

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

July 18, 2005 (2:30pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)
)
)
USEC Inc.)
(American Centrifuge Plant))
)
_____)

Filed July 18, 2005

Docket No. 70-7004-ML
ASLBP No. 05-838-01-ML

GEOFFREY SEA'S MOTION FOR LEAVE TO FILE AN AMENDED PETITION

Petitioner Geoffrey Sea hereby moves for leave to file an amended petition based on circumstances as described herein, and for delay of the hearing schedule accordingly as it pertains to his petition. Petitioner makes no objection to proceeding with the July 19 pre-hearing conference call as planned.

Deadline extension and move

On July 12, the Atomic Safety and Licensing Board issued a memorandum and order scheduling oral argument on the admissibility of contentions in the USEC matter.

On Friday, July 15, Petitioner contacted the ASLB and received permission to extend the deadline for filing an "objection" by one day, due to the following circumstance. Petitioner has been in the process of relocating his office to Piketon, Ohio. Not anticipating any orders or filings during the week of July 10-15, Petitioner scheduled that week for the move, and Petitioner's entire office was then packed up in boxes inside

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SECY-02

a moving truck. Petitioner appreciates the one day extension for this filing. (Petitioner asks that it be noted that his office is still mostly packed and this filing may be missing certain detailed references as a result—those can of course be provided shortly.)

Petitioner hereby notifies all parties that his active mailing address is now: Geoffrey Sea, The Barnes Home, 1832 Wakefield Mound Road, Piketon, OH 45661. His home telephone number is 740-289-2473, though for the next month (approximately), it is best to use the following cell number: 740-835-1508. Petitioner will also now be using a new e-mail address, which is: SargentsPigeon@aol.com. (Petitioner's contact information in New York may remain active for a few weeks but not thereafter.)

Pre-hearing conference call

This Petitioner has no objection to the conference call on July 19 proceeding as planned as it pertains to matters already raised in the existing record, and Petitioner will participate in the call. Petitioner plans to submit an amended petition based on new information, however, and some issues raised by the ASLB regarding the Sea Petition cannot be fully addressed at this time, as they bear precisely on those matters that will be chief subjects of the amended petition. Petitioner will identify these areas as they arise.

Petitioner does not anticipate adding contentions in his amended petition, but new information compels new bases for his existing contentions. An outline of the new bases and new information upon which they are based is provided below.

Outline of amended contentions

1. Existence of Hopewell earthworks on and adjacent to the USEC/DOE site.

The question of whether and to what extent Hopewell earthworks extend onto the DOE reservation has an obvious bearing on Petitioner's first and second contentions. When Petitioner filed in February, only a limited amount of documentary evidence was available to support his arguments—the documentary record is now larger and growing rapidly. Petitioner will file an expert statement now in preparation from a former Chief of a Native American tribe who served as a consulting party to archaeological investigations proximate to the USEC site in the early 1990s (Petitioner was formerly unaware of these investigations.) These investigations confirm Petitioner's allegation that there is a very large, previously unidentified circular earthwork that extends at its northeast side underneath the Barnes Home and the DOE southwest access road.

Petitioner has also secured the assistance of the University of Cincinnati in providing expert assessment of the earthworks. A tour of the Hopewell earthworks on the DOE land that is adjacent to the Scioto River—where DOE has placed water pumps for supply of ACP—was organized by the Petitioner and scheduled for July 14. The tour was to include William Murphie, director of DOE's Portsmouth-Paducah Projects office, the Petitioner, John Hancock, and three or four faculty and graduate student associates of Dr. Hancock. (A copy of the tour itinerary will be provided with the mailed version of this motion as Exhibit AA.) It should be noted that the water pumps in question were placed there, and the land acquired, in the 1980s, specifically for the purpose of supplying a centrifuge enrichment plant—water for the old gaseous diffusion plant was obtained from a pump field in the town of Piketon.

Had the tour proceeded, Petitioner would have used the resulting expert report as a basis for the immediate filing of an amended petition. On the afternoon of July 13,

however, the tour was unceremoniously cancelled by DOE, with a promise that it could be promptly rescheduled.

Additional new information supporting the allegation that USEC failed to identify cultural resources and the impacts upon them was contained in Appendix B of USEC's environmental report, which was mistakenly not included with the publicly released version of the report. (NRC staff later sent Appendix B to the Petitioners in response to our complaint about its absence.) Appendix B contained a letter from Mark Epstein at the Ohio Historic Preservation Office to USEC, alerting them to public concerns about earthworks in the project area, and advising USEC that these concerns should be taken seriously. (It should be noted that the Petitioner had had no contact with the Preservation Office prior to the date of Dr. Epstein's letter, and that the "concerned public" in question was therefore distinct from the Petitioner.)

2. The timber rattlesnake as a protected cultural resource.

USEC's environmental report considered the timber rattlesnake, *Crotalus horridus*, only as a potentially endangered species, but concluded that no protections are in order since no rattlesnakes have been sighted anywhere near the USEC site in recent years. On the basis of new information, Petitioner will show that: a.) the chosen USEC site is the virtual epicenter of rattlesnake sightings and habitat in Ohio, and b.) the rattlesnake is protected not just by the Endangered Species Act but also by the National Historic Preservation Act as a "historic property" inextricably linked to the Native American heritage and National Register sites of that locale.

