

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING BOARD

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

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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

**Duke Cogema Stone & Webster's Answer to  
Blue Ridge Environmental Defense League and Donald Moniak  
Additional Filings on Standing**

**I. INTRODUCTION**

Duke Cogema Stone & Webster ("DCS") hereby files its Answer to the "Blue Ridge Environmental Defense League ("BREDL") and Donald Moniak Additional Filings on Standing" ("Standing Supplement") regarding the Mixed Oxide Fuel Fabrication Facility ("MOX Facility") Construction Authorization Request ("CAR").

On May 17, 2001, Mr. Moniak, on behalf of both himself and BREDL ("Requestors"), requested a Nuclear Regulatory Commission ("NRC") hearing on the MOX Facility CAR ("BREDL Request"). DCS filed an Answer to this Request on May 29, 2001 ("DCS Answer"). The NRC Staff filed its Answer to the BREDL Request (and the requests of others) on June 25, 2001 ("Staff Answer"). As authorized by the Licensing Board, Requestors filed their Standing Supplement on July 30, 2001.

As discussed in the DCS Answer, in order to obtain individual or organizational standing, Requestors must demonstrate that if the CAR is approved by the NRC: (1) they will likely suffer a distinct and palpable injury that is within the zone of interests protected by the Atomic Energy Act (“AEA”) or the National Environmental Policy Act (“NEPA”); (2) the injury is traceable to the NRC’s approval of the MOX Facility CAR (*i.e.*, causation); and (3) the injury can be redressed by a decision in this proceeding.<sup>1</sup> To invoke representational standing, BREDL must show: (1) its members have standing in their own right; (2) the interests the organization seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires the participation of the individual members.<sup>2</sup>

Even with the opportunity to cure defects in their arguments, BREDL (both as an organization and as a representative of its members) and Mr. Moniak have failed to demonstrate standing for the following reasons: (1) there is no presumption of standing based on proximity to the MOX Facility given the absence of an obvious potential for offsite consequences; (2) BREDL has failed to show how its members could plausibly be affected by the MOX Facility; (3) concerns regarding transportation of uranium hexafluoride or fabricated MOX fuel are not within the scope of this proceeding; (4) alleged NEPA violations by the Department of Energy (“DOE”) are outside the scope of this proceeding; and (5) interests in nuclear non-proliferation policy or other interests as a tax payer or American citizen are insufficient to confer standing. For the reasons discussed below, BREDL and Mr. Moniak’s request for hearing should be denied.

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<sup>1</sup> See *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996); *Westinghouse Elec. Corp.* (Export to South Korea), CLI-80-30, 12 NRC 253, 258-59 (1980).

<sup>2</sup> See *Hunt v. Washington State Apple Adver. Comm’n*, 432 U.S. 333, 343 (1977); see also *Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 396-97 (1979).

## II. BREDL LACKS ORGANIZATIONAL STANDING

In support of its claim for organizational standing, BREDL asserts the following bases:

- (1) BREDL's "historical and well-documented interest in potential waste disposition from both the MFFF and reactor fuel use";
- (2) BREDL's "concern about the corridor community impacts of nuclear materials transportation related to the MFFF";
- (3) BREDL's "office in eastern North Carolina and extensive membership in the area [are] potentially affected by nuclear materials transportation, specifically shipments of uranium hexafluoride bound for [the Savannah River Site ("SRS")]";
- (4) BREDL's "compelling interest in nuclear non-proliferation, nuclear waste management and disposition, nuclear materials transportation, public health protection, and environmental democracy and environmental justice."<sup>3</sup>

This recitation of BREDL's general organizational areas of interest falls short of the minimum requirements for standing. BREDL sets forth no facts sufficient to demonstrate that it, as an organization, may suffer an injury in fact if the NRC approves the MOX Facility CAR. Rather, in items (1), (2), and (4) above, it expresses a general interest in the management and disposition of nuclear materials, nonproliferation, and other policy issues. As explained in the DCS Answer, the United States Supreme Court has held that "a mere interest in a problem, no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem is not sufficient" to constitute injury in fact for purposes of standing.<sup>4</sup> In item (3) above, BREDL alleges that its eastern North Carolina office and extensive membership in the area are potentially affected by shipments of nuclear materials. As discussed in section III.C, this allegation is insufficient to demonstrate standing. Therefore, BREDL lacks organizational standing.

