

RAS 4954

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September 19, 2002

DOCKETED
USNRC

Alan S. Rosenthal, Presiding Officer
Richard F. Cole, Special Assistant
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

October 24, 2002 (9:42AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

SUBJECT: *NFS-Erwin License Amendment Proceeding, Docket No. 70-143*

Dear Judges Rosenthal and Cole,

I am writing to inform you that I have been retained to represent the Friends of the Nolichucky Valley, one of the petitioners in this proceeding. A notice of my appearance is enclosed.

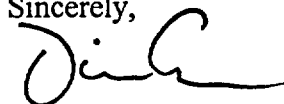
In addition, I would like to inform you that the three other Petitioners who joined the Friends of the Nolichucky Valley in a hearing request dated August 8, 2002, Oak Ridge Environmental Peace Alliance, State of Franklin Chapter of the Sierra Club, and Tennessee Environmental Council, have decided to designate Friends of the Nolichucky River Valley as the lead intervenor in any litigation that may be conducted regarding their concerns. I will be representing their collective interests in this proceeding.

In addition, Trudy L. Wallack and David Wallack, who submitted letters to the NRC requesting a hearing on August 6 and 7, 2002, have decided to participate in the proceeding as members of Friends of the Nolichucky River Valley. I am enclosing declarations for Ms. Wallack and Mr. Wallack which demonstrate their standing to participate in this proceeding as members of that organization. Please note that I have not yet received the original declarations from Ms. Wallack and Mr. Wallack, and thus the copies being filed today are fax copies. I will send the originals as soon as I receive them.

Finally, I am enclosing a response by the four Petitioners to your Memorandum and Order of September 11, 2002. Please note that the Petitioners seek an opportunity to comment on whatever filing the NRC Staff submits today in response to your order.

Thank you for your consideration.

Sincerely,



Diane Curran
Counsel to Friends of the Nolichucky River Valley

Template = SECY-049

SECY-02

September 19, 2002

UNITED STATES OF AMERICA
U.S. NUCLEAR REGULATORY COMMISSION
BEFORE THE PRESIDING OFFICER

In the matter of)
)
Nuclear Fuel Services, Inc.) Docket No. 70-143
)
(Materials License SNM-124))
)

NOTICE OF APPEARANCE BY DIANE CURRAN

Pursuant to 10 C.F.R. § 2.713, Diane Curran hereby enters an appearance in this proceeding as duly authorized legal counsel for Friends of the Nolichucky River Valley. Undersigned counsel is a member in good standing of the bars of the District of Columbia, the State of Maryland, the U.S. District Court for the District of Columbia, and the U.S. Courts of Appeals for the D.C. and First Circuits.

Respectfully submitted,



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September 19, 2002

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UNITED STATES OF AMERICA
U.S. NUCLEAR REGULATORY COMMISSION
BEFORE THE PRESIDING OFFICER

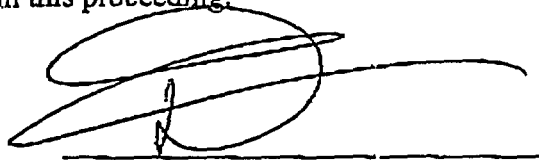
In the Matter of)
)
Nuclear Fuel Services, Inc.) Docket No. 70-143
) SNM License 124
(Blended Low Enriched Uranium Project))

DECLARATION OF DAVID WALLACK

Under penalty of perjury, I, David Wallack, declare that:

1. My name is David Wallack. My principal residence is 5725 North Bay Shore Drive, Miami, Florida.
2. For part of the year, I also reside with Trudy Wallack, at 2210 West Allen's Bridge Road in Greeneville, Tennessee. During most of the year I make monthly visits of a few days to Greeneville, and during the summers and holidays I spend extended periods of time there.
3. Our Greeneville property consists of about eight acres, including 900 feet of riverfront, on the banks of the Nolichucky River. I estimate that the property lies about 20 to 25 miles downstream from the NFS-Erwin facility.
4. Trudy and I have a very large extended family, including my mother, our grown children, grandchildren, and nieces and nephews. They all visit us regularly at our home on the Nolichucky River.
5. Our property has a beach on it, where my family and I spend many hours picnicing, fishing, boating and swimming. We also own several boats, and we frequently canoe or raft on the river. I am concerned that when we swim and boat in the Nolichucky River, my family and I will be exposed to increased levels of radiological and chemical effluents from the NFS plant. I am concerned that as a result, we may suffer adverse health effects. I am also concerned about the effects of increased radiological and chemical effluent from the NFS plant on the value of our property.
6. I am an avid canoeist and rafter. I frequently canoe and raft on various parts of the Nolichucky River. The waters just below the NFS-Erwin plant are very fine for both canoeing and white water rafting. However, I do not canoe or raft there, because I am concerned about the effects on my health from exposure to the chemical and radioactive effluents that NFS discharges from the plant. I am further discouraged from boating there by the prospect of increased discharges of chemical and radioactive effluent from the NFS plant.

