UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Presiding Officer:
G. Paul Bollwerk, III, Administrative Judge

Special Assistant:
Thomas D. Murphy, Administrative Judge

In the Matter of	)	Docket No. 40-8948-MLA
	)	
SHIELDALLOY METALLURGICAL CORP.	)	ASLBP No. 99-760-03-MLA
	)	
(Cambridge, Ohio Facility)	)	February 5, 1999

UNNAMED CITIZENS OF GUERNSEY COUNTY'S JOINT REPLY TO ANSWERS OF NRC STAFF AND SHIELDALLOY METALLURGICAL CORP. TO REQUEST FOR HEARING

The unnamed citizens of Guernsey County, Ohio, ("Citizens") by and through counsel, jointly reply to the answers of NRC Staff ("NRC") and Shieldalloy Metallurgical Corp.'s ("SMC") to the request for hearing, as follows:

I. Introduction

On November 24, 1998, NRC published notice of Consideration of SMC's MLA and of the opportunity for a hearing on the MLA. 63 FR 64976. Citizens timely filed a request for hearing in accordance with 10 CFR §2.1205(d). See 64 FR 915.

Answers of SMC and NRC were served on January 4, and January 11, 1999, respectively. Both SMC and NRC allege in their respective answers that Citizens of Guernsey County, Ohio, the location of SMC's licensed facility, lack standing or have otherwise failed to demonstrate that they have standing to request a public hearing concerning SMC's Material License Amendment ("MLA"). Only in accordance with the Presiding Officer's Initial Prehearing Order,

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§IV, were Citizens provided with copies of SMC's MLA application and the accompanying Environmental Report ("ER") via NRC's Answer.

Citizens were granted an extension of time to serve their reply to the answers of NRC and SMC until and including February 5, 1999. Citizens reply jointly to the duplicative allegations in the answers, except where necessary and noted to address the distinctions, if any, between the respective answers.

In effect, NRC and SMC are moving to dismiss Citizens' hearing request for deficiencies in pleading their complaint without the benefit of having even seen the "referenced document[s]" provided for in the Presiding Officer's initial prehearing order. Citizens pray that given the nature of "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," the Presiding Officer will freely grant leave to amend their request for hearing or otherwise consider allegations in Citizens' reply to relate back to the original pleading, in the interests of justice. Inasmuch as it is inequitable for an intervenor to file written presentations setting forth all of its concerns without access to the hearing file until after a hearing is granted, it is inequitable to require Citizens to set forth all of their concerns in a request for hearing without meaningful access to MLA documents other than by inspection in Washington, D.C.

Citizens reserve the right to seek leave to amend the original hearing request and/or subsequent pleadings, as necessary, if the hearing is granted, upon review of the hearing file made available in accordance with to 10 CFR §2.1231 and pursuant to §2.1233(c).

II. Argument

The issues pertaining to the term "standing" subsume a blend of constitutional and prudential considerations. Valley Forge College v. Americans United, 454 U.S. 464 (1982); See Warth v. Seldin, 422 U.S. 490, 498 (1975). Because satisfaction of the prudential principles is

no substitute for the Art. III requirements themselves, Citizens' argument begins with analysis of the constitutional requirements of standing. Valley Forge, 454 U.S., at 475.

A. Citizens Satisfy Constitutional Standing Requirements To Request A Public Hearing On SMC's Proposed Action and NRC's Consideration Of Issuing The MLA.

The constitutional aspect of standing is derived from the "cases and controversies" language of Art. III and implicit policies therein that state a limitation on the exercise of judicial power. Id. Art. III limits the exercise of judicial power to litigants who can show an actual or threatened injury in fact resulting from the action that they seek to have adjudicated. Id. A federal court's jurisdiction therefore can be invoked only when the plaintiff himself has suffered "some threatened or actual injury resulting from the putatively illegal action . . .." Id., *citing*, Linda R. S. v. Richard D., 410 U.S. 614, 617 (1973). See Data Processing Service v. Camp, 397 U.S. 150, 151-154 (1970). Finally, the actual or threatened injury in fact must be amenable to judicial remedy. Valley Forge, 454 U.S., at 475.