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<sup>3</sup> Standing Supplement, BREDL Affidavit at 1-2.

<sup>4</sup> *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972); see also *Dellums v. U.S. NRC*, 863 F.2D 968, 972 (D.C. Cir., 1988) ("harm to an interest in 'seeing...a social good furthered does not constitute injury in fact'").

### III. BREDL LACKS REPRESENTATIONAL STANDING

In addition to Mr. Moniak's affidavit, BREDL relies for representational standing upon the affidavits of fifteen individuals who reside in North Carolina. Most of these individuals allege concerns about transportation and irradiation of MOX fuel in commercial reactors near their homes. Such concerns are outside the scope of this proceeding. Only two individuals - Mr. Moniak and Dr. Frank Carl - claim to own property near the SRS. All of these individuals fail to demonstrate how the MOX Facility could adversely affect their safety or property interests. Since BREDL cannot establish that any of its members have standing in their own right, its request for representational standing should be denied.

#### A. THERE IS NO PRESUMPTION OF STANDING BASED ON PROXIMITY

In order to avail themselves of a presumption of standing based on proximity to the MOX Facility, Requestors must show that "the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences."<sup>5</sup> There is nothing in Requestors' Standing Supplement that makes such a showing.

In its Answer, the NRC Staff explains that it is "not yet able to state with any confidence the degree of risk - *if any* - [of] offsite radiological contamination" from the MOX Facility, but that based on preliminary analyses, "[m]ajor releases from the proposed MOX Facility are considered to be extremely low probability events."<sup>6</sup> Furthermore, the Staff has specifically stated that, while it "cannot yet take a position on whether presumptions of standing should be

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<sup>5</sup> *Florida Power and Light Co.*, (Turkey Point, Units 3 and 4), LBP-01-06, 54 NRC 138 (2001), citing *Florida Power and Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-98-21, 30 NRC 325, 329 (1989). Standing is presumed for persons whose location is proximate to a power reactor because such facilities have a large source of energy for dispersing radioactive material over a wide area in the event of an accident. Comparable sources of energy will not exist at the MOX Facility.

<sup>6</sup> Staff Answer at 9, 10 (emphasis added).

applied in this proceeding,” Mr. Moniak’s location, 19.3 miles from the proposed MOX Facility, “by itself,” does not confer standing.<sup>7</sup>

The proposed MOX Facility, to be located almost six miles within the SRS boundary at its closest point,<sup>8</sup> presents no obvious potential for offsite consequences. As shown in the CAR, the potential radiological consequences at the SRS boundary associated with any credible event would be low, and would result in negligible impact on the health and safety of any member of the public.<sup>9</sup> Consequently, there should be no presumption of standing based on proximity applied in this proceeding.<sup>10</sup>

**B. BREDL HAS FAILED TO SHOW A PLAUSIBLE MEANS BY WHICH ITS MEMBERS COULD BE AFFECTED**

Since there is no presumption of standing based upon proximity, BREDL must identify a plausible means by which its members could be affected. In *Commonwealth Edison Co.*, the Commission stated:

[The licensing actions] do not on their face present any “obvious” potential of offsite radiological consequences...[Therefore] it was incumbent upon [the petitioner] to provide...some “plausible chain of causation,” some scenario suggesting *how* these particular [licensing actions] would result in a distinct new harm or threat to him. [Petitioner], however, based his claims of standing only upon conclusory allegations about potential radiological harm from the facility.<sup>11</sup>

Requestors submit the affidavits of two individuals (Mr. Moniak and Dr. Carl) who allegedly own property or travel within 20 miles of the SRS. The remaining affidavits are from BREDL members who live over 100 miles away from the MOX Facility site.

