UNITED STATES OF AMERICA

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
Louisiana Energy Services	)	Docket No. 70-3070
(Claiborne Enrichment Center)	)	

CITIZENS AGAINST NUCLEAR TRASH'S FIRST SUPPLEMENT TO CONTENTIONS ON THE CONSTRUCTION PERMIT/ OPERATING LICENSE APPLICATION FOR THE CLAIBORNE ENRICHMENT CENTER

Introduction

Pursuant to 10 C.F.R. § 2.714(b), Citizens Against Nuclear Trash ("CANT") hereby files the following supplement to its contentions in the combined construction permit/operating license application for the Claiborne Enrichment Center ("CEC") in Claiborne Parish, Louisiana. As discussed below, these contentions satisfy the standards for admission of late-filed contentions in 10 C.F.R. § 2.714(a)(1).

Contention T: CEC Design Relies on Use of Illegal CFC.

The design of the CEC is invalid because it relies for cooling purposes on the use of trichlorofluoromethane ($CFC1_3$) (also known as "Freon R-11" or "CFC-11"), an ozone-depleting chemical which the Environmental Protection Agency has banned after January 1, 1996. Thus, LES must either be barred from constructing the plant with the use of CFC-11 as a coolant, or substitute a

new, legal coolant for CFC-11 in the design of the plant. Any substitute coolant chosen by LES should be identified in an amended Final Safety Analysis Report ("FSAR"), with an explanation of how or whether the new coolant affects other factors in the plant's design, such as centrifuge design, calculations of expected uranium emissions, and the type of lubricants that must be used.

Basis: The coolant in a uranium enrichment plant serves the essential function of carrying away the heat generated within each enrichment centrifuge. As described by the Draft Environmental Impact Statement ("DEIS") for the CEC, "Freon R-11 is selected as the refrigerant at CEC." DEIS at 2-21 (NRC: November 1993). According to the DEIS, the inventory of CFC-11 at the CEC plant at any given time will be about 3600 kg. Id.

The DEIS states that CFCs and other ozone-depleting chemicals will be banned from use by the year 2,000, and asserts that "a suitable substitute will be used at the facility when necessary." Id. at 2-21. However, EPA has now accelerated the schedule for banning CFC-11 to January 1, 1996. Notice of Final Rulemaking, Protection of Stratospheric Ozone, 58 Fed. Reg. 65,018 (December 10, 1993).[1] The Licensing Board cannot and should not license a facility whose design and operation is based

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1 CFC-11 is now included in EPA's list of "Class I Controlled Substances." 58 Fed. Reg. at 65,074. These Class I substances may not be produced after January 1, 1996. 58 Fed. Reg. at 65,021, col. 1. (A copy of the Federal Register Notice is included as Attachment 2.)

on the use of a substance that will be illegal before the facility even begins operation.[2]

If LES chooses a substitute coolant, it should be required to amend its FSAR and explain any changes in the plant's design that occur or are required as a result of the substitution. Such a license application amendment and explanation are required because the design of a uranium enrichment plant depends in part on the thermodynamic and other physical and chemical properties of the specific refrigerant that is used in the centrifuges. Unless the substitute refrigerant is an exact match for the relevant physical and chemical properties of CFC-11, the substitution of another coolant may necessitate changes in the plant's design. For instance, the rate of flow of uranium hexafluoride through each centrifuge, or alternatively, the dimensions of the centrifuge, depends in part on the thermodynamic properties of the coolant. The type of lubricant used in the cooling system also depends in part on the composition of the coolant. If the coolant and lubricants are not matched, this could cause premature deterioration of the coolant and deggradation of the equipment.

The type of coolant used in the centrifuges may also affect the levels of the plant's radioactive emissions to the environ-

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2 Even by LES' optimistic predictions of last July, the CEC was not expected to begin operation until 1998, two years after the regulations banning CFC-11 take effect. LES Environmental Report, § 1.3 (July 1993).

ment. During the enrichment process, some coolant leaks into the centrifuge chamber containing uranium hexafluoride (UF6). Some emissions of both coolant and uranium hexafluoride occur when these two materials are separated. Thus, the amount of emissions to the environment may change as a result of a change in refrigerant. In order to control increased emissions as a result of a change in refrigerants, LES may also need to change the design of the process for separating the coolant from the uranium hexafluoride.

Accordingly, before the CEC can be licensed, LES must be required to identify the substitute coolant it intends to use in the centrifuges, and describe any design changes that may be required as a result.

This contention is supported by the attached affidavit of Dr. Arjun Makhijani, President of the Institute for Energy and Environmental Research in Takoma Park, Maryland (Attachment 1). If the contention is admitted, CANT intends to have Dr. Makhijani present expert testimony regarding the unlawfulness of relying on CFC-11 as a refrigerant in the CEC design.

CANT Has Satisfied the Late-Filed Contention Standard.

CANT has satisfied the Commission's five-pronged standard in 10 C.F.R. § 2.714(a)(1) for submission of a late-filed contention.

(i) CANT has good cause for filing this contention after the original deadline for contentions. The EPA did not issue

public notice of its ban on CFC-11 until December 10, 1993. CANT did not receive a copy of the December 10th Federal Register in the mail until the following week. Thus, this contention is being filed within a short time of CANT's receiving notice of the EPA's rulemaking.

