

*RDB Review
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Subject: NUREG-1790

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69FR 56104*

Dear Sir or Madam:

Attached please find the comments of the New Mexico Attorney General's Office to the Draft Environmental Impact Statement for the Proposed National Enrichment Facility (NUREG-1790).

100

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December 18, 2004

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Washington, DC 20555-0001

RE: Report No. NUREG-1790, Draft

Dear Sir or Madam:

The Staff of the New Mexico Attorney General's Office ("AGO") is submitting these comments to the Draft Environmental Impact Statement for the Proposed National Enrichment Facility in Lea County, New Mexico ("EIS") to the U.S. Nuclear Regulatory Agency ("NRC"). In the first section, we will discuss our general, overall comments. In the second section, we will provide specific, line-by-line comments.

GENERAL COMMENTS

Overall, the EIS is well written and organized. However, we have several general concerns about the EIS, as follows:

1. Selection of Alternatives

We are very troubled that the EIS considers only the preferred alternative and the no-action alternative. On page 2-39 of the EIS, the decision is explained: "None of the candidate sites were *obviously superior* to the [Louisiana Energy Services ("LES")] preferred site in Lea County, New Mexico; therefore no other site was selected for further analysis." (emphasis added)

This is not the appropriate legal standard for evaluating the inclusion of alternatives under the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.* Rather, the NEPA and its implementing regulations make it clear that appropriate and reasonable alternatives must be fully evaluated.

NEPA provides: "[A]ll agencies of the Federal Government shall-- . . . (E) study, develop, and describe *appropriate alternatives* to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources; . . ." Section 102(2) of NEPA, 42 U.S.C. § 4332(2) (emphasis added).

The NEPA implementing regulations for the NRC state: “[D]raft environmental impact statements should also include consideration of the economic, technical, and other benefits and costs of the proposed action and alternatives” 10 C.F.R. § 51.71(d). This Section goes on to clarify that the alternatives to be considered are “reasonable alternatives.” See 10 C.F.R. § 51.71(e).

The Council on Environmental Quality (“CEQ”), the federal agency with NEPA oversight authority, has also promulgated NEPA implementing regulations, which are binding on other federal agencies conducting NEPA analyses. 40 C.F.R. § 1507.1. CEQ regulations explain that the purpose of evaluating “reasonable alternatives” is to fully “inform decisionmakers and the public.” 40 C.F.R. § 1502.1; see 40 C.F.R. § 1502.14. This laudatory policy is undermined by conclusory statements, such as the one contained in the EIS that alternative sites were not analyzed because they were not obviously superior to the preferred alternative.

The Tenth Circuit recently considered the selection and analysis of alternatives under NEPA in a case involving an environmental assessment. *Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002). The court criticized the federal agency (the Department of Transportation) for failing to analyze a reasonable alternative when there was nothing “in the record to establish that [the alternative] is such a ‘remote, speculative, impractical or ineffective’ alternative that it did not need to be studied as a viable alternative.” *Id.* at 1122. The court concluded: “There are no cost studies, cost/benefit analyses or other barriers advanced that would warrant a conclusion that [the unconsidered] alternatives are unreasonable, standing alone or in conjunction with other alternatives.”

In this case, the NRC is preparing an environmental impact statement rather than an environmental assessment. Thus, greater detail of discussion is required, because as the Tenth Circuit has made clear an environmental impact statement must be conducted with more rigor than an environmental assessment. See *Utah Shared Access Alliance v. United States Forest Service*, 288 F.3d 1205, 1213 (10th Cir. 2002). However, in light of the legal requirements outlined above and the paucity of discussion of alternative sites in the EIS, the AGO is concerned that the EIS may fail to comply with NEPA in this respect. The AGO urges the NRC to revisit the issue of selection and analysis of alternative sites.

2. Impacts to Water Resources

The AGO is very concerned about protecting New Mexico’s water resources and is concerned that the EIS provides insufficient information to evaluate fully whether the National Enrichment Facility (“NEF”) would be sufficiently protective. For example, with respect to off-site migration of contaminants through groundwater, there is no discussion of the potential transmission pathways to deeper groundwater. The EIS should include identification and analysis of these potential pathways, such as domestic wells, abandoned wells, geologic faulting and areas of exposure of aquifer-supporting geologic formations. It is particularly important that the EIS examine potential contaminant pathways to the Ogallala Aquifer, because as noted in the EIS the Ogallala Aquifer is of critical regional significance. See Section § 3.8.2.1 at 3-37.