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<sup>7</sup> Staff Answer at 10, 15.

<sup>8</sup> See MOX Facility CAR, Section 1.3.1.1.

<sup>9</sup> See MOX Facility CAR, Section 5.5.3 and Table 5.5-26.

<sup>10</sup> Cf. *Commonwealth Edison* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-04, 49 NRC 185, 191 (1999) (holding that where there is no proximity presumption, “petitioner cannot base his or her standing simply upon a residence or visits near the plant, unless the proposed action quite ‘obvious[ly]’ entails an increased potential for offsite consequences”).

## 1. Mr. Moniak

Mr. Moniak, as an individual and as a representative member of BREDL, amends his prior submission on standing based upon the following activities.<sup>12</sup>

### (a) Recreational activities

In his affidavit, Mr. Moniak claims that his ability to recreate and consume fruits and vegetables is “threatened by accidents from fires, explosions, earthquakes, tornadoes, ice storms, and/or other natural phenomenon that harms [*sic*] the MFFF; as well as nuclear criticality accidents or plutonium dispersion accidents during transportation of plutonium MOX fuel.”<sup>13</sup> In particular, Mr. Moniak states that he:

- (1) Recreates and gathers berries in Aiken State Park (located about 20 miles northeast of the MOX Facility) at least monthly;
- (2) Recreates, eats berries, and “assist[s] on a part-time work basis with forestry inventory efforts” in the Silver Bluff Sanctuary (located 9-10 miles southwest of the MOX Facility) on a weekly to bi-weekly basis;
- (3) Canoes in the Savannah River (“north of, and south of, U.S. Highway 301”)<sup>14</sup> once or twice a year;
- (4) Recreates and eats wild berries and mushrooms in Hitchcock Woods (located about 18 miles north of the MOX Facility) at least three days a week;
- (5) Grows vegetables and fruit for consumption; and

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<sup>11</sup> *Commonwealth Edison Co.*, 49 NRC at 191-92 (emphasis added).

<sup>12</sup> DCS does not re-address Mr. Moniak’s original bases for standing included in the BREDL Request, pp. 7-10. DCS’ response to those original bases is set forth in the DCS Answer at 4-19.

<sup>13</sup> Standing Supplement, Affidavit of Donald J. Moniak at 2. Additionally, the original BREDL Request claimed that the cumulative impact of adding another facility at SRS “substantially increases the risk of a major accident that could contaminate [Mr. Moniak’s] property, lower area property values, degrade water supplies, impede and even prevent his ability to freely recreate in the area, and restrict his opportunities to consume fish and game species from the area.” BREDL Request at ¶ 6(e). The NRC Staff suggests that this basis “invoke[s] Mr. Moniak’s AEA interest of radiological health and safety, and his NEPA interest in seeing that the potential environmental harms involved in the proposed action...are properly identified.” Staff Answer at 19. DCS respectfully disagrees. Such general assertions of potential harm are not sufficient to confer standing on an individual who has not described how an accident could plausibly affect him almost 20 miles away from the proposed MOX Facility – particularly where there is no presumption of standing based on proximity. Under the Staff’s reasoning, an individual living at virtually any distance could claim standing, simply by making broad assertions of the type made here.

<sup>14</sup> Highway 301 crosses the Savannah River approximately 25 miles from the MOX Facility.

- (6) Travels on State Highway 125 (which traverses SRS and passes within 3.5 miles of the MOX Facility) about a dozen times a year.

Mr. Moniak fails to show how an accident at the MOX Facility could plausibly affect his activities at these distances from the MOX Facility. Instead, he refers in only the most general way to the potential threat of various types of accidents.

