

RAS 5088

December 13, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

December 17, 2002 (11:29AM)

Before the Presiding Officer

In the Matter of)
)
Nuclear Fuel Services, Inc.)
)
(Blended Low Enriched Uranium Project))

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket No. 70-143
Special Nuclear Material
License No. SNM-124

APPLICANT'S ANSWER TO REQUEST FOR HEARING AND AREAS OF CONCERN OF THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE

Applicant Nuclear Fuel Services, Inc. ("Applicant" or "NFS") files this answer to the request for a hearing of the Blue Ridge Environmental Defense League ("BREDL").¹ NFS submits this answer pursuant to 10 C.F.R. § 2.1205(g). NFS respectfully requests that the Presiding Officer deny BREDL's request for a hearing for lack of standing and for failure to submit an admissible area of concern.

I. FACTUAL AND LEGAL BACKGROUND

A. Procedural Background

On February 28, 2002, NFS submitted a request for an amendment to Special Nuclear Material License No. SNM-124 to authorize the storage of low-enriched uranium ("LEU")-bearing materials at the Uranyl Nitrate Building ("UNB") at NFS's nuclear fuel fabrication and uranium recovery facilities in Erwin, Tennessee.² The license amendment is the first of three amendments that will be necessary to support process operations

¹ The Substitute Request of the Blue Ridge Environmental Defense League for a Hearing on a License Amendment for Nuclear Fuel Services (Nov. 29, 2002) ("Request").

² Letter from B. Marie Moore, Vice President, Safety and Regulation, NFS, to Director, Office of Nuclear Materials Safety and Safeguards, U.S. NRC (Feb. 28, 2002) ("NFS Letter"); Environmental Statements; Availability, etc.: Nuclear Fuel Services, Inc., Notice of docketing, etc., 67 Fed. Reg. 66,172 (Oct. 30, 2002).

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SECY-02

associated with the portion of the Blended Low-Enriched Uranium (“BLEU”) Project that will be performed at NFS. Id. at 66,173. The BLEU Project is part of a Department of Energy (“DOE”) program to reduce stockpiles of surplus high enriched uranium (“HEU”) through re-use or disposal as radioactive waste.³ Re-use of the HEU as LEU is the favored option of the DOE program because it converts nuclear weapons grade material into a form unsuitable for weapons, it allows the material to be used for peaceful purposes, and it allows the recovery of the commercial value of the material. Framatome ANP, Inc. has contracted with NFS to downblend surplus HEU material to an LEU nitrate solution, which will be transferred to the UNB. Id.

On July 9, 2002, the NRC Staff published a notice in the Federal Register that it had prepared the EA for the entire project, so as to avoid segmentation of the environmental review, and had made a Finding Of No Significant Impact (“FONSI”) for the amendment. Environmental Assessment and Finding of No Significant Impact of License Amendment for Nuclear Fuel Services, Inc. 67 Fed. Reg. 45,555, 45,558 (2002). The Staff also noted that it was in the process of considering the February 28, 2002 license amendment application itself. Id. The Staff noted that it will perform a separate safety evaluation and environmental review for each of the NFS license amendment requests. Id. at 45,555. If the Staff finds that the current EA accurately reflects the effects of the project, then it will perform no further assessment for that request. Id. If it finds that the current EA does not accurately reflect the effects of the project, then it will perform another EA (or potentially an environmental impact statement (“EIS”)). Id.

In response to the notice, several petitioners filed requests for a hearing and NFS filed responses opposing the requests. See Memorandum and Order (Raising Questions

³ U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, NMSS, Environmental Assessment for Proposed License Amendments to Special Nuclear Material License No. SNM-124 Regarding Downblending and Oxide Conversion of Surplus High-Enriched Uranium (June 2002) (“EA”) at 1-3.

Regarding Completeness of Federal Register Notice) (Sept. 11, 2002) at 1. One of the petitioners complained that the notice was incomplete. Id. at 2. This ultimately led to the NRC Staff committing to issue a revised notice and the Presiding Officer suspending the proceeding until that point, at which the petitioners would be allowed to amend their petitions or file new petitions as they desired. See Memorandum and Order (Suspending Further Proceedings Pending Issuance of Revised Federal Register Notice) (Sept. 23, 2002) at 2-3.