In several places, the EIS notes that wastewater from the NEF could be transported through groundwater to a location 3.2 kilometers (2 miles) from the site. See Section 4.2.6.2, page 4-13, lines 38-46; Section 4.2.6.2, page 4-14, lines 19-22. The EIS also notes the possibility of off-site transport of stormwater. Section 6.2.2, page 6-18, lines 26-27. However, the EIS fails to discuss the resulting impacts to human health and the environment. For example, is this migration likely to cause an exceedance of New Mexico water quality standards? If so, how will exceedances be addressed? Even if the groundwater and surface water contamination levels comply with water quality standards, will there be injury to New Mexico's trust resources, such as nearby uncontaminated groundwater and surface water and biota? In addition, what is the potential impact to private property rights, such as vested water rights? LES is not permitted to cause injury to these trust resources or private property rights.

Further, it would appear that the stormwater from the NEF that will contain the highest concentration of radionuclides is being discharged to a single-lined retention basin. See IES Section 4.2.6.2, page 4-11, line 49 to 4-12, line 5. The EIS acknowledges, "Exposure to uranium may occur from . . . releases of radioactive liquids to surface water." As discussed, we are concerned about off-site migration of wastewater and stormwater, and a discharge of radioactive stormwater to a single-lined basin has the potential to increase that risk to an unacceptable level. The EIS should quantify these risks and contain further discussion and analysis of the threats to groundwater and surface water so the decision maker and the public can make an informed decision regarding the acceptability of these risks.

3. Impacts of Long-Term Storage of DUF₆

It is undisputed that there currently is no conversion facility that could accept DUF₆ generated at the NEF. The EIS acknowledges that DUF₆ would be stored at the NEF for up to 30 years while disposal options are developed. See Section 4.2.14.3, page 4-52, lines 39-41. However, the EIS fails to analyze the impacts to human health and the environment if the efforts to develop these disposal options are unsuccessful. The AGO is very concerned about the seriousness of this omission.

Under NEPA, a potential effect must be analyzed if it is reasonably foreseeable. 40 C.F.R. § 1508.8. "As in other legal contexts, an environmental effect is 'reasonably foreseeable' if it is 'sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.'" *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520, 549 (8th Cir. 2003) (quoting *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992)). In other words, the effect need not be certain to occur.

In this case, the inability of LES to identify adequate conversion and disposal options, when none currently exist, is a classic example of an effect that is not certain, but is of sufficient likelihood that analysis is required under NEPA. Without a full discussion of the impacts of long-term storage on human health and the environment, the EIS fails to provide the necessary information to insure that future generations are not unduly burdened by the NEF's generation of large volumes of radioactive waste. See *Nuclear Energy Institute, Inc. v. Environmental*

Protection Agency, 373 F.3d 1251, 1284-85 (D.C. Cir. 2004). The AGO is very concerned that, by failing to consider this issue, the EIS may not comply with NEPA.

SPECIFIC COMMENTS

This section addresses specific comments following the organization of the EIS. It should be assumed that comments mentioned for particular chapters also apply to parallel discussions, if any, in the executive summary.

Section 1.6, pages 1-18 to 1-19 — The State of New Mexico owns the fee interest in the land upon which the NEF will be sited, so it would be appropriate to list the State as an organization involved in the proposed action.

Section 2.1.9, page 2-27, lines 38-41 — Throughout the EIS, it is assumed that the DUF₆ generated at the NEF would be categorized as a Class A low-level radioactive waste. *See, e.g.*, Section 4.2.14.2, page 4-52, lines 14-15; Section 4.2.14.4, page 4-58, line 37. However, the NRC has not yet ruled on this issue. Therefore, the EIS should identify and analyze alternative storage, conversion and disposal options if the DUF₆ is not categorized as a Class A low-level radioactive waste.