As noted in the CAR, only minor impacts (approximately 10 mrem) – resulting in negligible impact on the health and safety of the public – may result at the closest SRS boundary<sup>15</sup> from conservatively postulated events at the MOX Facility.<sup>16</sup> Furthermore, none of Mr. Moniak’s recreational activities take place at this range – rather, they occur 10-25 miles away from the MOX Facility. This applies to Mr. Moniak’s home garden as well, since according to the original BREDL Request, he resides about 20 miles away from the proposed MOX Facility.<sup>17</sup> At such remote distances, any possible dose would be well below that at the SRS site boundary, and would be *de minimis*. Mr. Moniak has provided no information to the contrary.

The only times Mr. Moniak approaches the site are during his occasional drives through the SRS. However, “intermittent visits” to the area near the proposed site are not a sufficient

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<sup>15</sup> The closest SRS boundary is almost six miles away from the MOX Facility.

<sup>16</sup> See MOX Facility CAR, Section 5.5.3 and Table 5.5-26.

<sup>17</sup> Mr. Moniak provided no credible scenario by which the fruits and vegetables he grows some 20 miles away from the MOX Facility could become contaminated. However, after noting the fact that “NRC has previously rejected similarly vague claims as bases for standing,” the NRC Staff nevertheless deemed Mr. Moniak’s previous assertions regarding his home garden sufficient to confer standing. Staff Answer at 16. This conclusion was reached with no apparent supporting rationale beyond the statement that there is a “lack of binding precedent” on this matter and that the cases cited by DCS were decided by licensing boards and therefore “carry no precedential value.” The Staff has not identified a plausible way in which Mr. Moniak’s garden could become contaminated.

basis for standing.<sup>18</sup> Thus, Mr. Moniak has failed to demonstrate that any of his recreational activities may be adversely affected by the NRC approval of the MOX Facility CAR.

**(b) Consumption of drinking water**

Mr. Moniak also states that he visits Savannah, Tybee Island, “and/or” Hilton Head, at least six to eight times a year to recreate or work. He claims that contamination of surface waters would impact his ability to enjoy these places. He also claims that his ability to recreate at Hilton Head would be impacted if the Savannah River were contaminated by the MOX Facility, “[s]ince Hilton Head derives its drinking water from the Savannah River.”<sup>19</sup>

Savannah, Tybee Island, and Hilton Head are located approximately 90, 100, and 93 miles from the MOX Facility, respectively. These locations clearly are too remote from the MOX Facility to confer standing without some persuasive demonstration of how surface or drinking water could become contaminated at these distances. Mr. Moniak has made no such demonstration.

Mr. Moniak does not describe how an accident could plausibly contaminate surface water at least 90 miles away. Furthermore, contrary to his assertions regarding Hilton Head’s drinking water, Hilton Head is an island in coastal salt-water that, according to the Environmental Protection Agency (“EPA”), receives its drinking water from groundwater, not the Savannah River.<sup>20</sup>

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<sup>18</sup> *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1447-48 (1982) (denying standing to petitioner who traveled within three miles of a nuclear power plant on six specified occasions).

<sup>19</sup> Standing Supplement, Affidavit of Donald J. Moniak, p. 2.

<sup>20</sup> The USEPA EnviroFacts database lists three drinking water systems on Hilton Head. Hilton Head Plantation (permit SC0750028) serves 11,115 people. Hilton Head PSD #1 (permit SC0720006) serves 7,366 people. Hilton Head Rural Water District (permit SC0720010) serves 711 people. According to the EPA database, all three systems obtain water from groundwater. See <http://www.epa.gov/enviro/html/qmr.html#envirofacts>.

## 2. Dr. Carl

BREDL also relies for representational standing upon an affidavit from Dr. Frank Carl, a BREDL member who claims to reside in Charlotte, North Carolina (over 130 miles from the proposed MOX Facility), and to own properties in Augusta, Georgia, located between 24 and 27 miles from the proposed MOX Facility. Dr. Carl has made no effort to describe a plausible mechanism by which he could be harmed at these remote locations.