On October 30, 2002, the NRC Staff published a revised notice of opportunity for hearing. 67 Fed. Reg. at 66,172 (corrected November 12, 2002, 67 Fed. Reg. 68,699). Applicant NFS was concerned that the revised notice remained unclear as to whether the scope of the hearing included only the environmental effects of the instant (first) license amendment request or whether it included the environmental effects of all three amendment requests (i.e., the entire EA) and filed a motion for clarification with the Presiding Officer on November 12, 2002. Applicant's Motion for Clarification of Scope of Proceeding (Nov. 12, 2002). The Presiding Officer ultimately ruled that "the scope of the proceeding is limited to those safety and environmental areas of concern that directly relate to the February 2002 [i.e., first] license amendment application." Memorandum and Order (Ruling on Motion for Clarification of Scope of Hearing) (Nov. 19, 2002).

B. The First License Amendment Application

Pursuant to the first license amendment request and as described in the EA, the UNB will be located on the NFS Site in Erwin, Tennessee, and will store LEU nitrate solutions prepared at and shipped to NFS from the DOE's Savannah River Site. EA at 1-2. The UNB will also store solutions prepared at the NFS Site, if license amendments for such operations are approved. Id. at 2-5. The LEU solutions will be stored in tanks within a diked area of the UNB. Id.

The EA found that none of the proposed amendments would result in significant adverse impacts to the environment. EA at 5-1. Normal operations are not expected to have a significant impact on air quality or water quality. See id. at 5-1 to 5-3. Specifically, discharges from the proposed action (the BLEU Project) are not expected to have a significant impact on the water quality in the Nolichucky River. Id. at 5-2. With respect to potential accidents, the EA found that the safety controls to be employed in plant processes for the BLEU project will ensure that the processes are safe. Id. § 5.1.2. The first license amendment will cause only a fraction of the insignificant impacts caused by the BLEU project as a whole, in that it will result in no discharges of chemical or radiological contaminants to the Nolichucky River and only a small fraction of the total airborne emissions of the project as a whole. See id. at 1-2 (proposed action consists of storage of low-enriched uranyl nitrate in tanks at the UNB); id. Tables 2.2 and 2.3 (UNB airborne emissions will be fraction of BLEU Complex emissions which will be fraction of BLEU project emissions).

C. Petitioners' Hearing Request

Pursuant to the Presiding Officer's Order, BREDL filed a substitute hearing request on November 29, 2002. Request at 1. The Request does not describe the nature of BREDL, although by name it presumably is environmental group. BREDL assertedly has members living within two and six miles of the NFS plant and working within one mile of the plant. Request at 1. NFS requests that the Request be denied because BREDL lacks standing, in that BREDL does not show that either it or its members would suffer any injury-in-fact from the granting of the license amendments. NFS also requests that the Request be denied because BREDL has failed to articulate any areas of concern that warrant a hearing on the amendments.

II. ANALYSIS

Under the notice of opportunity for hearing, requests for a hearing on the NFS license amendment are to be evaluated under 10 C.F.R. Part 2, Subpart L. 67 Fed. Reg. at 66,173. Under Subpart L, a petitioner requesting a hearing must demonstrate the timeliness of its request, that it has standing, and that it has areas of concern “germane” to the subject matter of the proceeding. Atlas Corp. (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 422 (1997); 10 C.F.R. §§ 2.1205(e) and (h). The Commission does not permit “notice pleadings” with respect to standing and areas of concern. Shieldalloy Metallurgical Corp. (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 353-54 (1999). Rather, it “insist[s] on detailed descriptions of the Petitioner’s positions on issues going to both standing and the merits.” Id. at 354.

A. BREDL Does Not Have Standing

In determining whether to grant a petitioner’s request to hold a hearing, the Presiding Officer must first determine whether the petitioner meets the judicial standards for standing and must consider, among other factors:

- 1) the nature of the requestor’s right under the [Atomic Energy] Act to be made a party to the proceeding;
- 2) the nature and extent of the requestor’s property, financial, or other interest in the proceeding; and
- 3) the possible effect of any order that may be entered in the proceeding on the requestor’s interest.