Table 2-8, page 2-52 — Under the No-Action Alternative column, the following sentence does not make sense: “Long-term uncertainty in future supplies of low-enriched uranium could be affect without replacement enrichment capacity for the existing U.S. enrichment facility or from the potential ending of the ‘Megaton to Megawatts’ program in 2013.”

Table 2-8, page 2-55 — Under the Proposed Action column, it appears that text is cut off at the bottom and missing.

Table 2-8, page 2-56 — In the third sentence under the Proposed Action column, for clarification, we suggest you insert *of radiation exposure* in between *(5 millirem)* and *per year*.

Table 2-8, page 2-56 — Under the Proposed Action column, it appears that text is cut off at the bottom and missing.

Table 2-8, page 2-57 — Under the Proposed Action column, the final sentence in the first paragraph is inaccurate. The sentence states: “There would be enough existing national capacity to accept the low-level radioactive waste that could be generated at the proposed NEF.” Throughout the EIS, it is acknowledged that there is no facility currently operating that could convert the DUF₆ generated at the NEF for disposal. If this reference is not intended to include DUF₆ it should so state, and then address the national capacity for converting and disposing of DUF₆.

Section 3.12, page 3-65, line 28 — This sentence indicates that Eunice, New Mexico is east of the proposed facility, but in fact Eunice is west of the site.

Section 4.2.4.1, page 4-7, lines 31-33 — We disagree with this statement. As noted by the New Mexico Environment Department in its comments dated November 8, 2004, PM₁₀ is a concern in this area of New Mexico. The EIS should address this issue in more detail.

Table 4-1, page 4-8, lines 11-12 — As noted in the preceding comment, PM₁₀ is a matter of concern. These model results indicate that the NEF will generate a 24-hour maximum of 144 µg/m³ of PM₁₀. This amount is very close to the primary regulatory limit of 150 µg/m³,¹ and in light of the fact that an exceedance for PM₁₀ has been recorded for Hobbs, New Mexico, the conclusion that the potential impact to air quality is small is unsupported. The EIS should address whether the NEF's emissions of PM₁₀, when added to other sources in the vicinity, will cause an overall exceedance, particularly since a quarry is nearby and could be expected to emit significant amounts of particulates, *see* Figure 3-3, page 3-3. In addition, the EIS should contain a more detailed explanation of how an exceedance for PM₁₀ would be prevented. The general references throughout the EIS to dust suppression are inadequate to inform the decision maker and the public fully on this issue.

Section 4.2.4.2, pages 4-8 to 4-9 — The references to the total amount of hazardous air pollutants emitted are inconsistent. Line 32 on page 4-8 and line 6 on page 4-9 erroneously indicate a limit of 91 metric tons (100 tons) per year, but line 24 on page 4-8 correctly references a limit of 9.1 metric tons (10 tons) per year.

Section 4.2.5.1, page 4-10, lines 12-14 — The EIS should explain how penetration of the clay layer would affect off-site transmission of contaminants through groundwater.

Section 4.2.5.1, page 4-10, lines 21-22 — It is inaccurate to state that "site preparations and construction result in only short-term effects to the geology and soils," because the effect of the NEF footprint on geology and soils will be long term. *See* Section 4.7, page 4-72, lines 24-25.

Section 4.2.5.2, page 4-10, lines 28-29 — The statement that "the rate of wind and water erosion of the exposed surface soils surrounding the proposed NEF site would likely be small" is conclusory. The EIS should explain why this is so, and how this conclusion was reached.

Section 4.2.6.1, page 4-11, lines 25-27 — Based on discussion elsewhere in the EIS, it appears that a large portion of the water used during construction will be used for dust suppression. Therefore, the design estimates for the Claiborne Enrichment Facility are applicable only to the extent that the climatic and soils conditions are similar or adjustments based on differences have been made. The EIS needs to explain the underlying rationale for assuming that the two facilities are comparable in this regard.

Section 4.2.6.2, page 4-12, lines 40-43 — This discussion assumes that water buildup in the evaporative basin would be gradual. The EIS should discuss how overflows would be prevented

¹ It should be noted that this table erroneously identifies this standard as secondary. The standard is primary. *See* Table 3-6 at 3-21.

in instances of rapid buildup, such as a valve failure or burst pipe, or a discussion of how a rapid water buildup would be prevented under such circumstances.

