

August 23, 2002

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

DOCKETED  
USNRC

August 26, 2002 (3:08PM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Before the Presiding Officer

In the Matter of	)	
	)	Docket No. 70-143
NUCLEAR FUEL SERVICES, INC.	)	Special Nuclear Material
	)	License No. SNM-124
(Blended Low Enriched Uranium Project)	)	

**APPLICANT'S ANSWER TO REQUESTS FOR HEARING OF JULIA BEACH,  
DAVID BYRD, TAMARA DAVIS CHAPMAN, WILLIAM COOPER, BRANDON  
DAVIS, JULIA B. EVANS, DENNE D. EVANS, TONI L. FOREMAN, LINNEA  
GILMER, JOANNA HAMMONDS, WHITNEY JOHNSON, GERALD M.  
O'CONNOR, JR., JAMES SMITH, DREW WALSH, AND PETER H. ZARS**

Applicant Nuclear Fuel Services, Inc. ("NFS") hereby submits its answer to the essentially identical, two-page boilerplate Requests for Hearing filed on August 8, 2002, by Julia Beach, David Byrd, Tamara Davis Chapman, William Cooper, Brandon Davis, Julia B. Evans, Denne D. Evans, Toni L. Foreman, Linnea Gilmer, JoAnna Hammonds, Whitney Johnson, Gerald M. O'Connor, Jr., James Smith, Drew Walsh, and Peter H. Zars ("Petitioners").<sup>1</sup> NFS submits this answer pursuant to 10 C.F.R. § 2.1205(g). NFS respectfully requests that the Presiding Officer deny Petitioners' requests for a hearing for lack of standing and for failure to set forth an admissible area of concern.

**I. FACTUAL AND LEGAL 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

<sup>1</sup> Letter from C. Todd Chapman, Esq., to Richard A. Meserve, Chairman, NRC, transmitting Declarations from Petitioners (Aug. 8, 2002) ("Requests").

uranium recovery facilities in Erwin, Tennessee.<sup>2</sup> On July 9, 2002, the NRC published a notice in the Federal Register that it was considering the NFS license amendment request and had prepared an Environmental Assessment (“EA”)<sup>3</sup> and had made a Finding Of No Significant Impact (“FONSI”) for the amendment. 67 Fed. Reg. 45,555, 45,558 (2002). The notice stated that interested persons could file a written request for hearing on the license amendment pursuant to 10 C.F.R. § 2.1205(a) by August 8, 2002. Id.

The license amendment is the first of three amendments that will be necessary to support process operations associated with the Blended Low-Enriched Uranium (“BLEU”) Project. Id. 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. EA at 1-3. Re-use of the HEU as LEU is the favored option 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.

The UNB will store LEU solutions prepared at and shipped from the DOE 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 solutions will be stored in tanks within a diked area of the UNB. Id.

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<sup>2</sup> 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”). On March 4, 2002, the NRC published a notice in the Federal Register that it was considering the license amendment and intended to prepare an EA on it and two additional related license amendments proposed by NFS. 67 Fed. Reg. 9,791 (2002).

<sup>3</sup> 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.

On August 8, 2002, Petitioners, through counsel, submitted fifteen (15) essentially identical "Declarations," each requesting, *inter alia*, that "a Public Hearing be conducted." The Declarations consist entirely of two pages of "boilerplate" language. Petitioners generally have added only their address and a sentence or two in their own handwriting, e.g., "I swim in the Nolichucky" and "I kayak in the Nolichucky river." Even the three completely type-written Declarations contain the same boilerplate language.

NFS requests that the Requests be denied because Petitioners lack standing, in that they do not show that they would suffer any injury-in-fact from the granting of the license amendment. NFS also requests that the Requests be denied because Petitioners have failed to articulate any areas of concern that warrant a hearing on the amendment.

## **II. APPLICABLE LAW**

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 45,558. 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. Petitioners Do 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.

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 Corp. (Gore, Oklahoma Site Decommissioning), CLI-01-02, 53 NRC 9, 13 (2001).

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 license 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.” International Uranium (USA) Corp. (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 251 (2001) (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.” Id. 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 cause concrete impact to 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. Finally, a petitioner “has ‘an ironclad obligation’ to examine the application, and other publicly available documents.” Duke Energy Corporation (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 338 (1999). We show below that Petitioners fail to meet these applicable standards.

