

RAS 4866

September 19, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

September 23, 2002 (10:16AM)

In the Matter of)
)
NUCLEAR FUEL SERVICES, INC.) Docket No. 70-143
)
(Special Nuclear Material License))

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

**APPLICANT'S RESPONSE TO SEPTEMBER 11, 2002
MEMORANDUM AND ORDER RAISING QUESTIONS
REGARDING THE COMPLETENESS OF
THE NRC'S JULY 9, 2002 FEDERAL REGISTER NOTICE**

Applicant Nuclear Fuel Services, Inc. ("NFS") submits this response to the Presiding Officer's September 11, 2002 Memorandum and Order which raised questions regarding the completeness of the Nuclear Regulatory Commission's ("NRC") July 9, 2002, Federal Register Notice.¹ The NRC's Federal Register Notice (1) provided an opportunity to seek a hearing under 10 C.F.R. Part 2, Subpart L, with respect to a proposed license amendment to permit the construction and operation of a Low-Enriched Uranyl Nitrate Storage Building at the NFS site, and (2) described the NRC's Environmental Assessment ("EA"), which concluded that the environmental impacts associated with the proposed amendment would not be significant and therefore did not warrant the preparation of an Environmental Impact Statement. The Presiding Judge's Order observed that the NRC's Federal Register Notice neither set forth the date upon which the license amendment application had been filed nor supplied any information as to how the content of the application could be located. The Order required the NRC staff to file a response addressing whether the Notice is defective and, if so, what the appropriate remedy

¹ 67 Fed. Reg. 45,555 (July 9, 2002).

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would be to cure such a defect. The Order also permitted NFS an opportunity to provide its views on the sufficiency of the NRC's Federal Register Notice.

NFS agrees that the NRC's Federal Register Notice would have been improved by a specific identification of the application's date and how its content could be located. NFS respectfully submits, however, that the absence of this additional information from the Federal Register Notice is immaterial to petitioners' standing and entitlement to a hearing in this instance, because the EA identified in the Federal Register Notice both summarizes and directs readers to the license amendment application.

That petitioners received notice of the license amendment application is beyond dispute. The very first sentence of the NRC's Federal Register Notice states that the NRC is "considering the amendment [of the NFS license] to authorize construction and operation of the Uranyl Nitrate building. . ." 67 Fed. Reg. at 45,555. In addition, several local newspapers published articles about the proposed amendment, including one which provided instructions on how to request a hearing. See, e.g., "NRC: NFS project would increase pollutants but pose no impact," *Elizabethton Star*, July 23, 2002 ("The Public has 30 days from the July 9 publication of the notice in the Federal Register to request a hearing on the license amendment"); "Planned NFS Erwin Operation Would Release Small Amounts of Radioactive Items, NRC says," *Greenville Sun*, August 3, 2002 (providing instructions for requesting a hearing "on the proposed NFS license amendment"); "NFS Works Toward Eventual Start-Up of TVA Project BLEU," *Johnson City Press*, July 31, 2002 ("Nuclear Regulatory local resident inspector Dan Rich said Tuesday that NFS has started the process of licensing applications").

The date on which the license amendment application was filed and the means to access its content were readily discernible to potential petitioners. The NRC's Federal Register Notice identifies the EA by date and accession number, and refers the reader to the NRC's Public Electronic Reading Room ("ADAMS"). 67 Fed. Reg. at 45,558. Any person who wanted to request a hearing should have accessed and reviewed this document.² Any person who did so was given explicit notice of the license amendment application, which has been available through ADAMS since June of this year. The EA, in section 1.3, "Description of Proposed Action," states that the proposed action currently before the NRC is to allow NFS to construct and operate a Uranyl Nitrate Storage Building (UNB). EA at 1-2. It further states:

The first of the three license amendment applications was submitted to the NRC in a letter dated February 28, 2002. The application contains a request to authorize the licensee to store LEU-bearing material at the Uranyl Nitrate Building. Low enriched uranyl nitrate solutions, prepared by Westinghouse Savannah River Company, at DOE's Savannah River Site near Aiken, South Carolina, will be shipped to the UNB beginning in early 2003. These Uranyl nitrate solutions will be limited to a weight percent enrichment of ≤ 5 percent of 235U and transported from Savannah River Site (SRS) to NFS in Type B packages. Low enriched uranyl nitrate solutions will also be produced in the downblending facility onsite and stored in the USB. The UNB will contain approximately 24 LE uranyl nitrate tanks, each having a capacity of 39.74 m³ (10,500 gallons).

² With one exception, the petitioners are either represented by counsel or experienced in NRC proceedings and, therefore, should have been able to obtain the license amendment application. The only exception are Petitioners David and Trudy L. Wallack, who appear to be pro se. In addition to not reading the license amendment application, the Wallacks' apparently had also not read the NRC's Federal Register Notice or the EA, and indeed based their hearing request solely on what appeared in a local newspaper article. See "NRC Questions 'Troublesome Omissions' on NFS Project," *Elizabethton Star*, September 12, 2002. ("They said it appeared that all I was doing was responding to a newspaper article. That's all I had at that moment," quoting Trudy Wallack). Therefore, since the Wallacks did not read the Federal Register Notice, specific reference to the license amendment application in the Federal Register Notice would have been of no benefit to them.

EA at 1-2.

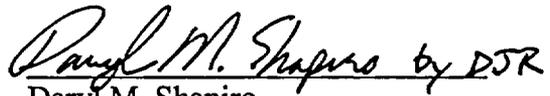
In addition to obtaining a copy of NFS' license amendment application through ADAMS, petitioners could have called the NRC contact identified in the Federal Register Notice, contacted the NRC official identified in the notice as the notice's issuer, or requested a copy from NFS (as one petitioner has recently done.)

Consequently, while the Federal Register Notice could no doubt have been improved if the date of the license amendment application and instructions for obtaining the application had been included, each of the petitioners in this case had more than sufficient information to allow it to prepare adequate pleadings. There is no evidence that any of them took even the most obvious and easily available steps to obtain access to the license amendment application.³ The absence of more specific information in the Federal Register Notice should not excuse any deficiencies in these pleadings.

³ One group of petitioners, the Oak Ridge Environmental Peace Alliance *et al.*, stated that the Federal Register Notice "does not identify any license amendment application that is the subject of a hearing; nor does it propose to make any safety determinations regarding any such applications." Request for Hearing, dated August 8, 2002, at 1-2. However, the Federal Register Notice clearly states that the NRC "is considering the amendment of Special Nuclear Material License SNM-124 to authorize construction and operation of the Uranyl Nitrate Storage Building at the Nuclear Fuel Services site in Erwin, Tennessee." 67 Fed. Reg. at 45,555. As noted above, the date on which the application was filed was readily discernible. In addition, because the NRC stated in the notice that it was considering the license amendment application, it could hardly be a surprise that the NRC would be "propos[ing] to make . . . safety determinations regarding . . . such application."

Therefore, no remedy is necessary and the Presiding Judge should proceed to rule upon the hearing petitions.

Respectfully submitted,



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Dated: September 19, 2002

CERTIFICATE OF SERVICE

I hereby certify that copies of the "Applicant's Response to September 11, 2002 Memorandum and Order Raising Questions Regarding the Completeness of the NRC's July 9, 2002 *Federal Register* Notice" was served on the persons listed below by electronic mail or by deposit in the U.S. mail, first class, postage prepaid, this 19th day of September, 2002.

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