The requirements of Article III, are "part of the basic charter promulgated by the Framers of the Constitution at Philadelphia in 1787, a charter which created a general government, provided for the interaction between that government and the governments of the several States, and was later amended so as to either enhance or limit its authority with respect to both States and individuals." Id., at 476.

Under this charter, Congress provided for the interaction between the general government and the governments of the several States with respect to atomic energy in the Atomic Energy Act, 69 STAT. 919, 42 U.S.C. §§2011 et seq., as amended ("AEA"). In furtherance of the charter, the AEA was later amended to limit the federal government's grant of authority with respect to the States concerning the disposal of low-level radioactive waste ("LLRW"), "[e]ach

State shall be responsible for providing . . . for the disposal of [LLRW] generated within the State . . .." subject to very, very narrow exceptions that are not germane here. 42 U.S.C. §2021c(a)(1)(A). The express purpose of this AEA amendment was "to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this chapter of the States and the Commission with respect to the regulation of . . . source . . . material . . .." and thereby honor the charter by respecting the rights of the States. 42 U.S.C. §2021(a). Furthermore, "[e]xcept as provided in sections 2021b to 2021j of this title, nothing contained in sections 2021b to 2021j of this title expands, diminishes, or otherwise affects State law." 42 U.S.C. §2021d(b)(5). Finally, "Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards." 42 U.S.C. §2021(k) [i.e., solid waste disposal].

In accordance with this charter, Congress amended the AEA limiting the authority of the federal government with respect to individuals by providing that:

> In any proceeding under this Act for . . . amending of *any* license . . . the Commission shall grant a hearing upon the request of any person whose interest may be adversely affected by the proceeding. 42 U.S.C. 2239a[emphasis supplied].

Thus, where Congress has authorized public officials to perform certain functions according to law, and has provided by statute for judicial review of those actions under certain circumstances, the inquiry as to standing must begin with a determination of whether the statute in question authorizes review at the behest of the plaintiff. Sierra Club v. Morton, 405 U.S. 727, 731 (1972).

It is therefore beyond question that the AEA authorizes the requested review of SMC's material license amendment. Citizens further suggest that where a federal statute authorizes review of a federal action, the very denial of that review invokes federal question jurisdiction.

Citizens challenge NRC's contention that the very, very narrow and specific scope of the MLA can be used to rob Citizens' of standing afforded to *any* person whose interest *may* be adversely affected by *any* license amendment proceeding. NRC and SMC both argue in effect that because the MLA is specific to on-site activities, it cannot affect Citizens' off-site interests. See NRC Answer, pp.12 – 13; SMC Answer, p.2. These arguments go to the merits of Citizens' allegations, which cannot be determinative of standing at this stage of the pleadings.

Citizens argue just the opposite – it is precisely because of the feigned triviality of the MLA, that the proceeding requires closer scrutiny. In other words, if the MLA is so minor, why does SMC or NRC bother with it at all? Why does it require public notice of the opportunity for a hearing?

SMC and NRC's contention undermines the operable premise, which must be that in any license amendment subject to the notice requirements of 10 CFR part 2, NRC shall grant a hearing to any person whose interests may be adversely affected by the proposed action. NRC and SMC argue in effect that because of the nature of the proposed action Citizens cannot prove the causal connection to any alleged injury. At this stage of the proceedings, proof that the proposed action causes or will cause the alleged injury is not necessary to establish standing. The issue only raised by SMC and NRC's answers, is whether the interests Citizens allege to be adversely affected are injuries in fact sufficient to provide the basis for review.

1. Citizens Allege Actual or Threatened Injuries in Fact Resulting From the Proposed Action They Seek to Have Adjudicated.

Citizens are natural persons whose interests, and the interests of others similarly situated, may be adversely affected by the NRC's MLA proceeding. Citizens have alleged and further allege herein their interests that may be adversely affected by the proposed action..

As noted, *supra*, constitutional standing is shown by an actual or threatened injury in fact resulting from:

- the action which they seek to have adjudicated (Valley Forge, 454 U.S., at 475), or;
- putatively illegal action (Linda R. S., 410 U.S., at 617), and;
- the actual or threatened injury in fact must be amenable to judicial remedy. (Valley Forge, 454 U.S., at 475).

a) The Proposed Action Which Citizens Seek Review of Is Putatively Illegal Action That Violates Ohio and Federal Law.