7. The Nolichucky River supplies drinking water for the town of Greeneville and for Greene County. Although there is a well on our property, I frequently visit familys' and friends' homes and public facilities where I drink from the municipal water supply. I also consume fruits and vegetables that are irrigated with Nolichucky River water, I eat shrimp that are raised in Nolichucky River water, and I drink milk from cows that drink from the Nolichucky River. I am therefore concerned about the effects on my health of ingesting increased levels of radiological and chemical contaminants in the Nolichucky River.
8. I am concerned that the increased levels of radiological and chemical effluent from the NFS Erwin plant will affect my health during normal operation of the facility, and also during floods. The Nolichucky River is periodically subject to severe flooding. The most recent severe flood, which occurred in August of 2001, did extensive damage to life and property along the river. I am concerned that such flooding may result in unplanned discharges of effluent from the NFS-Erwin site that may affect my health and the health of my family. I am also concerned that during a flood, our property may become contaminated by radiological and chemical discharges from the NFS plant. This would adversely affect both my health and my family's health. It could also adversely affect the value of our property.
9. I am a member of the Friends of the Nolichucky River Valley. I agree with the concerns expressed in the Request for Hearing filed by the Friends of the Nolichucky River Valley on August 8, 2002. I have authorized the Friends of the Nolichucky River Valley to represent me in this proceeding. I therefore am withdrawing my individual appearance in this proceeding.



David Wallack

Dated: September 19, 2002

September 19, 2002

UNITED STATES OF AMERICA
U.S. NUCLEAR REGULATORY COMMISSION
BEFORE THE PRESIDING OFFICER

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

DECLARATION OF TRUDY L. WALLACK

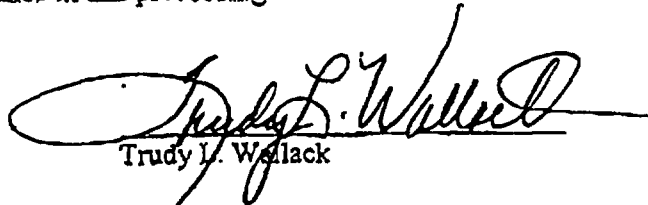
Under penalty of perjury, I, Trudy L. Wallack, declare that:

1. My name is Trudy L. Wallack. I reside at 2210 West Allen's Bridge Road, Greeneville, Tennessee. I live there with David Wallack.
2. Our property consists of about eight acres, including 900 feet of riverfront, on the banks of the Nolichucky River. I estimate that the property lies about 20 to 25 miles downstream from the NFS-Erwin facility.
3. David and I have a very large, extended family, including my 85 year old father, our grown children, grandchildren, and nieces and nephews. They all visit us regularly at our home on the Nolichucky River.
4. Our property has a beach on it, where my family and I spend many hours picnicing, fishing, boating and swimming. We also own several boats, and we frequently canoe or raft on the river. I am concerned that when we swim and boat in the Nolichucky River, my family and I will be exposed to increased levels of radiological and chemical effluents from the NFS plant. I am concerned that as a result, we may suffer adverse health effects. I am also concerned about the effects of increased radiological and chemical effluent from the NFS plant on the value of our property.
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6. The Nolichucky River supplies drinking water for the town of Greeneville and for Greene County. Although there is a well on our property, I frequently visit familys' and friends' homes and public facilities where I drink from the municipal water supply. I also consume fruits and vegetables that are irrigated with Nolichucky River water, I eat shrimp that are raised in Nolichucky River water,

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and I drink milk from cows that drink from the Nolichucky River. I am therefore concerned about the effects on my health of ingesting increased levels of radiological and chemical contaminants in the Nolichucky River.

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8. I am a member of the Friends of the Nolichucky River Valley. I agree with the concerns expressed in the Request for Hearing filed by the Friends of the Nolichucky River Valley on August 8, 2002. I have authorized the Friends of the Nolichucky River Valley to represent me in this proceeding. I therefore am withdrawing my individual appearance in this proceeding.