Section 4.2.6.2, page 4-13, lines 38-46 — The fact that “[t]here are no ground-water users within 3.2 kilometers (2 miles) downgradient of the proposed NEF site, and there are no downgradient users of ground water from the sandy soil above the Chinle Formation” is not relevant to the question at hand, whether seepage from the Site Stormwater Detention Basin has the potential to contaminate groundwater. As far as we are aware, there is no legal constraint, other than State Engineer permitting, that would prevent the construction of a shallow groundwater well next to the NEF property line. Therefore, the analysis should focus on the magnitude of impacts from this perspective.

In addition, the EIS concludes, “the Site Stormwater Detention Basin seepage would have a SMALL impact on water resources of the area.” However, this conclusion is contradicted by the immediately preceding statement that there is a potential for migration of seepage from the stormwater detention basin to a location 3.2 kilometers (2 miles) from the site. The potential for seepage needs to be examined and analyzed in much greater detail before an appropriate conclusion regarding the impact can be made.

Section 4.2.6.2, page 4-14, lines 19-22 — Similarly, the conclusion that “[t]he septic systems would also be expected to have a SMALL impact on water resources” is directly contradicted by the preceding sentence acknowledging the potential for off-site migration to a location 3.2 kilometers (2 miles) from the site. As above, the potential for seepage needs to be examined and analyzed in much greater detail before an appropriate conclusion regarding the impact can be made.

Section 4.2.7.1, page 4-17, lines 33-34 — This analysis fails to discuss the impacts on ecological resources from the use of pesticides, which Table 4-15 on page 4-51 indicates would occur.

Section 4.2.7.2, page 4-18, line 24 — The EIS should explain why the level of safety required for the protection of humans is adequate for other animals and plants, since different species use natural resources and react to environmental toxins in very different ways.

Section 4.2.7.3, page 4-18, lines 44-45 — The EIS should explain why netting would not be installed over the UBC Storage Pad Stormwater Retention Basin. As noted above, even if the concentration levels are within regulatory limits, LES is not permitted to cause damage to natural resources, such as waterfowl.

Section 4.2.9.1, page 4-24, lines 4-6 — Impacts from increased traffic are summarized by the statement, “this period of inconvenience would be short.” However, traffic impacts would last from the inception of construction through the last phase of decontamination, which would span 30 or more years. It is inaccurate to state that this is a “short” period of inconvenience.

Section 4.2.9.5, page 4-24, lines 44-47 — The observation that the nearest residence is 4.3 kilometers (2.6 miles) from the NEF, which is made throughout the EIS, diverts attention from

the fact that residences could be established much closer to the NEF. The EIS should focus on analyzing the potential human health and environmental impacts to the general public with respect to the maximally exposed individual. The frequent references to the currently existing nearest residence could create confusion regarding the appropriate benchmark.

Section 4.2.9.5, page 4-25, lines 8-19 — The EIS should include discussion of relevant infant mortality rates, if available. This would be particularly helpful if the statistics can be broken out by race and ethnicity.

Table 4-3, page 4-26 — The category of potential impacts to socioeconomic and community resources for recreation is identified in the table but not discussed in the text. The text should include a discussion of this impact.

Section 4.2.10.1, page 4-27, lines 22-23 — The EIS indicates in a very generalized way that “[c]onstruction activities would be expected to occur during normal daytime working hours.” It would be much more informative to the decision makers and the public if the term *normal daytime working hours* is defined. What hours of the day and what days of the week are included? How are holidays handled? Are there any exceptions to the general rule of limiting construction activities to these times, particularly since the EIS states that “short-term noise impacts *may* be limited to workday mornings and afternoons”? (emphasis added)

Section 4.2.10.1, page 4-29, lines 8-10 and 20 — Despite finding that the “projected noise level ranges are within the U.S. Department of Housing and Urban Development (HUD) unacceptable sound pressure level guidelines,” the EIS concludes that the impact on noise levels from site preparation and construction is small, noting that the duration is short term. However, the unacceptable noise levels would continue for several years, and the EIS fails to describe the impact on the maximally exposed individual. For example, if hearing loss were likely to occur for this individual, it would appear erroneous to conclude that the impact is small. This issue merits further discussion and analysis.