10 C.F.R. § 2.1205(h). This is the test for standing familiar in NRC proceedings. See, e.g., Sequoyah Fuels Corp. (Gore, Oklahoma Site Decommissioning), CLI-01-02, 53 NRC 9, 13 (2001). Since the BREDL is an organization, however, it must also meet the test for organizational standing. See Yankee Atomic Electric Co. (Yankee Nuclear Power

Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994). We show below that BREDL fails to meet these applicable standards.

In order to establish standing, an organization must show potential injury to the interests of the organization or its members. Yankee Nuclear, CLI-94-3, 39 NRC at 102 n.10. Injury to an organization's interests must constitute "discrete institutional injury to itself." See International Uranium (USA) Corp. (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001). Injury to general environmental and policy interests is clearly not sufficient. Id.; see International Uranium (USA) Corp. (White Mesa Uranium Mill), LBP-02-03, 55 NRC 35, 39 (2002). If an organization seeks standing through asserted harm to its members' interests (*i.e.*, representational standing), "the organization must show how at least one of its members may be affected by the licensing action, must identify the member, and must show that the organization is authorized to represent that member." White Mesa, CLI-01-21, 54 NRC at 250.

To demonstrate standing in materials licensing cases under Subpart L, a petitioner must allege: (1) an actual or threatened, concrete and particularized injury, that (2) is fairly traceable to the challenged action, (3) falls among the general interests protected by the Atomic Energy Act (or other applicable statute such as the National Environmental Policy Act) and (4) is likely to be redressed by a favorable decision.

Sequoyah Fuels, CLI-01-02, 53 NRC at 13. The burden of establishing the alleged injuries is on the petitioner. Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility – Decommissioning Plan), LBP-93-4, 37 NRC 72, 81 (1993). Furthermore, "section 2.1205(e) of [the Commission's] procedural regulations requires petitioners seeking a hearing to provide a detailed description as to why they have standing." Shieldalloy, CLI-99-12, 49 NRC at 354.

"Since a licensing amendment involves a facility with ongoing operations, a petitioner's challenge must show that the amendment will cause a 'distinct new harm or threat apart from the activities already licensed.'" White Mesa, CLI-01-21, 54 NRC at

251 (emphasis added). “Conclusory allegations about potential radiological harm from the facility in general, which are not tied to the specific amendment at issue, are insufficient to establish standing.” Id.

To provide standing, asserted harms must be more than “unfounded conjecture;” petitioners must show “a realistic threat . . . of direct injury.” White Mesa, CLI-01-21, 54 NRC at 253. Even in a reactor license amendment case, a petitioner cannot establish standing by simply enumerating the proposed license changes and alleging without substantiation that the changes will lead to offsite radiological consequences. Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 & 2), CLI-99-4, 49 NRC 185, 192 (1999). Vague or cryptic statements regarding petitioners’ location, their activities, or their potential injuries are clearly insufficient. See Atlas, LBP-97-9, 45 NRC at 426-27. If petitioners claim that there is a potential for injury from accidents, they must show that the accident scenario(s) are credible and that the accident(s) would have a “‘particular and concrete’ impact” at the distances from the facility at which the petitioners are located. Babcock and Wilcox, LBP-93-4, 37 NRC at 84. Similarly, petitioners alleging harm from facility effluents or contamination must explain how the effluents or contamination would have concrete impact upon them. Id. at 84, 92; see Atlas, LBP-97-9, 45 NRC at 426 (alleged radiological contacts must be concretely delineated); see also White Mesa, CLI-01-21, 54 NRC at 252-53. Furthermore, mere potential exposure to small doses of radiation within regulatory limits is not sufficient, as it does not constitute “distinct and palpable” injury. See Babcock and Wilcox, LBP-93-4, 37 NRC at 87-88; International Uranium (USA) Corp. (Source Material License Amendment), LBP-01-8, 53 NRC 204, 220, aff’d, CLI-01-18, 54 NRC 27 (2001) (negligible likelihood of exposure significantly above background does not constitute “new or increased harm . . . or risk”).