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); see International Uranium (USA) Corp. (White Mesa Uranium Mill), CLI-01-18, 54 NRC 27, 31-32 (2001).

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). Rather, the petitioner must demonstrate that the subject licensing action “is defective in a manner so as to cause the injuries described.” Id. at 44; see also International Uranium (USA) Corp. (White Mesa Uranium Mill), LBP-02-03, 55 NRC 35, 45-46 (2002) (small increase in truck traffic alone provides no basis for standing).

The fact that Petitioners assert that the NRC should have prepared an EIS for the NFS license amendment, Request at 5, does not obviate their need to 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, 37 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.

Here, Petitioners fail to demonstrate standing because they fail to show a realistic threat of direct, concrete, and palpable injury that is fairly traceable to the proposed license amendment. Petitioners make only impermissibly vague and speculative claims, lacking in all detail, about potential harm arising from the amendment. These deficiencies are particularly significant because the Commission holds Petitioners represented by counsel "to a higher standard than *pro se* litigants." Shieldalloy, CLI-99-12, 49 NRC at 354. Here, even if counsel were not familiar with the applicable NRC regulations, the notice of opportunity for hearing (a copy of which was attached to the Requests), stated the applicable requirements in their entirety. There is simply no excuse for such grossly deficient Requests and no reason to grant a hearing in response.

### III. ANALYSIS

Petitioners failed to demonstrate standing because they have not shown that they will suffer injury-in-fact from the NFS license amendment. Indeed, a fair reading of the Petitioners' Declarations fails to identify any interest that is affected by the proposed license amendment.

Other than a sentence or two of Petitioner-specific information, the Declarations are essentially identical "boilerplate." Each Declaration typically asserts that the Petitioner: (1) has read the July 8, 2002, Federal Register notice; (2) finds "no mention" of certain downstream "effects" in the Federal Register notice; (3) is "concerned" by the decision not to prepare an EIS; and (4) "submits" that an EIS is required. See e.g., Declaration of Julia Beach ¶¶ 3, 4, 5, 6; Declaration of Tamara Davis Chapman ¶¶ B, C. Finally, each Declaration requests that a "Public Hearing" be conducted. See e.g., id. These boilerplate documents do not remotely

approach the substance and detail required by the Commission to establish standing and an area of concern germane to the license amendment.

Petitioners' sole factual assertion, and only basis for a hearing, is a claimed deficiency in the content of the EA. See e.g., Declaration of Julia Beach ¶ 3; Declaration of Tamara Davis Chapman ¶ B. Each Declaration typically asserts that:

I find no mention in this *Environmental Assessment* relative to the effect on downstream sources of drinking water, downstream consumers of harvested fish (e.g. small mouth bass) or those who use downstream water for recreational activities such as swimming.

See e.g., Declaration of Julia Beach ¶ 4; Declaration of Tamara Davis Chapman ¶ C (emphasis added). This assertion is demonstrably wrong.

Petitioners appear to have confused the Federal Register notice with the NRC Staff's environmental analysis. Petitioners do not claim to, and obviously have not, read the EA, although the Federal Register notice states it is publicly available for review. See e.g., Declaration of Julia Beach ¶ 3 (asserting review of only the July 9, 2002, Federal Register Notice); Declaration of David Byrd ¶ 3 (same); Declaration of Tamara Davis Chapman Beach ¶ B (same). As a result, Petitioners' are apparently unaware that an entire section of the EA explicitly describes the potential environmental impacts "downstream" of the proposed action. See generally EA § 5. Indeed, the sole purpose of EA section 5, "Environmental Consequences," is to describe potential adverse environmental impacts from the proposed action, including those "downstream" of the NFS site.

For surface water, the EA explicitly states that "[d]ischarges from the proposed action are not expected to have significant impact on the surface water quality in the Nolichucky River." EA § 5.1.1.1. The EA also states explicitly that "the proposed action will not discharge any effluents to the groundwater; therefore, no adverse impacts to groundwater are expected." Id.



The NRC Staff specifically identified that neither the closest public groundwater supply well, “nor any of the other public water supply wells are directly downstream of the site and therefore would not be affected by site operations.” Id. § 3.6.2. Further, the EA states that “radiological contaminants in the surface water are below the effluent concentration limits in 10 CFR Part 20.” Id. § 3.9.2. The Declarations provide no information that would contradict or challenge the EA analyses.