NRC's observation that the "violation of Ohio law. . . is a matter for the State of Ohio" is only partly correct. NRC Answer, p.14. It becomes a matter of federal law when the proposed action and NRC's approval thereof violates federal and state law or otherwise diminishes State law.

Only in NRC-speak can the transfer of possession and control of source material from an unlicensed third party for permanent placement on or against SMC's West Slag Pile prior to capping the West Slag Pile be something other than receipt for disposal of LLRW. The SMC facility is not, was not, never will be and was never intended to be a licensed LLRW disposal facility. Thereby, NRC's approval of the proposed action enables SMC and Cyprus Foote Mineral Company ("CFMC"), two Ohio corporate citizens, in the further violation of Ohio law – the commingling of LLRW and solid waste and the disposal of LLRW except at a facility licensed for the disposal of LLRW. NRC's threatened approval , thus, is also putatively illegal action.

Pursuant to the mandate of responsibility for the disposal of LLRW within the State, Ohio enacted the following statutes applicable to the proposed action:

Revised Code §3734.027 Prohibitions as to low-level radioactive waste.

(A) No person shall commingle with any type of solid wastes, hazardous waste, or infectious wastes any low-level radioactive waste whose treatment, recycling, storage, or disposal is governed under division (B) of section 3748.10 of the Revised Code.

(B) No owner or operator of a solid waste facility, infectious waste treatment facility, or hazardous waste facility shall accept for transfer, storage, treatment, or disposal or shall transfer, store, treat, or dispose of, as applicable, any such radioactive waste.

HISTORY: 144 v S 130 (Eff 8-19-92); 146 v S 19. Eff 9-8-95

Division (B) of §3748.10 prohibits storage or disposal of any low-level radioactive waste except at a facility licensed for storage or disposal of low-level radioactive waste by Ohio's director of health or the NRC.

(B) No person shall treat, recycle, store, or dispose of any low-level radioactive waste except at a facility that is licensed for treatment, recycling, storage, or disposal of that waste by the director of health under this chapter and rules adopted under it or, until the state becomes an agreement state pursuant to section 3748.03 of the Revised Code, by the United States nuclear regulatory commission under the "Atomic Energy Act of 1954," 68 Stat. 919, 42 U.S.C.A. 2011, as amended, and regulations adopted under it regardless of whether the waste has been reclassified as "below regulatory concern" by the United States nuclear regulatory commission pursuant to any rule or standard adopted after January 1, 1990.

Taken together these laws mean, in pertinent part, that in Ohio *all* LLRW may *only* be stored or disposed of at a licensed storage or disposal facility and *no* low-level radioactive waste may be *commingled* with *any* solid waste or *accepted for transfer* at a solid waste facility.

It is undisputed that the West Slag Pile contains solid waste. See Ohio EPA Decision Document, Slag and Other Wastes, p.7 (March 3, 1997). Further, it is indisputable that "consolidation of the offsite slag into a common area", i.e., the West Slag Pile commingles low-level radioactive waste with solid waste, notwithstanding the manner in which the offsite slag

will be separable and retrievable. ER, at p.5. The separable and retrievable language used throughout the Federal Register Notice, SMC's MLA application and the ER is simply a ruse to give the impression that the proposed action is reversible and therefore something other than the permanent placement of the offsite slag in the West Slag Pile for disposal. The proposed action is an end run around the Ohio's prohibition against disposal of LLRW except at a licensed disposal facility.

Finally, it is undeniable that the only decommissioning proposal or plan under review by the NRC calls for the onsite disposal of the radioactive waste in the slag piles, despite NRC's express assurance that granting the MLA will not prejudice any of the alternatives to be considered regarding final disposal at the site. See Notice, 63 FR 64976. The false premise of NRC's assurance is that there are in fact alternatives under consideration for final disposal.

The proposed action is simply the first step in finalizing the Draft Environmental Impact Statement to conform to Ohio EPA's selected remedy for the SMC facility – onsite disposal -- a predetermined outcome.

