

November 28, 2005  
DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

November 29, 2005 (7:35am)

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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In the Matter of

Docket No. 70-3103

Louisiana Energy Services, L.P.

ASLBP No. 04-826-01-ML

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**RESPONSE ON BEHALF OF  
NUCLEAR INFORMATION AND RESOURCE SERVICE  
AND PUBLIC CITIZEN  
TO STATEMENT OF MATERIAL FACTS  
ON WHICH NO GENUINE DISPUTE EXISTS  
SUBMITTED ON BEHALF OF NRC STAFF**

**Preliminary statement**

This Response is submitted on behalf of Intervenors Nuclear Information and Resource Service and Public Citizen ("NIRS/PC") in response to the Statement of Material Facts on which no Genuine Dispute Exists, submitted by Commission Staff on November 18, 2005.

**Disputed facts**

NIRS/PC respond herein to the numbered paragraphs contained in the Statement of Material facts submitted on behalf of Commission Staff:

1. NIRS/PC concur that they moved to amend contention EC-4 on October 20, 2004 and respectfully refer to the motion of that date for a full statement of its substance.
2. NIRS/PC concur that they moved to amend contention EC-4 on February 5, 2005 and respectfully refer to the motion of that date for a full statement of its substance.

3. NIRS/PC concur that the Atomic Safety and Licensing Board (the "Board") denied leave to amend contention EC-4 in relevant respects and that the Commission decision dated October 19, 2005, reversed those decisions in specific particulars and respectfully refer to the rulings in question for a full statement of their substance.
4. NIRS/PC concur that the Final Environmental Impact Statement ("FEIS") for the Claiborne Enrichment Center ("CEC") was issued in 1994 and contains an analysis of impacts of deep disposal, although not necessarily in an "abandoned mine" as asserted by Staff. NIRS/PC respectfully refer to the FEIS for a full statement of its contents.
5. NIRS/PC dispute that Appendix A to the CEC FEIS contains a description of the models and parameters used to analyze the impacts of disposal at the granite site and sandstone/basalt site referred to. To the contrary (although the CEC FEIS does state certain values for hydraulic conductivity, flow area, and gradient), it is undisputed that the information in the CEC Final EIS does not include all necessary source data, does not fully disclose modeling methodology, and is inadequate to enable other scientists to reproduce dose results published in that EIS. The Commission Staff itself has been unable or unwilling to reproduce these results.
6. NIRS/PC dispute that in developing the Draft EIS for the National Enrichment Facility ("NEF") Commission Staff reviewed the CEC FEIS's deep disposal estimate analysis and determined that the models and parameters used were reasonable and appropriate. To the contrary, the information in the CEC Final EIS does not include all necessary source data, does not fully disclose modeling methodology, and is inadequate to enable other scientists to reproduce dose results published in that EIS. Therefore, the review referred to could not take place. NIRS/PC concur, based upon statements by Commission Staff,

that the results reported in the CEC FEIS for analysis of deep disposal appear to have been used to prepare Table 4-19 of the NEF Draft EIS (and Final EIS), with certain adjustments, *e.g.*, by applying a factor, on average, of 1.76, but dispute the validity of the CEC FEIS results and the adjustment factor. NIRS/PC concur that certain reporting errors were made in preparing Table 4-19 of the Draft EIS and appear to have been amended in preparing Table 4-19 of the Final EIS, but dispute the validity of the CEC FEIS results that were used in preparing that table.

7. NIRS/PC concur that the value reported in the NEF Draft EIS for the drinking water dose in the river scenario at the sandstone/basalt site was approximately 54,000 times lower than the similar value in the CEC FEIS and that this appears to have been caused by an error by Commission Staff.
8. NIRS/PC concur that Commission Staff have stated that dose results reported in the CEC FEIS were multiplied by a factor of 1.72 based on the larger amount of depleted uranium to be generated by the NEF compared to the CEC, but NIRS/PC dispute the validity of application of such a linear factor without further explanation of assumptions as to the disposal configuration and the behavior of the disposal site in releasing its contents and, in addition, without full disclosure of the data and modeling methodologies used in producing the dose results contained in the CEC FEIS.
9. NIRS/PC dispute that Staff have conducted a further review of the CEC analysis. To the contrary, the information in the CEC FEIS does not include all necessary source data, does not fully disclose modeling methodology, and is inadequate to enable other scientists to reproduce dose results published in that EIS, so that a review of that analysis cannot take place. NIRS/PC concur that, to their knowledge, the PHREEQC code has

been updated since 1994 but dispute that such updating would mean that the analyses that produced the dose results reported in the CEC FEIS could not be reproduced. NIRS/PC concur that Staff personnel have reportedly concluded that the dose results in the CEC Final EIS "appear reasonable" and are below limits stated in 10 CFR 61.41 but specifically dispute that any such asserted judgment has a basis in scientific investigation or analysis or, indeed, in any review of the CEC analysis, which, to the best information of NIRS/PC, is not available for review.

Respectfully submitted,



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November 28, 2005

## CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305 the undersigned attorney of record certifies that on November 28, 2005, the foregoing Response on behalf of Nuclear Information and Resource Service and Public Citizen to Statement of Material Facts on which no Genuine Dispute Exists submitted on behalf of NRC Staff was served by electronic mail and first class mail upon the following:

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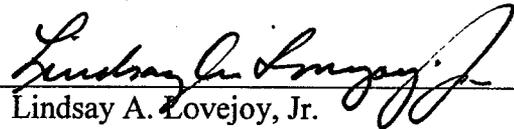
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