In addition to these common failures of all Petitioners to establish standing, the specific information in each Declaration also fails to establish standing of any Petitioner, as discussed below.

1. Julia Beach

Ms. Beach individually asserts only that:

I, as well as my family, consume municipal water which is derived from the Nolichucky [sic] River. I have reviewed your Commission’s document titled “Environmental Assessment and finding of No Significant Impact of License Amendment for Nuclear Fuel Services, Inc.” which appeared in the Federal Register on July 9, 2002.

Declaration of Julia Beach at 1.

Petitioner Beach failed to describe any injury, trace any injury to the proposed license amendment, or show how any injury could be redressed by a favorable decision arising from a hearing on the proposed license amendment. Merely drinking water “derived from” the Nolichucky River does not demonstrate an injury-in-fact. The Declaration does not identify how far from the NFS site she lives, whether she is upstream or downstream from the site, or whether the drinking water is “derived from” the river upstream or downstream (and if so, how far downstream) of the NFS site. Moreover, the asserted injury of contaminated drinking water caused by the proposed license amendment is completely refuted by the NRC Staff’s EA

analyses (see discussion supra), which Petitioner has failed to address. Oconee, CLI-99-11, 49 NRC at 338. Failing to demonstrate any of the required elements, Petitioner Beach lacks standing to participate in this proceeding.

Thus, Petitioner Beach has failed to demonstrate either a need for a hearing or standing to participate in this matter.

2. David Byrd

Mr. Byrd individually asserts only that:

I live downwind from N.F.S. I don't want to breath polluted air that is any worse than what it already is. I have a choice about cigarette smoke, but I would not have a chance to get away from this.

...

I live near the N.F.S. I am concerned about air, and water pollution. I have cancer possibly caused by earlier air pollution from this plant.

Declaration of David Byrd at 1, 2.

Petitioner Byrd failed to trace any injury to the proposed license amendment, or show how any injury could be redressed by a favorable decision arising from a hearing on the proposed license amendment. The only injury described is an existing cancer, which could not possibly be related to the proposed license amendment. Further, the petitioner failed to assert any tie between "polluted air" and the proposed license amendment. Failing to demonstrate any of the required elements, Petitioner Byrd lacks standing to participate in this proceeding.

Thus, Petitioner Byrd has failed to demonstrate either a need for a hearing or standing to participate in this matter.

3. Tamara Davis Chapman

Ms. Chapman individually asserts only that, "I, as well as my family, consume 'municipal' water which is derived from the Nolichucky [sic] River." Declaration of Tamara Davis Chapman at 1.

Petitioner Chapman failed to describe any injury, trace any injury to the proposed license amendment, or show how any injury could be redressed by a favorable decision arising from a hearing on the proposed license amendment. Merely drinking water "derived from" the Nolichucky River does not demonstrate an injury-in-fact. Moreover, the implied injury of allegedly contaminated drinking water caused by the proposed license amendment is completely refuted by the NRC Staff's EA analyses (see discussion supra), which Petitioner has failed to address. Oconee, CLI-99-11, 49 NRC at 338. Failing to demonstrate any of the required elements, Petitioner Chapman lacks standing to participate in this proceeding.

Thus, Petitioner Chapman has failed to demonstrate either a need for a hearing or standing to participate in this matter.

4. William Cooper

Mr. Cooper individually asserts only that, "I live very near this Nuclear Fuels Company." Declaration of William Cooper at 1.

Petitioner Cooper failed to describe any injury, trace any injury to the proposed license amendment, or show how any injury could be redressed by a favorable decision arising from a hearing on the proposed license amendment. Merely living near the NFS site does not demonstrate an injury-in-fact. The Declaration does not identify how far from the NFS site he lives or whether he is upstream or downstream from the site. Failing to demonstrate any of the required elements, Petitioner Cooper lacks standing to participate in this proceeding.

Thus, Petitioner Cooper has failed to demonstrate either a need for a hearing or standing to participate in this matter.

5. Brandon Davis

Mr. Davis individually asserts only that:

“General welfare and health concerns for the present and future residents of the surrounding and possibly affected residents. I use the Nolichucky river for year-round kayaking, fishing and backpacking recreation.”