The Ohio Department of Health ("ODH") issued CFMC, the unlicensed, non-party to the MLA and person in possession and control of the offsite slag, an Order allowing CFMC to temporarily stage the offsite slag at the SMC facility. Administrative Order, July 18, 1997. The premise for the Order was "Cyprus Foote's desire to . . . permanently place the [offsite] Slag on or against the West Slag Pile at the Facility." Id., at Findings of Fact, p. 2, ¶ 11. ODH Ordered CFMC that, "Any [offsite] slag that is not permanently placed on or against the West Slag Pile shall be disposed of in accordance with applicable state and federal law, including without limitation Ohio Revised Code Chapter 3748, concerning any permanent placement of Slag on or against the West Slag Pile," Id., Orders, p.4, ¶7.

The MLA application misleads Citizens and the NRC into falsely believing that the proposed action is "[i]n accordance with . . . the Administrative Order . . . ." ("Compliance with this Order shall be deemed compliance with O.R.C. Chapter 3748 as it relates to *temporary staging* of the Slag and associated materials at the Facility." Id., Orders, p.8, ¶13[emphasis supplied]). The MLA application further misleads Citizens and the NRC into falsely believing that, "This requested action is consistent with the alternatives *evaluated* in the . . . Decision Document. . . ." Application,p.1. [emphasis supplied] Ohio EPA's selected remedy expressly excluded *evaluation* of SMC's proposed action. ("Shieldalloy and Cyprus Foote have proposed that up to 10,000 ft of radioactive slag from offsite locations be returned to the Site and disposed of on top of the West Slag Pile. . . Ohio EPA's selected remedy is to evaluate this issue if firm plans are expeditiously developed . . . ." Decision Document, §5.8, p.52 (March 28, 1997)).

The final disposal option, Ohio EPA's selected remedy for site, is already known and found in the Decision Document. The selected remedy for the SMC site expressly includes the plan to "Cap the West Slag Pile in accordance with state solid waste rules under Ohio Administrative Code Chapter 3745-27." Decision Document, Declaration, p.2, Item 3. The Decision Document, is also an Appendix to the Permanent Injunction Consent Order ("PICO") entered in the Guernsey County Court of Common Pleas, Case No. 95 CV 242, ¶89, p.45 (December 23, 1996). Cyprus Foote Minerals Company is a co-defendant along with SMC in that case.

The Decision Document and the PICO are also referenced in SMC's MLA Application. p.1. What SMC fails to mention in the Application is that neither it nor CFMC have been granted relief from "any obligation to comply with . . . R.C. Chapters 3734, 3748 and

6111, including without limitation any regulation, license or order issued under these Chapters. . . ." PICO, p.45, ¶89.

This is the only decommissioning proposal under consideration. The Final Environmental Impact Statement will not change Ohio's selected remedy for the site. The separable and retrievable condition of the offsite slag in the West Slag Pile has no bearing on the selected remedy. Quite simply, the issue is that the proposed action violates Ohio law and thereby federal law wherein the AEA mandates Ohio's responsibility for the disposal of LLRW generated within the State.

The proposed action also threatens the violation of federal law by otherwise diminishing the effect of State law. 42 U.S.C. 2021d(b)(5). The proposed action threatens to undermine a Consent Decree and Settlement Agreement between SMC and the United States to which the NRC was a signatory under the Comprehensive, Environmental Response, Compensation and Liability Act of 1980, ("CERCLA") as amended, 42 U.S.C. 9601 et seq., relating to SMC's facilities in Cambridge Ohio site. See Notice, 62 FR 7255. Under CERCLA, the remedial action agreed to by the United States shall achieve the degree of clean shall at least attain such legally applicable or relevant and appropriate standard, requirement ("ARARs"), criteria or limitation under a State environmental or facility siting law that is more stringent than the Federal standard applicable to the hazardous substance or pollutant or contaminant concerned. 42 U.S.C. 9621(d). Again, nothing in the Settlement agreement between the United States and SMC "shall release Shieldalloy . . . from complying with applicable state and federal law." Settlement Agreement of Environmental Claims and Issues by and between the Debtors and the United States of America and the State of New Jersey, In Re: Metallurg, Inc. and SMC, Case Nos. 93 B 44468 –69 (BR SD NY), p. 35, ¶43.