Section 4.2.10.3, page 4-29, line 46 — In accordance with the preceding comments, it would be informative to the reader to expand upon the statement that “construction could occur during nights and weekends, if necessary.”

Section 4.2.11.1, page 4-30, lines 47-49 — We do not agree that a 188% increase in vehicular traffic on New Mexico Highway 234 results in a small to moderate impact. We believe this impact should be characterized as moderate to large. In light of this substantial increase in traffic, the EIS should further analyze this impact. For example, the EIS should quantify the expected additional expense to the State of New Mexico for increased road maintenance. The EIS should also discuss how this impact would be mitigated. For example, would LES contribute resources to the State to assist in maintenance and improvement of Highway 234 in the affected area?

Section 4.2.11.1, page 4-31, lines 11-12 — The EIS should explain how the assumption was reached that a truck would have an average round-trip distance of 64 kilometers (40 miles).

Section 4.2.11.1, page 4-31, lines 19-21 — It is unclear how the fact that the construction access roads will be converted to permanent access roads leads to a conclusion that the impacts from the construction access roads are small. Conversion of these roads will not cause a decrease in the amount of vehicular traffic on Highway 234. And the fact that the roads essentially will be constructed twice does not decrease other human health and environmental impacts. The EIS needs to contain further analysis and explanation of this issue.

Section 4.2.11.2, page 4-31, lines 45-46 — As above, the EIS should explain how the assumption was reached that a supply truck would have an average round-trip distance of 64.4 kilometers (40 miles).

Section 4.2.11.2, page 4-32, lines 41-42 — The EIS should explain why an assumption of stable meteorological conditions is appropriate for the NEF.

Section 4.2.11.2, page 4-37, lines 78-84 — This paragraph is virtually unintelligible.

Section 4.2.11.2, page 4-40, lines 17-19 — The EIS fails to explain how the probability of occurrence of a transportation accident factors into the conclusion that the impacts could be small to moderate. It is almost inconceivable that impacts on up to 28,000 persons could be small to moderate unless the risk of such occurrences is infinitesimally small. Without an explanation of how probabilities influenced the conclusion, it is impossible for the decision maker or the public to make an informed decision regarding the acceptability of a risk with such a large potential impact.

Section 4.2.11.3, page 4-40, lines 24-25 and 28-29 — As above, we do not agree that an approximately 100% increase in vehicular traffic on New Mexico Highway 234 results in a small to moderate impact. We believe this impact should be characterized as moderate to large. In light of this substantial increase in traffic, the EIS should further analyze this impact. For example, the EIS should quantify the expected additional expense to the State of New Mexico for increased road maintenance. The EIS should also discuss how this impact would be mitigated. For example, would LES contribute resources to the State to assist in maintenance and improvement of Highway 234 in the affected area?

Section 4.2.11.3, page 4-40, lines 31-37 — It is misleading to discuss only cancer fatalities in connection with summarizing the potential impacts to human health for transportation accidents. There are other significant, concerning impacts identified in the preceding discussion, which should also be mentioned in the summary.

Section 4.2.11.4, page 4-41, line 2 — The EIS should state whether LES is being required to install dedicated turning lanes. As written, it sounds more like a mere suggestion. Also, as noted above, construction of dedicated turning lanes may be inadequate to mitigate the impacts of increased traffic on Highway 234.

Section 4.2.12.2, page 4-45, lines 4-11 and 37-39 — The UBC Storage Pad Stormwater Retention Basin is expected to be dry for 11 to 12 months of the year, *see* Section 4.2.6.2, page 4-13, lines 10-12, but there is no discussion of impacts to human health and the environment from resuspension of contaminated soil from this basin. Because the USB Storage Pad Stormwater Retention Basin would not be covered with netting, it could be expected that the resuspension factor for soils would be higher than for the Treated Effluent Evaporative Basin. There is no indication in Chapter 6 that either of these basins would be monitored for impacts to air quality. The EIS should address these issues. The EIS also should contain a discussion of the effect of this drying on the integrity of the liner.