Trudy L. Wallace

Dated: September 19, 2002

September 19, 2002

UNITED STATES OF AMERICA
U.S. NUCLEAR REGULATORY COMMISSION
BEFORE THE PRESIDING OFFICER

In the matter of)
)
Nuclear Fuel Services, Inc.) Docket No. 70-143
)
(Materials License SNM-124))
)

**RESPONSE TO SEPTEMBER 11, 2002 MEMORANDUM AND ORDER
BY FRIENDS OF THE NOLICHUCKY RIVER VALLEY,
OAK RIDGE ENVIRONMENTAL PEACE ALLIANCE,
STATE OF FRANKLIN GROUP/SIERRA CLUB AND
TENNESSEE ENVIRONMENTAL COUNCIL**

Friends of the Nolichucky River Valley, Oak Ridge Environmental Peace Alliance (“OREPA”), State of Franklin Group of the Sierra Club, and Tennessee Environmental Council (hereinafter “Petitioners”), hereby respond to the Presiding Officer’s Memorandum and Order (Raising Questions Regarding Completeness of Federal Register Notice) (September 11, 2002). The Presiding Officer has raised a number of questions regarding the adequacy of the Federal Register notice that was published by the Staff of the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) regarding an Environmental Assessment and Finding of No Significant Impact prepared in support of a proposed amendment to Nuclear Fuel Services’ (“NFS’s”) license for its facility in Erwin, Tennessee. See 67 Fed. Reg. 45,555 (July 9, 2002).

As pointed out by Petitioners in their hearing request of August 8, 2002, the Federal Register notice does not cite any license amendment application by NFS, nor does it propose to make any safety determination regarding any such application. Petitioners are extremely puzzled by this situation. We are unable to answer the Presiding Officer's questions at this point, because we have no insights into the Staff's reasons for publishing the Federal Register notice in the manner that it did. Therefore, Petitioners request a reasonable opportunity to respond to the answers provided by the Staff to the Presiding Officer's questions.

In the meantime, Petitioners would like to take this opportunity to point out some of the ways in which the Federal Register notice is confusing and lacking in relevant information.

1. NRC regulations at 10 C.F.R. 2.104 require that in the case of an application on which a hearing is required, the NRC must publish a "notice of hearing" in the Federal Register. Contrary to this requirement, the title of the July 9 Federal Register notice contains no reference to a "Notice of Hearing." Instead, the notice is entitled "Environmental Assessment and Finding of No Significant Impact of License Amendment for Nuclear Fuel Services." The "action" is described in the subheading as "Amendment of Nuclear Fuel Services, Inc., Materials License SNM-124 to authorize construction and operation of the Uranyl Nitrate Storage Building."

Thus, there is no mention of an opportunity to request a hearing in either the title or the subheading of the notice. Not until the very end of the body of the notice does the reader find a paragraph entitled "Notice of Opportunity for Hearing." It is very possible

that some members of the public who were reviewing the Federal Register for notice of an opportunity for a hearing on the NFS-Erwin license amendment passed over this notice because it did not alert the reader at the outset that the subject matter of the notice included the opportunity to request a hearing.

2. Pursuant to 10 C.F.R. § 2.104(a), a notice of hearing must state, *inter alia*, the “nature” of the hearing, the “authority under which the hearing is to be held,” and the “matters of fact and law to be considered.” These elements are missing from the notice. Instead, the information provided about the subject of the hearing is confusing and incomplete. In the paragraph entitled “Notice of Opportunity for Hearing,” the notice states that the subject of the hearing is “the license amendment.” However, no license amendment application is identified.

Moreover, the text of the notice does not provide a specific description of any particular license amendment. Instead, the notice makes the following extremely confusing statement:

The proposed action currently before the U.S. Nuclear Regulatory Commission (NRC) is to allow the licensee to construct and operate a Low-Enriched Uranyl Nitrate Storage Building (UNB) at the Nuclear Fuel Services, Inc. (NFS) site in Erwin, Tennessee, and to increase the 235U possession limit. This action is part of the Blended Low-Enriched Uranium (BLEU) project described below. The other related future activities which were considered to contribute to the environmental impacts for this project are: construction and operation of an Oxide Conversion Building (OCB), construction and operation of a new Effluent Processing Building (EPB), and relocation of downblending operations within the NFS protected area in a BLEU Preparation Facility.

On March 4, 2002, the NRC issued a notice of intent to prepare an environmental assessment (EA) for amendment of Special Nuclear Material (SNM) License No. SNM-124 for NFS. To avoid segmentation of the environmental review, NFS has submitted environmental documentation for three proposed license amendments, which will impact the site over the next few years.

Id. This statement raises a number of questions. First, what license amendment application(s) is/are at issue here? Is the BLEU Project one of these license amendments, or is it an umbrella term for all of them? Has NFS-Erwin submitted all three applications for the license amendments? Why does the paragraph regarding the hearing notice refer to only a single license application rather than three applications? To which license amendment application does the notice of hearing refer?