Declaration of Brandon Davis at 1.

Petitioner Davis failed to describe any injury, trace any injury to the proposed license amendment, or show how any injury could be redressed by a favorable decision arising from a hearing on the proposed license amendment. Merely using the Nolichucky River for recreation does not demonstrate an injury-in-fact. The Declaration does not identify how far from the NFS site he uses the river or whether he recreates upstream or downstream from the site. Moreover, the implied injury of contaminated river water caused by the proposed license amendment is completely refuted by the NRC Staff's EA analyses (see discussion supra), which Petitioner has failed to address. Oconee, CLI-99-11, 49 NRC at 338. Failing to demonstrate any of the required elements, Petitioner Davis lacks standing to participate in this proceeding.

Thus, Petitioner Davis has failed to demonstrate either a need for a hearing or standing to participate in this matter.

6. Julia B. Evans

Ms. Evans individually asserts only that, “The water we drink and use for cooking, bathing, and other household uses comes from the Nolichuckey [sic] River.” Declaration of Julia B. Evans at 1.

Petitioner Evans failed to describe any injury, trace any injury to the proposed license amendment, or show how any injury could be redressed by a favorable decision arising from a hearing on the proposed license amendment. Merely using water from the Nolichucky River for household purposes does not demonstrate an injury-in-fact. The Declaration does not identify how far from the NFS site she lives or whether she is upstream or downstream from the site. Moreover, the implied injury of contaminated drinking water caused by the proposed license amendment is completely refuted by the NRC Staff's EA analyses (see discussion supra), which Petitioner has failed to address. Oconee, CLI-99-11, 49 NRC at 338. Failing to demonstrate any of the required elements, Petitioner Evans lacks standing to participate in this proceeding.

Thus, Petitioner Evans has failed to demonstrate either a need for a hearing or standing to participate in this matter.

7. Denne D. Evans

Petitioner Evans individually asserts only that, "The water we drink and use for cooking, bathing, and other household uses comes from the Nolichuckey [sic] River." Declaration of Denne D. Evans at 1.

Petitioner Evans failed to describe any injury, trace any injury to the proposed license amendment, or show how any injury could be redressed by a favorable decision arising from a hearing on the proposed license amendment. Merely using water from the Nolichucky River for household purposes does not demonstrate an injury-in-fact. The Declaration does not identify how far from the NFS site the petitioner lives or whether the petitioner is upstream or downstream from the site. Moreover, the implied injury of contaminated drinking water caused by the proposed license amendment is completely refuted by the NRC Staff's EA analyses (see discussion supra), which Petitioner has failed to address. Oconee, CLI-99-11, 49 NRC at 338.

Failing to demonstrate any of the required elements, Petitioner Evans lacks standing to participate in this proceeding.

Thus, Petitioner Evans has failed to demonstrate either a need for a hearing or standing to participate in this matter.

8. Toni L. Foreman

Ms. Foreman individually asserts only that, “I, as well as my family consume ‘municipal’ water which is derived from the Nolichucky [sic] River.” Declaration of Toni L. Foreman at 1.

Petitioner Foreman failed to describe any injury, trace any injury to the proposed license amendment, or show how any injury could be redressed by a favorable decision arising from a hearing on the proposed license amendment. Merely drinking water “derived from” the Nolichucky River does not demonstrate an injury-in-fact. The Declaration does not identify how far from the NFS site she lives or whether she is upstream or downstream from the site. Moreover, the implied injury of contaminated drinking water caused by the proposed license amendment is completely refuted by the NRC Staff’s EA analyses (see discussion supra), which Petitioner has failed to address. Oconee, CLI-99-11, 49 NRC at 338. Failing to demonstrate any of the required elements, Petitioner Foreman lacks standing to participate in this proceeding.

Thus, Petitioner Foreman has failed to demonstrate either a need for a hearing or standing to participate in this matter.

9. Linnea Gilmer

Petitioner Gilmer individually asserts only that:

I use the Nolichucky River area for a variety of recreational activities, including hiking, swimming and kayaking. I have serious concerns regarding short- and longterm effects on water sources.

Declaration of Linnea Gilmer at 1.