Dr. Carl also claims that he “commonly recreate[s] in the following places in the Savannah River area: On the River, on the Augusta Canal, at the New Savannah Bluffs Park, at River Walk and in downtown Augusta,” as well as in the “Charlotte metropolitan area.”<sup>21</sup> Dr. Carl does not specify where on the River he recreates, and whether this is upstream or downstream of the MOX Facility.<sup>22</sup> Furthermore, he fails to provide the distances to the MOX Facility from the Augusta Canal, New Savannah Bluffs Park, River Walk, downtown Augusta, or Charlotte. The Augusta locations are over 20 miles from the MOX Facility, and Charlotte is over 130 miles away. Nor does Dr. Carl specify the frequency of his recreation at any of these locations. Instead, he simply states that he “commonly” recreates in these areas. BREDL’s failure to allege any plausible way in which the MOX Facility may adversely impact Dr. Carl’s interests at these remote locations is fatal to his claim for standing.

## 3. Other BREDL Members

The remaining fourteen affidavits submitted by BREDL are from members who live in the general vicinity of the Catawba and McGuire nuclear power plants. There is no credible way in which these individuals could be adversely affected by the MOX Facility, since their

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<sup>21</sup> Standing Supplement, Affidavit of Dr. Frank Carl, p. 2.

<sup>22</sup> See, e.g., *Atlas Corp.* (Moab, Utah Facility), LBP-97-10, 45 NRC 414, 426, aff’d CLI-97-8, 46 NRC 21 (1997) (denying standing based on petitioner’s water-related activities, since he had “not provided any information

respective properties are located over 100 miles away from the SRS. Claims arising out of proximity to the Duke reactors are not acceptable bases for standing, since the use of MOX fuel in reactors is outside the scope of this CAR proceeding.<sup>23</sup> As explained in the DCS Answer, the agency action at issue here is the NRC's review of the CAR for the MOX Facility at the SRS in South Carolina, not the separate reactor licensing actions that will be taken to permit use of the MOX fuel at the irradiation facilities. Therefore, BREDL may not rely for standing upon individuals who claim that they may be affected by the Catawba or McGuire nuclear plants.

**C. PROXIMITY TO POTENTIAL TRANSPORTATION ROUTES IS INSUFFICIENT TO CONFER STANDING**

Requestors also base their standing claims upon "proximity to plutonium MOX fuel transportation routes" from SRS to the Catawba and McGuire nuclear power plants,<sup>24</sup> and BREDL's "extensive membership in the [eastern North Carolina] area [which may be] potentially affected by nuclear materials transportation, specifically shipments of uranium hexafluoride bound for SRS."<sup>25</sup> The BREDL affiants claim to live between 7 and 40 miles from Catawba and McGuire, and within "similar or closer distance[s] from the probable MOX fuel routes," and to "drive on routes likely to be used to transport MOX fuel assemblies" to the Duke nuclear power plants.<sup>26</sup>

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that indicates whether these water-related activities are being conducted upstream or downstream from the facility, a fact critical to establishing whether these activities will establish the requisite injury in fact").

<sup>23</sup> See *Westinghouse Electric Corp.*, 12 NRC at 260 ("Intervention may not be based on claims pertaining to matters that are beyond the scope of this proceeding").

<sup>24</sup> Standing Supplement, pp. 2, 7.

<sup>25</sup> *Id.*, Affidavit of BREDL at ¶ 2e.

<sup>26</sup> *Id.*, Affidavits of Betty Yuhas, Phyllis St. Clair, Constance Kolpitzke, Thomas L. Drake, Sr., Francis G. Johnson, Edward Johnson, Judy T. Drake, Susan Bulloch, Nina W. Layton, Danielle M. Fournier, George L. Mitchell, Charles Peitzman, Catherine Mitchell; see also Affidavits of BREDL and Frank Carl.