Unlike nuclear power reactor licensing proceedings, in materials licensing proceedings there is no presumption that a petitioner has standing merely because he or she lives in or frequents a location some distance from a facility. Informal Hearing Procedures for Materials Licensing Adjudications, Proposed Rule, 52 Fed. Reg. 20,089, 20,090 (1989). To show injury-in-fact, petitioners “must provide some evidence of a causal link between the distance they reside from the facility and injury to their legitimate interests.” Babcock and Wilcox, LBP-93-4, 37 NRC at 83-84, 87 (rejecting per se standing for petitioners living as close as one-eighth of a mile from and visiting an apartment “within one foot” of the facility).

Similarly, close proximity to a radioactive waste transportation route, alone, is not sufficient to establish standing. Northern States Power Co. (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 43-44 (1990); White Mesa, LBP-01-8, 53 NRC at 219; see CLI-01-18, 54 NRC at 31-32. Furthermore, regarding accidents:

Nuclear waste safely and regularly moves via truck and rail throughout the nation under regulations of the NRC and Department of Transportation (49 C.F.R. Parts 100-179). The mere fact that additional radioactive waste will be transported if decommissioning is authorized does not *ipso facto* establish that there is a reasonable opportunity for an accident to occur [on a route one mile from petitioner’s residence], or for the radioactive materials to escape because of accident [sic] or the nature or the substance being transported.

Pathfinder, LBP-90-3, 31 NRC at 43 (emphasis added); White Mesa, CLI-01-21, 54 NRC at 252-53 (“speculation about accidents along feed material’s transport routes does not establish standing under our case law”). Rather, the petitioner must demonstrate that the subject licensing action “is defective in a manner so as to cause the injuries described.” Pathfinder, LBP-90-3, 31 NRC at 44; see also White Mesa, LBP-02-03, 55 NRC at 45-46 (small increase in truck traffic alone provides no basis for standing).

The fact that BREDL asserts that the NRC should have prepared an EIS for the NFS license amendment, Request at 1, does not obviate the need for BREDL to otherwise

establish standing. Although having an EIS prepared may be a procedural right, “the petitioner must suffer some concrete injury from the proposed agency action, which must still be shown apart from having any interest in having the procedures observed.”

Babcock and Wilcox, LBP-97-9, 45 NRC at 93. Petitioners unable to show concrete injury to legitimate health, safety, or environmental interests “are unable to establish their standing to pursue their concerns about the agency’s compliance with NEPA’s procedural requirements.” Id. at 93-94. As the Supreme Court put it, an individual can assert procedural rights “so long as the procedures in question are designed to protect some threatened concrete interest of his that is the ultimate basis of his standing.” Lujan, 504 U.S. at 573 n.8.

Here, BREDL fails to demonstrate standing because it fails to show a realistic threat of direct, concrete, and palpable injury that is fairly traceable to the proposed license amendment. BREDL points to asserted harms connected to past or ongoing operations at the NFS facility that are not related to the proposed license amendment and it makes only impermissibly vague and speculative claims, lacking in all detail, about potential harm arising from the amendment.

1. BREDL Has Shown No Injury-In-Fact to Itself

BREDL appears to assert institutional injury to what it describes as “BREDL’s property, financial, or other interest in the proceeding include[ing] offices in Glendale Springs, NC.” Request at 2. It claims that it “seeks to reduce the extent of radionuclide contamination of air, water, and soil in the region affected by NFS, including alteration or elimination of the UNB and the downblending proposal.” Id. It does not state in any further respect, however, how the NFS license amendment would cause injury to its property, financial, or other interests in its offices, in Glendale Springs, or elsewhere.