Section 4.2.13.1, page 4-48, lines 22-23 and Section 4.2.13.2, page 4-48, lines 36-42 — The statements regarding the severity of the accident consequences are inconsistent. Section 4.2.13.1 identifies the selected accident sequences as high to intermediate in severity, yet Section 4.2.13.2 concludes that these accident scenarios pose acceptably low risks and small to moderate impacts. It is possible that this discrepancy is due to factoring in the probability of the selected accident sequences, but that cannot be determined from the EIS. The decision maker and the public cannot make an informed decision regarding the acceptability of these risks without a full discussion of probabilities of occurrence and how these probabilities factor into a conclusion regarding the magnitude of impacts.

Section 4.2.14, page 4-50, line 43 — The word *govern* should be replaced with the word *governed*.

Section 4.2.14.2, page 4-52, lines 9-10 — This statement regarding the generation of wastes needs clarification. Does this mean that the NEF would generate 86,950 kilograms (191,690 pounds) annually of purely radiological (nonmixed) waste?

Section 4.3.4, page 4-61, lines 41-47 — The discussion of solvents is inadequate. It does not identify what solvents would be emitted and whether these solvents are classified as hazardous air pollutants. If they are so classified, the EIS should analyze whether the NEF would have the potential to emit more than 10 tons per year of any single pollutant or more than 25 tons per year of any combination of pollutants. The analysis should be from the perspective of the NEF's *potential to emit* these pollutants, not the estimated actual emissions of such pollutants. *See, e.g.,* 42 U.S.C. § 7511a(b)(1)(A)(ii)(I). It would appear that the EIS erroneously relies on an estimate of actual emissions. The discussion of solvents needs to be expanded and clarified to address these issues.

Section 4.3.8, page 4-63, lines 34-35 — It would appear untenable to conclude that closure of the NEF would have a small to moderate socioeconomic impact if the NEF became the major employer in the Eunice, New Mexico area. It is more likely that the impact would be moderate to large under these circumstances.

Section 4.3.9, page 4-63, lines 39-42 — The statement regarding the NEF's environmental justice impacts during decommissioning is conclusory. The EIS should explain how this conclusion was reached.

Section 4.3.10, page 4-63, line 49 to page 4-64, line 1 — The statement regarding noise impacts lasting “for a few months” is confusing. The EIS indicates elsewhere that the decommissioning process will take 9 years. This apparent contradiction should be explained.

Section 4.4, page 4-65, lines 22-23 — The EIS should explain why there would not be cumulative impacts to these resource areas. Intuitively, it would appear that most if not all of these resources would experience cumulative impacts.

Section 4.4.3, page 4-66, lines 24-27 — The EIS should explain why it was appropriate to analyze only the Waste Control Specialists site for cumulative impacts to water resources, or it should include analyses of impacts from other nearby sites.

Section 4.4.4, page 4-66, lines 35-48 — As noted above, the EIS should discuss the cumulative impacts to air quality with respect to PM₁₀ resulting from the operation of NEF in addition to the nearby quarry and other surrounding land activities.

Section 4.4.6, page 4-67, line 43 — The word *or* should be replaced with the word *of*.

Section 4.4.6, page 4-67, lines 42-44 — The EIS should discuss cumulative impacts with respect to environmental justice resources during the operation and decommissioning phases of the NEF.

Section 4.4.7, page 4-68, lines 8-9 — As noted above, the AGO disagrees that the impacts to transportation resources would be small to moderate. Therefore, we also disagree for the same reasons that the cumulative impacts to transportation resources would be small to moderate.

Section 4.7, page 4-72, lines 17-18 and 24-25 — It is unclear whether the commitment of 81 hectares (200 acres) of natural land is inclusive of the footprint for the NEF, which as noted in this section, would constitute a long-term commitment of terrestrial resources. The EIS should identify the amount of land that will be subject to such long-term commitment.