Petitioner Gilmer failed to describe any injury, trace any injury to the proposed license amendment, or show how any injury could be redressed by a favorable decision arising from a hearing on the proposed license amendment. Merely recreating in the Nolichucky River area does not demonstrate an injury-in-fact. The Declaration does not identify how the petitioner conducts these activities or whether the petitioner is upstream or downstream from the site. Moreover, the concerns for contaminated water resources caused by proposed license amendment are fully addressed by the NRC Staff's EA analyses (see discussion supra), which Petitioner has failed to address. Oconee, CLI-99-11, 49 NRC at 338. Failing to demonstrate any of the required elements, Petitioner Gilmer lacks standing to participate in this proceeding.

Thus, Petitioner Gilmer has failed to demonstrate either a need for a hearing or standing to participate in this matter.

10. JoAnna Hammonds

Ms. Hammonds individually asserts only that, "I swim in the Nolichucky." Declaration of JoAnna Hammonds at 1.

Petitioner Hammonds failed to describe any injury, trace any injury to the proposed license amendment, or show how any injury could be redressed by a favorable decision arising from a hearing on the proposed license amendment. Merely swimming in the Nolichucky River does not demonstrate an injury-in-fact. The Declaration does not identify how far from the NFS site or how often she swims or whether she is upstream or downstream from the site. Moreover, the implied injury of contaminated river water caused by the proposed license amendment is completely refuted by the NRC Staff's EA analyses (see discussion supra), which Petitioner has failed to address. Oconee, CLI-99-11, 49 NRC at 338. Failing to demonstrate any of the required elements, Petitioner Hammonds lacks standing to participate in this proceeding.

Thus, Petitioner Hammonds has failed to demonstrate either a need for a hearing or standing to participate in this matter.

11. Whitney Johnson

Ms. Johnson individually asserts only that, "I swim in the Nolichucky River and am concerned about the proximity of the plant to me and the citizens of Northeast Tennessee."

Declaration of Whitney Johnson at 1.

Petitioner Johnson failed to describe any injury, trace any injury to the proposed license amendment, or show how any injury could be redressed by a favorable decision arising from a hearing on the proposed license amendment. Merely swimming in the Nolichucky River does not demonstrate an injury-in-fact. The Declaration does not identify where or how often she swims or whether she is upstream or downstream from the site. Moreover, the implied injury of contaminated river water caused by the proposed license amendment is completely refuted by the NRC Staff's EA analyses (see discussion supra), which Petitioner has failed to address. Oconee, CLI-99-11, 49 NRC at 338. Her generalized concern regarding the "proximity of the plant" is clearly inadequate to confer standing and is also outside the scope of the proposed license amendment. Failing to demonstrate any of the required elements, Petitioner Johnson lacks standing to participate in this proceeding.

Thus, Petitioner Johnson has failed to demonstrate either a need for a hearing or standing to participate in this matter.

12. Gerald M. O'Connor, Jr.

Mr. O'Connor individually asserts only that:

I own 2 manufacturing plants on 9.92 acres at 1070A and 1070B  
Industrial Drive, Erwin, TN 37650.

...



I submit Nuclear Fuels Services is in violation of the Safe Water Drinking Act (42 U.S.C. § 300j-8) ref. EPA report dated May 30, 2002 copied to USNRC Region II, Atlanta, EAP Region IV, Atlanta and NRC Fuel Cycle Licensing Branch, Washington D.C.

Declaration of Gerald M. O'Connor at 1, 2.

Petitioner O'Connor failed to describe any injury, trace any injury to the proposed license amendment, or show how any injury could be redressed by a favorable decision arising from a hearing on the proposed license amendment. Merely owning businesses in the same general geographical area does not demonstrate an injury-in-fact. His assertion of a violation of the Safe Water Drinking Act is clearly outside the scope of the proposed license amendment. In any event, NFS is aware of no "EPA report dated May 30, 2002" regarding NFS. Further, the Safe Drinking Water Act is not applicable to NFS since it applies only to "public water systems," which NFS is not. 42 U.S.C. § 300g; City of Evansville v. Kentucky Liquid Recycling, Inc., 604 F.2d 1008, 1016 (7<sup>th</sup> Cir. 1979). Failing to demonstrate any of the required elements, Petitioner O'Connor lacks standing to participate in this proceeding.