BREDL’s assertion is clearly insufficient to establish standing on the basis of injury to its property. First, although BREDL does not mention it, Glendale Springs,

North Carolina, is approximately 44 miles from the NFS plant and approximately 37 miles from the closest point of the Nolichucky River (which flows into Tennessee, not into North Carolina). Further, the NFS Site and Glendale Springs are separated by mountains. Thus, it is impossible to see how the NFS license amendment would cause harm to BREDL's property. Even if it had stated the location of its offices, distance alone is not sufficient to establish the likelihood of concrete and palpable harm. Rather, a petitioner "must show, in accordance with section 2.1205(g), what particular impact the planned licensing action will have upon [its] legitimate (e.g., health, safety, or environmental) interests." Babcock and Wilcox, LBP-93-4, 37 NRC at 83-84; see also Shieldalloy, CLI-99-12, 49 NRC at 355 (standing claims must be supported by "requisite detail"). Hence, the petitioner must "provide some evidence of a causal link" between the distance between its property and the facility and injury to its interests. Babcock and Wilcox, LBP-93-4, 37 NRC at 84. Since BREDL has not made these showings, it cannot derive standing from alleged injury to its property.

2. BREDL Has Shown No Injury-In-Fact to Its Members

BREDL also claims that it has representational standing, in that it is interested in protecting the quality of the environment and that it has members whose health, property, and environmental interests would allegedly be harmed by the NFS facility. Request at 1. Therefore, BREDL must show that at least one of its members may be affected by the proposed license amendment, it must identify the member, and it must show that it is authorized to represent the member. White Mesa, CLI-01-21, 54 NRC at 250.

BREDL has identified two members who state that they "support" BREDL's request for a hearing in this proceeding. See Affidavit of Nancy Allen ¶ 4; Affidavit of Ronald Tinker ¶ 4. As discussed below, however, BREDL has not shown that its members have standing themselves and thus its Request should be denied.

a. **Nancy Allen**

Ms. Nancy Allen states that she is a member of BREDL and that she supports BREDL's request for a hearing in this proceeding. Allen Aff. ¶¶ 1, 4. She lives in Erwin, Tennessee, two miles from the NFS plant. Id. ¶¶ 2, 3.a. She states that she works less than one mile from the plant. Id. ¶ 3.a. She claims that she has an interest in this matter because a) she lives and works certain distances from the NFS plant; b) the BLEU process would involve construction and operation of several buildings at the plant and the relocation of downblending operations for LEU; c) NFS "has several contaminated buildings at its Erwin site;" d) the groundwater beneath the NFS property is contaminated; e) "[r]adioactive contamination caused by NFS would be increased by the expanded operations under the proposed license amendment and the BLEU project;" and f) she is concerned about the effect of expanded operations on the health and well-being of herself and her family. Id. ¶ 3.

Ms. Allen's declaration does not show that she has standing. First, the fact that she lives within two miles of the NFS plant and works within one mile of the plant, without more, does not show that she is likely to suffer injury-in-fact from this proposed license amendment or the BLEU Project as a whole. 52 Fed. Reg. at 20,090. To show injury-in-fact petitioners "must provide some evidence of a causal link between the distance they reside from the facility and injury to their legitimate interests." Babcock and Wilcox, LBP-93-4, 37 NRC at 83-84, 87 (rejecting per se standing for petitioners living as close as one-eighth of a mile from and visiting an apartment "within one foot" of the facility).

Ms. Allen's claims regarding contaminated buildings at the NFS Site and groundwater contamination at the site are also not sufficient. An asserted harm must arise from the proposed license amendment, not past or ongoing operations. White Mesa, CLI-01-21, 54 NRC at 251.

Finally, her claim that radioactive contamination caused by NFS would be increased by the expanded operations under the proposed license amendment and the BLEU Project is also not sufficient. Petitioners alleging harm from facility effluents or contamination must explain how the effluents or contamination would have concrete impact upon them. Babcock and Wilcox, LBP-93-4, 37 NRC at 84, 92. “[A] petitioner who wants to establish ‘injury in fact’ for standing purposes must make some specific showing outlining how the particular radiological (or other cognizable) impacts from the nuclear facility or materials involved in the licensing action at issue can reasonably be assumed to accrue to the petitioner.” Atlas, LBP-97-9, 45 NRC at 426. Here, Ms. Allen has provided no explanation of how radiological impacts will affect her or even what they will be. Thus, she has not demonstrated her standing. Because Ms. Allen does not have standing, BREDL cannot derive standing from her.