The proposed action also violates federal law by failing to comply with federal Licensing Requirements For Land Disposal Of Radioactive Waste, 10 CFR Part 61. In pertinent part, 10 CFR 61.1 provides:

> (a) The regulations in this part establish, for land disposal of radioactive waste, the procedures, criteria, and terms and conditions upon which the Commission issues licenses for the disposal of radioactive wastes containing byproduct, source and special nuclear material *received from other persons.* [emphasis supplied]

CFMC is an "other person" within the meaning of the AEA. Presently, CFMC possesses and controls the offsite radioactive waste containing source material without a valid source material license or exemption from the NRC. By SMC's proposed action, SMC threatens to receive radioactive waste containing source material from an unlicensed, other person.

On information and belief, the MLA application does not comply with the licensing requirements for land disposal of radioactive waste. SMC and NRC can call the proposed action what it will --in substance the proposed action is intended to and will result in the receipt of source material from an other person (nonlicensee) for disposal in the West Slag Pile under an Ohio solid waste facility cap.

Thus, the NRC, by approving the MLA would cause the violation of federal and Ohio law and all of the aforementioned court and administrative agency orders. The violation of Ohio and federal law will result in additional radioactive waste being disposed of on the West Slag Pile. This is the putatively illegal action that gives rise to Citizens' alleged injuries in fact and gives them standing to request review of the proposed action.

b) Citizens' Noneconomic Injuries Result From the Proposed and Putatively Illegal Action for Which Citizens Seek Review.

Citizens allege injuries to both economic and noneconomic interests. In Sierra Club, the Supreme Court decided what must be alleged by persons who claim injury of a noneconomic nature to interests that are widely shared. Id., at 734. The injury alleged by the Sierra Club was to be incurred entirely by reason of the change in the uses to a National Forest and the attendant change in the aesthetics and ecology of the subject location and adjacent areas. Id. The Court held that the Sierra Club lacked standing only because the club failed to allege that it or its members would be affected by the proposed changes in use. Id., at Syllabus. The Court did not even question that the type of harm alleged by the Sierra Club may amount to an "injury in fact" sufficient to lay the basis for standing.

The trend of cases arising under statutes authorizing judicial review of federal agency action has been toward recognizing that injuries other than economic harm are sufficient to bring a person within the meaning of the statutory language, and toward discarding the notion that an injury that is widely shared is ipso facto not an injury sufficient to provide the basis for judicial review. Id., at 738. The Court in Sierra Club, reiterated the Court's approval of this development with in Data Processing v. Camp, 397 U.S. 150, 154, saying that the interests alleged to have been injured "may reflect `aesthetic, conservational, and recreational' as well as economic values." Sierra Club, at 738. This view of the Supreme Court's is apparently at odds with the string of cases from lesser authorities cited by NRC that alleged injury to economic interests are outside the AEA's protected zone of interests. See NRC Answer, p.6, n.3. [citations omitted]; See also, Sierra Club, 405 U.S., at 737 analyzing FCC v Sanders Bros. Radio Station, 309 U.S. 470, 477 and Scripps-Howard Radio v. FCC., 316 U.S.4, ("Taken together, Sanders and Scripps-Howard thus established a dual proposition: the fact of economic injury is what gives a

person standing to seek judicial review under the statute, but once review is properly invoked, that person may argue the public interest in support of his claim that the agency has failed to comply with its statutory mandate.")

Citizens here allege that SMC's proposed change in use and NRC's consideration of this proposed change in use, lays the bases for standing. Like the alleged injury in Sierra Club, SMC's proposed changes will not fall indiscriminately upon every citizen, but upon those whose *use* of adjacent areas, and for whom the *aesthetic* and *recreational* values will be lessened by the changes. Sierra Club, 405 U.S., at 735 [emphasis supplied]. Citizens' alleged injury may also properly be based on *conservational* interests recognized in Data Processing, 397 U.S., at 154[emphasis supplied].