3. The notice contains statements that appear to be inherently contradictory. For instance, the notice starts out by stating that: “[t]he *proposed action* currently before the U.S. Nuclear Regulatory Commission (NRC) is to *allow the licensee* to construct and operate a Low-Enriched Uranyl Nitrate Storage Building (UNB) at the Nuclear Fuel Services, Inc. (NFS) site in Erwin, Tennessee, and to increase the ²³⁵U possession limit.” 67 Fed. Reg. at 45,555 (emphasis added). Two paragraphs later, the notice states that the Environmental Assessment, which is the subject of the Federal Register notice, “does not serve as authorization for any proposed activities.” *Id.* Yet, nowhere does the notice cite any other authority under which the NRC proposes to allow the requested activities. If the proposed action is to allow NFS to build the UNB and store U-235 there, under what authority does the NRC propose to take that action?

4. It is Petitioners’ understanding that construction of a new building on the NFS site has commenced. We believe that the building under construction may be the uranyl nitrate storage building. If so, under what authority was it begun? When was the public informed of the decision?

5. In an e-mail message dated September 17, 2002, William M. Keyser, law clerk to the ASLB, sent a message asking the NRC Staff to comment on whether NFS's license amendment application is complete and available. Petitioners would like to comment on their efforts to obtain complete copies of all relevant license amendment applications. An application dated February 28, 2002, is in the ADAMS system. However, it is difficult to understand because it appears to consist of selected revised pages to another application, which is not included. When taken out of context, these individual pages are difficult to follow. Petitioners also understand that the license amendment application includes proprietary information, to which they have no access.

In addition, Petitioners have been unable to locate the second license amendment application. At page 1-2, the EA states that this application was expected to be filed in July 2002. However, Petitioners have not been able to locate it in the ADAMS system. Petitioners have not searched for the third application, because the EA states that it is not expected to be filed until January 2003. EA at 1-3.

In any event, the Federal Register notice is so confusing that it is not apparent which, if any, of these license applications is the subject of the instant hearing.

At this point, as demonstrated above, it is not clear what is the legal or factual subject matter of the hearing that has been offered. Moreover, the title of the notice does not alert the public that a hearing is available at all. Under the circumstances, Petitioners believe the deficiencies in the Federal Register notice are so serious as to require its republication. However, Petitioners recognize the possibility that the Staff may offer some reasonable explanation for these apparent defects. Therefore, Petitioners propose

to await the NRC Staff's explanation of its reasons for the manner in which it published the Federal Register before commenting on what steps should be taken next. As discussed above, Petitioners respectfully request that they be given an opportunity to respond to the Staff.

Respectfully submitted,



Diane Curran

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Counsel to Friends of the Nolichucky River Valley

Dated: September 19, 2002

CERTIFICATE OF SERVICE

I certify that on September 19, 2002, copies of a letter from Diane Curran to Alan S. Rosenthal, Notice of Appearance, and Response to September 19, 2002, Memorandum and Order by Friends of the Nolichucky River Valley, Oak Ridge Environmental Peace Alliance, State of Franklin Group/Sierra Club, and Tennessee Environmental Council were served by first-class mail and/or e-mail (as indicated) on the following. In addition, copies of declarations by David Wallack and Trudy Wallack were served by first-class mail only.

<p>Alan S. Rosenthal, Presiding Officer Atomic Safety and Licensing Board Mail Stop T-3 F23 U.S. Nuclear Regulatory Commission Washington, D.C. 20555 By e-mail to: rosnthl@aol.com Sam4@nrc.gov</p>	<p>Office of Appellate Adjudication U.S. Nuclear Regulatory Commission Washington, D.C. 20555</p>
<p>Richard F. Cole, Administrative Judge Atomic Safety and Licensing Board Mail Stop T-3 F23 U.S. Nuclear Regulatory Commission Washington, D.C. 20555 By e-mail to: rfc1@nrc.gov</p>	<p>Daryl Shapiro Shaw Pittman, LLP 2300 N Street N.W. Washington, D.C. 20037 By e-mail to: Daryl.Shapiro@shawpittman.com</p>
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<p>Jennifer Euchner, Esq. David Cummings, Esq. Office of General Counsel U.S. Nuclear Regulatory Commission Washington, D.C. 20555 By e-mail to: jme@nrc.gov, dac3@nrc.gov</p>	<p>Louis Zeller Blue Ridge Environmental Defense League P.O. Box 88 Glendale Springs, NC 28629 By e-mail to: BREDL@skybest.com</p>

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Diane Curran