b. Ronald Tinker

Mr. Ronald Tinker states that he is a member of BREDL and that he supports BREDL’s request for a hearing in this proceeding. Tinker Aff. ¶¶ 1, 4. He lives in Unicoi, Tennessee, six miles from the NFS plant. Id. ¶¶ 2, 3.a. He states that he works “right beside—as close a[s] 10 feet from NFS.” Id. ¶ 3.a. He claims, in what appears to be a form affidavit identical to Ms. Allen’s, that he has an interest in this matter because a) he lives and works certain distances from the NFS plant; b) the BLEU process would involve construction and operation of several buildings at the plant and the relocation of downblending operations for LEU; c) NFS “has several contaminated buildings at its Erwin site; d) the groundwater beneath the NFS property is contaminated; e) “[r]adioactive contamination caused by NFS would be increased by the expanded operations under the proposed license amendment and the BLEU Project;” and f) he is

concerned about the effect of expanded operations on the health and well-being of himself and his family. Id. ¶ 3.

Mr. Tinker's claims are identical to those of Ms. Allen, except for the distance from the NFS Site at which he works. Therefore, his claims do not provide him with standing any more than Ms. Allen's claims provide her with standing. Regarding Mr. Tinker's employment "as close a[s] 10 feet from NFS" (though an unspecified distance from the UNB), Tinker Aff. ¶ 3.a, in Babcock and Wilcox, when petitioners claimed that they frequently visited an apartment "within one foot" of the facility in question, the presiding officer rejected their claim of standing on the grounds that they did not attempt to show that there was any particular offsite location where their activities would expose them to radiological contamination that would have constituted distinct and palpable injury. LBP-93-4, 37 NRC at 87. Nor did they show that their activities would have resulted in any injury that could have been traced to the activities at the site in question. Id. They did not present any information to contradict the licensee's information that site effluents would only be a small fraction of regulatory limits. Id. In sum, the petitioners "failed to put forth any credible basis to support a finding of 'particular and concrete' injury in fact to them during their daily activities from [the proposed action]." Id. at 88. Here, Mr. Tinker has similarly not put forth any credible basis to show that he will suffer particular and concrete injury at his job from NFS' proposed license amendment for the UNB (or the BLEU Project as a whole). Thus, he lacks standing.

c. BREDL's Request

In addition to its members' affidavits, BREDL's hearing request also makes claims of potential injury but they also do not provide its members with standing. BREDL makes claims about contaminated buildings at the NFS Site (and a decommissioning "pilot program") and groundwater contamination that allegedly affects

the Nolichucky and Tennessee Rivers, Request at 2, but those claims allegedly relate to past operations at the NFS plant. Thus, they do not establish BREDL's standing here.

The Request claims that “[t]he alteration in [the NFS] site may postpone or eliminate the decontamination and decommissioning of the structures under the [decommissioning] pilot program, [in that] it may be necessary for clean up operations to be completed before any new operations can be considered.” Request at 2. It claims that “failure of the pilot program” could cause the spread of airborne radionuclides that would place its members at risk. *Id.* This claim does not provide BREDL's members with standing because it is purely conjectural and thus does not show a realistic threat of direct injury. *White Mesa*, CLI-01-21, 54 NRC at 253. BREDL provides absolutely nothing to show that the proposed license amendment (for UNB construction and operation) or the BLEU Project will have any effect on a decommissioning pilot program that would result in any harm to its members.

BREDL's request also claims that “[d]ownblending operations would entail the further use of toxic chemicals and solvents which may add to the existing groundwater contamination.” Request at 2 (emphasis added). It asserts that some of the solvents in the groundwater are volatile or semivolatile which would become airborne “under certain circumstances.” *Id.* “Greater concentrations of these toxic substances in groundwater may lead to greater volatilization, adding to the health risk to those working near the plant and residents living downwind.” *Id.* at 2-3 (emphasis added). Finally, BREDL claims that the toxins in the groundwater are persistent and bioaccumulative such that they reverse the effect of dilution by streams or groundwater aquifers and thus they pose a significant hazard to BREDL's members who use the groundwater or the local river system for drinking water. *Id.* at 3.