Thus, it should suffice for constitutional purposes of standing that Citizens allege their aesthetic values may be adversely affected by looking from state or township roads upon additional slag/soil to be commingled with the solid wastes in the West Slag Pile. It should suffice for constitutional purposes of standing that Citizens allege their recreational interests will be adversely affected by the additional slag/soil to be commingled with the solid wastes in the West Slag Pile adjacent to the open fields, wetlands and Chapman's Run that drain into nearby Will's Creek. It should suffice for constitutional purposes of standing that Citizens allege their conservational interests will be adversely affected by the additional slag/soil to be commingled with the solid wastes in the West Slag Pile in violation of federal and Ohio law enacted to protect the public health, safety, welfare and environmental resources. The foregoing allegations are injuries in fact of which Citizens complain.

The alleged actual or threatened injuries "fairly can be traced to the challenged action" and "[are] likely to be redressed by a favorable decision". Valley Forge,

454 U.S., at 472 (*citing*, Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S 26, 38, 41 (1976)). Art. III judicial power thus exists to redress or otherwise to protect against these injuries. Citizens request a hearing to redress their grievances. A favorable decision is likely to protect Citizens interests from the actual or threatened injuries they allege.

c) At Least Two of the Citizens' Economic Injury May Result From the Proposed Action.

Citizens include at two individuals who own real property within a mile of the SMC facility known to contain radioactive slag from the SMC facility. One of the owners of this property is a contractor who bought and paid for slag from this facility. Slag on these Citizens' property has been surveyed, sampled and analyzed as radioactive in excess of 10 times background radiation.

The proposed action will license SMC to receive radioactive slag waste from only one other person for disposal in the West Slag Pile -- CFMC. In this regard, CFMC is no different from these Citizens who are in possession and control of offsite, unlicensed source material from the SMC facility. Both CFMC and these Citizens desire to have their radioactive slag permanently placed in the West Slag Pile. The proposed MLA permits SMC to receive only CFMC's offsite slag. These citizens allege that this limitation of the MLA will adversely affect their economic interests as they will have to dispose of their radioactive slag at a licensed disposal facility at substantially greater cost. A favorable decision at the hearing requested may protect these Citizens' economic interest that will be adversely affected by the proposed action. Contrary to NRC's argument, the fact of these Citizens' economic injury is what gives them standing to seek review under the AEA. *c.f.*, Sierra Club, 405 U.S., at 737, *supra*. Once review is properly invoked, these Citizens will argue the public interest in support of their claim that

NRC has failed to comply with its statutory mandates. *Accord*, Sanders, 309 U.S., at 477 and Scripps-Howard, 316 U.S., at 14.

B. Citizens Satisfy Prudential Standing Requirements To Request A Public Hearing On SMC's Proposed Action and NRC's Consideration Of Issuing The MLA.

Beyond the constitutional requirements, the federal judiciary has also adhered to a set of prudential principles that bear on the question of standing. Thus, the Supreme Court has held that "the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." Warth v. Seldin, 422 U.S., at 499. In addition, even when the plaintiff has alleged redressable injury sufficient to meet the requirements of Art. III, the Court has refrained from adjudicating "abstract questions of wide public significance" which amount to "generalized grievances," pervasively shared and most appropriately addressed in the representative branches. Id., at 499-500. Finally, the Court has required that the plaintiff's complaint fall within "the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." Data Processing , 397 U.S., at 153.

1. Citizens Assert Their Own Legal Rights or Interests Are Adversely Affected, and Do Not Rest Their Claims on the Legal Rights or Interests of Third Parties.

This prudential principle is generally relevant in cases of where organizational standing is at issue. See Sierra Club, *supra*. The relevant question in those cases is whether the interests of the organization coincide with its membership. In the case of an organizational plaintiff, the organization must allege that it or its members are adversely affected.

Organizational standing is not at issue here. Citizens are unorganized in that respect and assert only that their own legal rights are adversely affected.

2. Citizens' Complaint Falls Within the Zone of Interests to be Protected or Regulated by the Statutes Violated.

The issue here is whether Citizens have alleged injury to an interest "arguably with the zone of interests to be protected or regulated by the statutes that the agencies were claimed to have violated." Data Processing, 397 U.S., at 154. Citizens have set forth numerous violations of statutes that will be violated by NRC's approval of the MLA. §II.A.1.a., supra. Among these statutes, Citizens allege violations of the federal AEA, CERCLA and Ohio Solid and Hazardous Waste and Radiation Control Program. Id.

