**Before Administrative Judges:  
Thomas S. Moore, Chairman  
Charles N. Kelber  
Peter S. Lam**

In the Matter of	)	
	)	May 9, 2003
DUKE COGEMA STONE & WEBSTER	)	
	)	Docket No. 070-03098-ML
(Savannah River Mixed Oxide Fuel	)	
Fabrication Facility)	)	ASLBP No. 01-790-01-ML
	)	

**STATEMENT OF MATERIAL FACTS  
ON WHICH NO GENUINE ISSUE EXISTS  
IN SUPPORT OF DCS' MOTION FOR  
SUMMARY DISPOSITION ON CONTENTIONS 1 AND 2**

Duke Cogema Stone & Webster ("DCS") submits, in support of its Motion for Summary Disposition on Contentions 1 and 2, this Statement of Material Facts as to which DCS contends there is no genuine issue to be heard.

1. DCS' initial Construction Authorization Request ("CAR") for the MOX Facility, docketed February 28, 2001, contained no specific material control and accounting ("MC&A") or physical protection-related design basis information.<sup>1</sup>
2. On August 13, 2001, GANE filed Contentions 1 and 2, entitled "Lack of Consideration of Safeguards and Physical Protection in Facility Design," as part of its Contentions

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<sup>1</sup> CAR §§ 13.1, 13.2 (Feb. 28, 2001).

Opposing a License for Duke Cogema Stone & Webster to Construct a Plutonium Fuel Factory at Savannah River Site. Contentions 1 and 2 challenge: (1) the lack of design basis information for MC&A and physical protection in the MOX Facility CAR,<sup>2</sup> and (2) DCS' alleged failure to consider MC&A and physical protection in the design of the MOX Facility.<sup>3</sup>

3. In its Memorandum and Order of December 6, 2001, the Licensing Board admitted Contentions 1 and 2, addressing these together as dealing with the "Lack of Consideration of Safeguards and Physical Security Considerations at the MOX Facility."<sup>4</sup>
4. 10 CFR § 70.23(b), and the Commission's hearing notice for the MOX Facility Construction Authorization proceeding,<sup>5</sup> require a construction authorization request to describe design bases—not design details—of principal structures, systems and components intended to provide protection against natural phenomena and the consequences of potential accidents.
5. The CAR, revised as of October 31, 2002, now contains DCS' MC&A and physical protection-related design bases.<sup>6</sup>
6. As evidenced by the Affidavits of Donald Joy and Kenneth Bristol, DCS took into consideration, and continues to take into consideration, MC&A issues in designing the MOX Facility.

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<sup>2</sup> GANE Contentions at 2-3, 10.

<sup>3</sup> *Id.*

<sup>4</sup> *Duke Cogema Stone & Webster (Mixed Oxide Fuel Fabrication Facility)*, Memorandum and Order (Ruling on Standing & Admissibility of Contentions), LBP-01-35, at 22 (Dec. 6, 2001).

<sup>5</sup> Notice of Acceptance for Docketing of the Application, and Notice of Opportunity for a Hearing, on an Application for Authority to Construct a Mixed Oxide Fuel Fabrication Facility, 66 Fed. Reg. 19994 (April 18, 2001).

7. As evidenced by the Affidavit of Scott Johnson, DCS took into consideration, and continues to take into consideration physical protection issues in designing the MOX Facility.

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<sup>6</sup> CAR §§ 13.1, 13.2 (Oct. 31, 2002).

## CERTIFICATE OF SERVICE

I hereby certify that copies of "Duke Cogema Stone & Webster's Motion for Summary Disposition on Contentions 1 and 2," dated May 9, 2003, and all its attachments were served this day upon the persons listed below, by same-day courier, with the exception of Glenn Carroll who was served by Federal Express.

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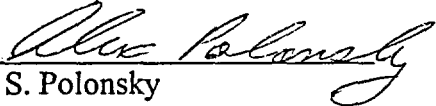
I also hereby certify that only the letter transmitting the aforementioned Motion and the Statement of Facts Supporting the Motion were served this day upon the persons listed below, by United States Postal Service, First Class Mail.

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Copies of the letter transmitting the aforementioned Motion and the Statement of Facts Supporting the Motion were also served on all the persons listed above by email.

\* Original and 2 copies

  
Alex S. Polonsky

5/9/03  
Date