These claims do not provide BREDL with standing because they consist merely of strings of vague, conjectural assertions. *See White Mesa*, CLI-01-21, 54 NRC at 253;

Central and South West Services, Inc. v. EPA, 220 F.3d 683, 701 (5th Cir. 2000).

BREDL provides nothing to show that the proposed license amendment (or the BLEU Project) would contaminate the groundwater, let alone with volatile chemicals, or that such chemicals would become airborne and have a concrete impact on BREDL's members. Nor does it identify which of the toxins are bioaccumulative and persistent and show how they will enter the groundwater or rivers and ultimately injure BREDL's members as a result of the proposed amendment. Thus, these claims are simply too vague and unsupported to establish BREDL's standing.

BREDL mentions in passing the alleged potential for harm to "the general public," Request at 2, "residents of Erwin, and the people of east Tennessee," *id.* at 3. None of those assertions can establish BREDL's standing. One cannot establish standing on the basis of potential harm to others. Atlas, 45 NRC at 426 n.2 (citing Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 474 n.1 (1978)); Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989).⁴

3. Conclusion

BREDL has not shown that either it or its members will suffer any injury-in-fact from the NFS license amendment. Therefore, BREDL does not have standing and its petition should be denied.

B. BREDL Has Not Proffered an Admissible Area of Concern

To obtain a hearing under Subpart L, a petitioner must also "describe in detail" "areas of concern" about the licensing activity in question. 10 C.F.R. § 2.1205(e)(3); see Shieldalloy, CLI-99-12, 49 NRC at 354. Areas of concern must be "germane to the

⁴ Similarly, while Ms. Allen asserted that she was concerned about effects on her family, those concerns cannot provide her with standing.

subject matter of the proceeding.” 10 C.F.R. § 2.1205(h). If the proceeding concerns a license amendment, germane areas of concern are limited to activities to be authorized by the amendment and do not include those authorized by the underlying license. See Energy Fuels Nuclear, Inc. (Source Materials License No. SUA-1358), LBP-94-33, 40 NRC 151, 153-54 (1994).

Areas of concern must have some factual basis. “Prior to acceptance of an area of concern, there must at least be a reference to some authority giving rise to the concern.” Molycorp., Inc. (Washington, Pennsylvania), LBP-00-10, 51 NRC 163, 175 (2000). “Information and belief is patently inadequate.” Id. Concerns must be particularized in some respect and show some significance so as to “appear that the concern is at least worthy of further exploration.” See International Uranium (USA) Corp. (White Mesa Uranium Mill), LBP-02-06, 55 NRC 147, 153 (2002). BREDL has submitted no admissible concerns here.

First, BREDL states that it is interested in the submittal of a complete EIS “to determine the full extent of the proposed action on the environment and public health.” BREDL Req. at 1. This concern is inadmissible in that it is not even an assertion that the license amendment, or the NRC Staff’s EA, are in any way inaccurate or incomplete. Nowhere does BREDL show or even claim that an EIS is required for the NFS license amendments. Thus, this is merely a “notice pleading” of the type the Commission has stated is insufficient to support a valid concern. Shieldalloy, CLI-99-12, 49 NRC at 353-54.

BREDL makes statements about contaminated buildings at the NFS Site and contamination of the groundwater beneath the NFS Site. Request at 2-3. But those allegations are not germane to this proceeding because they relate only to past or ongoing operations, not the proposed license amendment or the BLEU Project. See Energy Fuels Nuclear, LBP-94-33, 40 NRC at 153-54; 10 C.F.R. § 2.1205(h).

BREDL asserts that its members' health and well-being would be affected by increased emissions of "radionuclides and other toxins" arising from the proposed license amendment. Request at 1. This concern is inadmissible because it has no factual support, Molycorp, LBP-00-10, 51 NRC at 175; it fails to even identify what the "radionuclides and other toxins" are or their quantities and concentrations, and provides no indication whatsoever that the alleged emissions and contamination would be significant in any respect. The concern is little more than a bare assertion -- BREDL has clearly not shown that it is "worthy of further exploration." See White Mesa, LBP-02-06, 55 NRC at 153.