Citizens further have alleged both economic and noneconomic interests that are adversely affected by these violations of statutes. *Accord*, Data Processing, 397 U.S., at 154. Among the noneconomic interests, Citizens have alleged injury to aesthetic, recreational and conservational interests by the violation of these statutes. §II.A.1.b., *supra*. Two of the Citizens allege economic injuries in particular. §II.A.1.c., *supra*. The issue then is whether these issues arguably fall within the zone of interests of the statutes claimed to be violated.

Citizens argue that the purpose of all of the aforementioned statutes is the protection of public health and welfare, safety and the environment. Citizens further argue that their aesthetic, recreational, conservational and economic interests fall within the zone of interests on the applicable statutes. As the NRC acknowledges, the threshold of standing at this stage in the proceeding is low. NRC Anwer, p. 11.

As an example of how low the threshold is, Citizens look to the Supreme Court's decision in U.S. v. Students Challenging Regulatory Agency Procedures (SCRAP I). 412 U.S.

669 (1973). In that case, a student group and environmental group brought a challenge against an interim rate increase by the Interstate Commerce Commission. The SCRAP I Court "was asked to follow a far more attenuated line of causation to the eventual injury of which SCRAP complained – a general rate increase would allegedly cause increased use of nonrecyclables, thus resulting in the use of more natural resources, some of which might be taken from the Washington [state] area resulting in more refuse that might be discarded in national parks in Washington." Id., at 687-688. The SCRAP I Court noted that this was a far less direct and perceptible injury to the environment than alleged even in Sierra Club, but held that the pleadings alleged facts sufficient to show standing. Id.

In this case, the line of causation to the eventual injury to the environment that Citizens allege is far less attenuated than in SCRAP I. At this stage in the MLA proceedings, Citizens have alleged injury in fact within the zone of interests of the environmental protection statutes alleged to be violated sufficient to show standing.

3. Citizens Seek Redress of Specific Grievances That Have Already Been Addressed in the Representative Branches.

Even though Citizens have alleged redressable injury sufficient to meet Art. III standing, the Supreme Court has refrained from adjudicating abstract questions of wide public significance that amount to generalized grievances most appropriately addressed in the representative branches. Warth v. Seldin, 422 U.S., at 499-500. Such are cases that would convert the judicial process into "no more than a vehicle for the vindication of the valued interests of concerned bystanders." Valley Forge, 454 U.S., at 473 (*citing*, SCRAP I, 412 U.S., at 687).

Citizens here are not attempting to vindicate value interests of concerned bystanders. The representative branches of both the State and federal governments have already addressed the specific issues raised by Citizens' alleged violations of federal and state statutes. Citizens alleged specific violations of state and federal law and specific grievances resulting from those violations. The Supreme Court has already made it clear – standing is not to be denied simply because many people may suffer the same injury. SCRAP I, 412 U.S., at 687.

Although NRC made casual reference to " a generalized grievance," its argument does raise the issue with respect to Citizens allegations, but only in its restatement of the law of standing. NRC Answer, p.6. Citizens do not raise abstract questions or generalized grievances more appropriately addressed by their representatives. Therefore, Citizens cannot be denied standing because many others may also be injured.

III. CONCLUSION

For the foregoing reasons, Citizens have adequately satisfied the constitutional and jurisprudentional requirements of standing to invoke the Informal Hearing Procedures of 10 CFR Part 2, Subpart L. SMC and NRC's Answers are without merit insofar as they allege Citizens lack standing or have otherwise failed to adequately demonstrate standing.

Respectfully Submitted,

Michael Bruce Gardner MBG

Counsel for Unnamed Citizens of Guernsey County Ohio

Certificate of Service

Pursuant to §II.B.1.g and §II.B.1.d of the initial prehearing order, copies of the foregoing motion were served on the presiding officer, the administrative assistant, the office of the secretary, counsel for the Staff and counsel for Shieldalloy Metallurgical Corporation via email at approximately 11:25 p.m. on 5 February 1999 and by regular mail on 6 February1999, at the addresses shown below:

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