Thus, Petitioner O'Connor has failed to demonstrate either a need for a hearing or standing to participate in this matter.

13. James Smith

Mr. Smith individually asserts only that:

My two children attend school very near NFS. I am concerned that safety procedures in case of major mishap might not be sufficient. Could NFS liason [sic] w[ith] school system be improved, evacuation plans, etc. be reviewed and/or improved.

Declaration of James Smith at 1.

Petitioner Smith failed to describe any injury, trace any injury to the proposed license amendment, or show how any injury could be redressed by a favorable decision arising from a hearing on the proposed license amendment. Merely having children attending school near the

NFS site does not demonstrate an injury-in-fact. The Declaration does not identify how far the school is from the NFS site or whether it is upstream/upwind or downstream/downwind from the site. Moreover, the concern regarding site safety procedures is clearly outside the scope of the proposed license amendment. Failing to demonstrate any of the required elements, Petitioner Smith lacks standing to participate in this proceeding.

Thus, Petitioner Smith has failed to demonstrate either a need for a hearing or standing to participate in this matter.

14. Drew Walsh

Mr. Walsh individually asserts only that, "I kayak in the Nolichucky river." Declaration of Drew Walsh at 1.

Petitioner Walsh failed to describe any injury, trace any injury to the proposed license amendment, or show how any injury could be redressed by a favorable decision arising from a hearing on the proposed license amendment. Merely kayaking in the Nolichucky River does not demonstrate an injury-in-fact. The Declaration does not identify how far from the NFS site he kayaks or whether he is upstream or downstream from the site. Moreover, the implied injury of contaminated river water caused by the proposed license amendment is completely refuted by the NRC Staff's EA analyses (see discussion supra), which Petitioner has failed to address. Oconee, CLI-99-11, 49 NRC at 338. Failing to demonstrate any of the required elements, Petitioner Walsh lacks standing to participate in this proceeding.

Thus, Petitioner Walsh has failed to demonstrate either a need for a hearing or standing to participate in this matter.

15. Peter H. Zars

Mr. Zars individually asserts only that:

I live at the above address [in Erwin] and am very concerned about other nuclear accident at NFS having studied three so far: loss of plutonium, a chemical hood explosion and a burning roof, due to [illegible].”

Declaration of Peter H. Zars at 1.

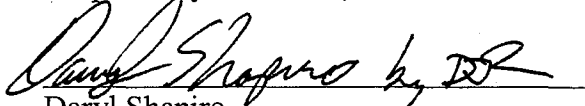
Petitioner Zars failed to describe any injury, trace any injury to the proposed license amendment, or show how any injury could be redressed by a favorable decision arising from a hearing on the proposed license amendment. Merely living in Erwin does not demonstrate an injury-in-fact. The Declaration does not identify how far from the NFS site he lives or whether he is upstream or downstream from the site. His concern with other “nuclear accident[s]” is clearly too general to permit a Presiding Officer to determine if it is germane to the license amendment. Moreover, the cited events are unrelated to the proposed license amendment (i.e., the proposed amendment does not involve the possession or use of plutonium, any activities involving a “chemical hood,” or a facility with a flammable roof) and are outside any legitimate area of concern. Failing to demonstrate any of the required elements, Petitioner Zars lacks standing to participate in this proceeding.

Thus, Petitioner Zars has failed to demonstrate either a need for a hearing or standing to participate in this matter.

#### IV. CONCLUSION

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

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Daryl Shapiro by DR", is written over a horizontal line.

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Dated: August 23, 2002

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Presiding Officer

In the Matter of	)	
	)	Docket No. 70-143
NUCLEAR FUEL SERVICES, INC.	)	Special Nuclear Material
	)	License No. SNM-124
(Blended Low Enriched Uranium Project)	)	

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the "Applicant's Answer To Requests For Hearing of Julia Beach, David Byrd, Tamara Davis Chapman, William Cooper, Brandon Davis, Julia B. Evans, Denne D. Evans, Toni L. Foreman, Linnea Gilmer, JoAnna Hammonds, Whitney Johnson, Gerald M. O'Connor, Jr., James Smith, Drew Walsh, and Peter H. Zars" were served on the persons listed below by deposit in the U.S. mail, first class, postage prepaid, this 23rd day of August, 2002.

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Attention: Docketing and Service Branch  
(original and two copies)

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