BREDL similarly claims that the BLEU Project could have an effect on the decommissioning pilot program at NFS which could result in the spread of airborne radionuclides. Request at 2. This concern is similarly invalid, in that there is no basis whatsoever to believe that the proposed amendment for the UNB will have any impact on any decommissioning programs at NFS.

BREDL claims that downblending operations could add to existing groundwater contamination which might ultimately have impacts on the health and safety of people living nearby. Request at 2-3. This claim is not germane to this license amendment request because "downblending operations" will not take place in the UNB; rather, they will take place in the BLEU Preparation Facility. EA at 2-1. This concern is also invalid as it is entirely conjectural—BREDL cites no authority or support whatsoever for its claim. It is also unparticularized, in that BREDL does not say what aspects of the BLEU Project could result in groundwater contamination.

BREDL has submitted no admissible areas of concern. Therefore, its petition should be denied.

III. CONCLUSION

For the foregoing reasons, the Presiding Officer should deny BREDL's request for a hearing on the license amendment.

Respectfully submitted,



Daryl M. Shapiro

D. Sean Barnett

SHAW PITTMAN, LLP

2300 N Street, N.W.

Washington, DC 20037

(202) 663-8507

Counsel for Nuclear Fuel Services, Inc.

Neil J. Newman

Vice President and General Counsel

Nuclear Fuel Services, Inc.

Dated: December 13, 2002

CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Answer To Request By The Friends Of The Nolichucky River Valley, The State Of Franklin Group Of The Sierra Club, The Oak Ridge Environmental Peace Alliance, And The Tennessee Environmental Council To Hold Proceeding In Abeyance; Applicant's Answer To Request For Hearing Of The Friends Of The Nolichucky River Valley, The State Of Franklin Group Of The Sierra Club, The Oak Ridge Environmental Peace Alliance, And The Tennessee Environmental Council; Applicant's Answer To Request For Hearing And Areas Of Concern Of The Blue Ridge Environmental Defense League; and Applicant's Answer To Declaration Of Kathy Helms-Hughes were served on the persons listed below by electronic mail or by facsimile and deposit in the U.S. mail, first class, postage prepaid, this 13th day of December, 2002.

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

Administrative Judge
Alan S. Rosenthal, Presiding Officer
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Fax: 301-415-5599
email: rsnthl@aol.com; sam4@nrc.gov

Administrative Judge
Richard F. Cole, Special Assistant
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Fax: 301-415-5599
Email: rfc1@nrc.gov

Dennis C. Dambly
Jennifer M. Euchner
David A. Cummings
Office of the General Counsel
Mail Stop: O-15 D21
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Fax: 301-415-3572
Email: dac3@nrc.gov; jme@nrc.gov;

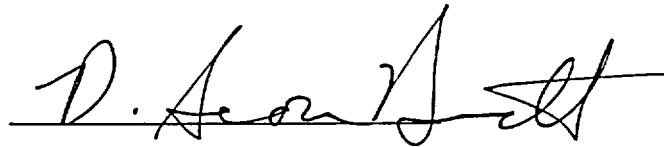
Louis Zeller
Blue Ridge Environmental Defense League
P.O. Box 88
Glendale Springs, NC 28629
Email: BREDL@skybest.com

Diane Curran
Harmon, Curran, Spielberg & Eisenberg,
L.L.P.
1726 M Street, N.W., Suite 600
Washington, D.C. 20036
Fax: 202-328-6918
Email: dcurran@harmoncurran.com

Office of the Secretary
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
One White Flint North
Rockville, MD 20852-2738
Attention: Docketing and Service Branch
Fax: 301-415-1101
Email: hearingdocket@nrc.gov
(original and two copies)

**C. Todd Chapman, Esq.
King, King & Chapman, P.L.L.C.
125 South Main Street
Greeneville, TN 37743
Fax: 423-639-3629

*Kathy Helms-Hughes
P.O. Box 58
Hampton, TN 37658
Email: Khelms@mounet.com



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* by U.S. mail only

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