As explained in the DCS Answer, an allegation that transportation of MOX fuel might occur on roads used by or located near BREDL members is insufficient to confer standing.<sup>27</sup> Moreover, because transportation of MOX fuel from the MOX Facility will be conducted not by DCS, but rather by DOE or another of its contractors, assertions regarding the safety of transportation of MOX fuel are beyond the scope of this proceeding.<sup>28</sup>

Similarly, issues related to the safety of transportation of uranium to SRS are outside the scope of NRC's authority. As the Staff has noted with respect to plutonium shipments to the SRS:

NRC has no control over the ways in which the DOE chooses to transport the nation's surplus weapons-grade plutonium to the SRS. The NRC will only assume jurisdiction over the plutonium and its derivatives once the material is inside the proposed MOX Facility.<sup>29</sup>

The same principle should apply to uranium shipments to the SRS.

Furthermore, contrary to BREDL's statement, there will be no incoming shipments of uranium hexafluoride (UF<sub>6</sub>) to the SRS. The DOE's Surplus Plutonium Disposition ("SPD") Environmental Impact Statement ("EIS") considers the transportation of UF<sub>6</sub> from a gaseous diffusion plant to a uranium conversion facility, where it would be converted to uranium oxide.<sup>30</sup> The uranium oxide created at the conversion facility (and not UF<sub>6</sub>) would then be transported to the MOX Facility.

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<sup>27</sup> See *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 43-44 (1990), cited affirmatively in *International Uranium (USA) Corp.* (Source Material License Amendment), CLI-01-18 (2001); *Exxon Nuclear Co., Inc.* (Nuclear Fuel Recovery and Recycling Center), LBP-77-59, 6 NRC 518, 520 (1977).

<sup>28</sup> The NRC Staff has also concluded that claims regarding transportation safety "may be read as a prohibited challenge to the Commission's 10 CFR Part 71 regulations governing the transport and shipment of radioactive materials under the NRC's jurisdiction.... NRC regulations may not be challenged in Subpart L proceedings." Staff Answer at 16, citing 10 CFR § 2.1239.

<sup>29</sup> Staff Answer at 36.

<sup>30</sup> SPD EIS, Section 4.4.2.6.

#### **D. ALLEGED NEPA VIOLATIONS ARE INSUFFICIENT TO CONFER STANDING**

BREDL cites a series of alleged DOE NEPA violations as bases for standing.<sup>31</sup> Each of these allegations involves an alleged act or omission by DOE that is outside the scope of this proceeding. With respect to NEPA issues, the scope of this proceeding is limited to the sufficiency of the NRC's NEPA process and determinations relating to the proposed MOX Facility. An NRC hearing does not provide a forum to litigate whether the DOE has met its separate NEPA obligations associated with the overall surplus plutonium disposition program.<sup>32</sup>

#### **E. INTEREST IN NONPROLIFERATION POLICY IS INSUFFICIENT TO CONFER STANDING**

Respondents also base their claim for standing upon an alleged interest in "advancing the cause of nuclear nonproliferation and preventing the spread of fissile materials."<sup>33</sup> As explained in the DCS Answer, an interest in general nuclear nonproliferation issues constitutes the type of broad public interest concern that repeatedly has been held to be insufficient for standing.<sup>34</sup> "[A] generalized grievance shared in substantially equal measure by all or a large class of citizens will not result in a distinct and palpable harm sufficient to support standing."<sup>35</sup>

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<sup>31</sup> See Standing Supplement at ¶¶ S4, S8 (listing alleged NEPA violations).

<sup>32</sup> In the BREDL Request, Mr. Moniak claimed standing on the basis of various statements regarding the potential for environmental contamination and DOE's alleged failure to select the F-area at SRS through the NEPA process. BREDL Request at 10. The NRC Staff found that Mr. Moniak's statements "invok[e] [his] NEPA interest" and are "an adequate identification of cognizable interests..." Staff Answer at 20. DCS respectfully disagrees. First, whether or not DOE has adequately implemented NEPA is clearly beyond the scope of this proceeding. Second, the Commission has recently stated that it "has never held that a claimed violation of law creates a presumption of standing, without some showing that the violation could harm the petitioner." *International Uranium (USA) Corp.*, CLI-01-18, at 4. This principle seems particularly applicable when the alleged violator is not the NRC license applicant. Moreover, as discussed in the DCS Answer, these statements lack particularization and fail to show how Mr. Moniak, living almost 20 miles away, could be affected. DCS Answer at 16-18. Finally, these statements appear to be more in the nature of contentions and are therefore inappropriate at this stage in the proceeding.