Table 5-1, page 5-2 — With respect to proposed mitigation measures for impacts to ecological resources, the EIS makes conflicting statements that trenches will not be left open overnight and that animal will be removed from trenches left open overnight. This apparent inconsistency should be resolved.

Table 5-1, page 5-5 — With respect to proposed mitigation measures for impacts to public and occupational health resources, the word *to* should be inserted in the first line of the fourth paragraph in between the words *radiation* and *workers*.

Table 5-1, page 5-5 — With respect to the activity description for waste management, it is inaccurate to state that air emissions are addressed under “water resources.”

Chapter 6, page 6-3, lines 21-23 — The EIS leaves too much unfettered discretion in LES to determine the details of the monitoring program, including in some instances whether any

monitoring will occur. The EIS should identify minimum requirements, so the decision maker and the public will know what monitoring definitely will occur, in addition to describing the spectrum of additional monitoring options. Throughout Chapter 6, monitoring projects are described, and then it is noted that LES may make changes to the projects after issuance of the NRC license. For example, with respect to bird monitoring, the EIS states, "Following this [three-year] period, program changes could be initiated based on operational experience." Section 6.3.2.2, page 6-22, lines 3-4. Without any explanation of the scope of permissible changes, we do not see why LES could not simply abandon bird monitoring altogether.

The AGO understands and appreciates the value and efficacy of using adaptive management practices. These practices, when properly implemented, can benefit all stakeholders and lead to win-win outcomes. However, the EIS has no discussion of how these practices would be implemented. For example, if LES wants to change an aspect of its monitoring program, can it do so unilaterally? Would it seek NRC staff concurrence without an opportunity for public notice and input? Or would there be a full permit modification process, with all the attendant due process protections? Without this level of detail, the decision maker and the public are left with no real understanding of the NEF monitoring program and cannot evaluate its effectiveness and sufficiency.

Section 6.1.1.1, page 6-5, lines 29-31 — The EIS assumes that the NEF would have twice the amount of gaseous radioactive effluent as the proposed Claiborne enrichment facility, because the NEF would be twice the size of the proposed Claiborne facility. This assumption, standing alone, is not conservative. The EIS should provide justification for considering this assumption to be conservative.

Section 6.2.1, page 6-16, line 12 — The word *exhaust* is misspelled.

Section 6.2.1, page 6-16, lines 21-22 — It would appear unnecessarily risky not to conduct chemical sampling of the septic systems merely because it is assumed no plant-process-related effluents would be introduced into the septic systems. This assumption is particularly confusing in light of the subsequent statement in the EIS, "Physiochemical monitoring would be conducted via sampling of stormwater, soil, sediments, vegetation, and ground water to confirm that *trace, incidental chemical discharges* would be below regulatory limits." Section 6.2.1, page 6-17, lines 1-2 (emphasis added). The only way to verify that incidental plant-process-related effluents have not been introduced inadvertently into the septic systems is to conduct chemical sampling of the systems. For this reason, the AGO believes there should be a requirement of periodic chemical sampling of the septic systems.

Section 6.2.6, page 6-20, line 2 — The word *participates* should be replaced with the word *participate*.

Section 6.3.2.3, page 6-22, lines 6-12 — There is very little detail regarding monitoring of mammals as compared to reptiles and amphibians. The EIS should explain why this is so. For example, are reptiles and amphibians better indicators of overall ecological health than mammals, and if so why?

Section 6.3.2.4, page 6-22, lines 24-25 — The EIS notes that, for monitoring of reptiles and amphibians, there will be at least two other replicated sample sites beyond the primary location of the proposed NEF site. The EIS should explain why similar replicated sites are not being used for monitoring other types of ecological resources, such as vegetation, birds and mammals.

Section 6.3.6, page 6-23, lines 28-29 — The EIS should describe the timeframe for completion of tribal consultation. In addition, it is unclear what will be provided when completed. Is it anticipated that a report will be generated as a result of the consultations? If so, the AGO hereby requests that it receive a copy.

Thank you for the opportunity to submit these comments. We look forward to continuing to work with the NRC and its staff to ensure that New Mexican's health and the State's environment are fully protected. Please feel free to call me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Karen L. Fisher". The signature is written in a cursive, flowing style.

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