The new information supporting protection of the timber rattlesnake as a cultural resource includes the following: 1) Appendix B of USEC's environmental report, which also contains a letter from the US Fish and Wildlife Service raising serious concerns about the site as prime rattlesnake habitat, 2) An expert report from the man who serves as Ohio's rattlesnake biologist that includes a listing of townships where recent rattlesnake sightings have occurred, with a map compiled on the basis of those listings, 3) An expert report from Dark Rain Thom, clan mother of the Shawnee Water Panther Clan and a recognized expert on Shawnee cultural history, showing the centrality of the timber rattlesnake to both Hopewell and Shawnee religion, mythology and folklore, 4) The March 2, 2005 (two days after Petitioner filed his petition) decision of the Ninth Circuit Federal Court that ruled that an animal species (in that case the Okinawan dugong) can be protected by the National Historic Preservation Act if it is central to the religion, mythology and folklore of an indigenous people and is connected to a protected sacred site.

3. Recent material demonstrating the unlikelihood of USEC completing the ACP project, bolstering Petitioner's contentions 3, 4, 5, 6 and 7.

Such material includes but is not limited to: 1) Statements of Mohammed El Baradai calling for an international moratorium on the construction of all new uranium enrichment facilities, 2) an article by Spencer Jakab of Dow Jones Newswires, titled "Slow Decay," in the May 21, 2005, issue of *Barron's*, which rated USEC's risk level for investors as "radioactive," 3) the March 2005 report of the DOE Inspector General that concluded that DOE has illegally paid \$17 million of USEC private expenses at Piketon,

together with indications from DOE that DOE will now embark on legal action to recoup those expenses.

4. Changes to the project site since February that impact the surrounding area.

At the time Petitioner filed his petition, the southwest access road—which was built on top of Hopewell earthworks and which cut through the former Barnes estate—was closed and grown over with weeds and shrubs. Petitioner warned that USEC’s plans would necessitate the reopening and expansion of this road, and USEC countered that this was “speculative.” Well, since February, the road was indeed reopened and resurfaced, and large concrete pylons were placed at its entrance, adjacent to the Barnes Home, with large fluorescent orange marker decals—a feature that USEC and DOE must think are appropriate to a historic district. Petitioner will provide photographs of this new development.

Move for Leave

Because of the many substantive developments since February with direct bearing on the admissibility and strength of Petitioner’s contentions, Petitioner moves for leave to amend his petition and for the schedule to be adjusted accordingly. Specifically, Petitioner requests that a new date for the archaeological site visit at Piketon be set as soon as possible, that Petitioner be granted two weeks from that date to submit an amended petition, and that the hearing schedule on this Petitioner’s contentions commence sixty days from that submission.

Notifications

On Friday, July 15, 2005, Petitioner discussed the general contents of this filing with Donald Silverman of USEC, Marian Zobler of NRC staff, ASLB Law Clerk Susan C. Stevenson-Popp, and Vina Colley of PRESS.

PRESS Erratum

The Erratum filed by PRESS on July 15, 2005, may raise the question as to when various parties became aware of the discrepancy in PRESS's tax status. Petitioner Geoffrey Sea was first informed about a potential discrepancy on June 24, 2005. He felt a duty to inform Vina Colley and did so the next day, urging her to investigate and, if necessary, file a correction with the ASLB immediately. Apparently that resulted in the correction of the record by PRESS. This Petitioner wishes to stress that his intervention is not connected to that of PRESS in any way.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Geoffrey Sea', written over a horizontal line.

Geoffrey Sea

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Geoffrey Sea, Petitioner

EXHIBIT AA.



**Bill Murphie's Visit
July 13-15, 2005
Agenda**

Wednesday, July 13, 2005 (DOE Conference Room)

- 1:00 p.m. – 1:30 p.m. **AB to AEA Authority Conference Call**
(Attendees: Randy DeVault w/ other DOE)
- 1:30 p.m. – 3:30 p.m. **USEC Programmatic Review** *(Attendees: DOE and USEC)*
- 3:30 p.m. – 5:00 p.m. **Upcoming Presentations** *(Attendees: DOE)*

Thursday, July 14, 2005 (DOE Conference Room)

- 8:30 a.m. – 10:30 a.m. **Tour w/ Geoffrey Sea** *(Attendees: Melda Rafferty, Sandy Childers, Geoffrey Sea, and 3-6 UC faculty members)*
- 10:30 a.m. – 11:30 a.m. **Discuss Public Meeting Presentation** *(Attendees: Sandy Childers)*
- 11:30 a.m. – 12:00 p.m. **Lunch**
- 12:00 p.m. – 2:30 p.m. **LATA/Parallax (LPP) Meeting**
(Attendees: DOE and LPP)
- Transition
 - Project Status Review
 - Update on Waste Disposition Recovery
(Rafferty, Mattson, and Franz)
- 2:30 p.m. – 5:00 p.m. **TPMC Meeting**
(Attendees: DOE and TPMC)
- Transition
 - Project Status Review
- 6:00 p.m. – 8:00 p.m. **Semi-Annual Public Update Meeting (OSU Endeavor Center, Piketon, OH)**