<sup>33</sup> Standing Supplement at ¶ S7.

<sup>34</sup> See, e.g., *Warth v. Seldin*, 422 U.S. 490, 499 (1975); *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 6 (1998); *Florida Power & Light Co.*, 30 NRC at 329-30; *Transnuclear Inc.*, CLI-77-24, 6 NRC 525, 531 (1977).

<sup>35</sup> *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit No.1), CLI-83-25, 18 NRC 327, 333 (1983).

## F. CITIZEN / TAXPAYER STATUS IS INSUFFICIENT TO CONFER STANDING

Each of BREDL's affiants assert as a basis for standing his/her general interest "as an American citizen and taxpayer" with "civic and financial interests in sound federal government and reasonable expectations that the federal government will not fund dangerous and unnecessary facilities when better alternatives exist."<sup>36</sup> However, it is well settled that injuries alleged as a citizen or taxpayer do not fall within the zone of interests protected by the AEA and NEPA.<sup>37</sup> Therefore, these individuals' status as United States citizens or taxpayers is insufficient to confer standing.<sup>38</sup>

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<sup>36</sup> Standing Supplement, Affidavits of Betty Yuhas, Phyllis St. Clair, Constance Kolpitcke, Thomas L. Drake, Sr., Francis G. Johnson, Edward Johnson, Judy T. Drake, Susan Bulloch, Nina W. Layton, Danielle M. Fournier, George L. Mitchell, Charles Peitzman, Catherine Mitchell; *see also* Affidavits of Donald J. Moniak and Frank Carl.

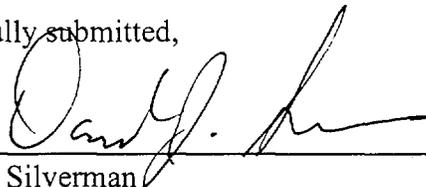
<sup>37</sup> *See Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), LBP-77-36, 5 NRC 1292, 1294, *aff'd*, ALAB-413, 5 NRC 1418, 1421 (1977); *Northern States Power Co.*, (Pathfinder Atomic Plant, Byproduct Material License), LBP-89-30, 30 NRC 311, 315 (1989).

<sup>38</sup> *See generally, Babcock and Wilcox* (Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania), LBP-94-4, 39 NRC 47, 49 (1994); *see also Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 477-482 (1982) (the mere fact that a person is a taxpayer is an insufficient basis for standing to object to particular government conduct); *Northern States Power Co.*, 30 NRC at 315; *Exxon Nuclear Co., Inc.*, 6 NRC at 520.

**IV. CONCLUSION**

Requestors have failed to demonstrate the essential minimum requirements for standing. For the foregoing reasons, DCS requests that BREDL's request for hearing be denied.

Respectfully submitted,



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Dated August 10, 2001

**UNITED STATES OF AMERICA  
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**CERTIFICATE OF SERVICE**

I hereby certify that copies of "Duke Cogema Stone & Webster's Answer to Blue Ridge Environmental Defense League and Donald Moniak Additional Filings on Standing" were served this day upon the persons listed below, by both e-mail and United States Postal Service, first class mail, with the exception of Environmentalists, Inc, which was served by first-class mail.

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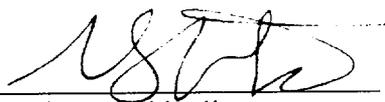
Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
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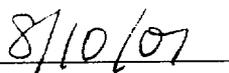
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