CANT also notes that preparation of this contention required CANT to obtain expert assistance in the fields of nuclear engineering and thermodynamics of ozone-depleting chemicals. Such assistance was not available to CANT during the winter holidays. CANT filed this contention as soon as possible after the first of the year, when Dr. Makhijani became available.

(ii) There is no other means by which CANT's interest can be protected. Although CANT might be able to bring an enforcement action against LES for violating the EPA's new regulations under the Clean Air Act, such an enforcement action would address only the question of whether LES could operating using an illegal CFC. However, CANT would not be able to address the effects of any substitute coolant chosen by LES on radioactive emissions from the plant, or on any other aspects of plant safety or environmental protection that were affected by the new coolant. Thus, there is no other means of fully protecting CANT's interests in this matter.

(iii) CANT's participation in the proceeding can be expected to aid in the development of a sound record with regard to this issue. As stated in the attached affidavit of Dr. Arjun

Makhijani, this contention is based on a technical evaluation of the CEC by Dr. Makhijani, who has extensive expertise in both the areas of nuclear engineering and chlorofluorocarbons. Dr. Makhijani is prepared to testify in the licensing proceeding regarding the illegality of CFC-11 as a refrigerant for the centrifuges at the Claiborne Enrichment Center.

(iv) CANT is the only citizen intervenor group admitted to this proceeding. Thus, there are no other parties who can represent CANT's interests.

(v) While admission of this contention will certainly broaden the issues and may delay the conclusion of this proceeding, there are three reasons why this factor can be given little, if any weight.

First, as discussed above, any delay caused by litigation of this proceeding arises from a new and important legal obligation on LES, not from CANT's tardiness in raising the issue. In fact, LES, which knew that the government was in the process of phasing out CFCs, could have designed its facility without the use of CFCs in the first place -- but it chose not to. Now LES should be required to bear the consequences of its decision, not CANT.

Second, the substitution of a new, legal coolant for the CEC will alter the design of the facility, and may have an effect on such factors affecting public health and safety as the level of uranium emissions from the plant. Thus, it is an important safety issue which CANT should be allowed to address in the context of an adjudicatory hearing.

Third, any delay occasioned by CANT's participation in the resolution of this issue will be a minor increment to the delay that will almost certainly be caused by IFS' selection and proposal of a substitute coolant, and the review by the Nuclear Regulatory Commission ("NRC" or "Commission") staff. Moreover, under the Atomic Energy Act, as implemented by 10 C.F.R. Part 2, Appendix A, § V(f), the Licensing Board has an obligation to review all issues, including uncontested issues, and make an independent determination as to whether the construction permit should be issued.[3] Thus, the Licensing Board must satisfy itself that this issue has been addressed adequately, regardless of whether the contention is admitted.[4] Accordingly, litigation of the issue by CANT will not add substantially to the time that must already be taken to review this issue.

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[3] While the Licensing Board need not "duplicate the radiological safety review" already conducted by the NRC Staff and the Advisory Committee on Reactor Safeguards, it must decide whether the application and its review by the NRC staff provide sufficient grounds for issuance of the construction permit. Id.

[4] This obligation also applies to the other contentions submitted by CANT, and thus should be considered when the Licensing Board is weighing the admissibility of all of the contentions under the late-filed contention standard.

Contention U: The DEIS Is Inadequate Because the Nuclear Regulatory Commission Failed to Consult With Other Appropriate Federal Agencies Regarding the Proposed Project, as Required by NEPA.

In violation of the National Environmental Policy Act ("NEPA"), the NRC failed to consult other affected or interested federal agencies in preparing the DEIS. Accordingly, the DEIS should be withdrawn, submitted to all appropriate agencies for consultation, and resubmitted to the public for comment at the appropriate time, before further action is taken in the pending licensing proceeding.

Basis: NEPA, 42 U.S.C. §§ 4321 - 4370c, requires a systematic, interdisciplinary approach to assessing the environmental impacts of a proposed federal action, culminating in the preparation of a detailed environmental impact statement which is subject to public comment. See 42 U.S.C. § 4332(2)(A) & (C). An important part of NEPA's systematic and interdisciplinary approach is consultation by the agency proposing the action with other federal agencies.

Specifically, NEPA mandates that "[p]rior to making any detailed statement [of environmental impacts], the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved." 42 U.S.C. § 4332(2)(C) (emphasis added). Reflecting this NEPA mandate, NRC regulations require that:

> To the extent sufficient information is available, the draft environmental impact statement will include . . . an analysis of significant problems and objections raised by other Federal, State, and local agencies . . . .

10 C.F.R. § 51.71(b); see also 40 C.F.R. § 1500.5(b) (Council of Environmental Quality NEPA regulations, which are binding on all agencies, require the NRC to "emphasiz[e] interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document").

Adopting a systematic and interdisciplinary approach early in the course of preparing a draft environmental impact statement is essential to serve NEPA's twin goals of informed agency decisionmaking and public participation. Early consultation allows the agency in charge of the project (the NRC) to "obtain all views from interested agencies and thereby ensure an intelligent assessment of the 'significance' of the project's environmental impact." Simmans v. Grant, 370 F.Supp. 5, 19 (S.D. Tex. 1974). Early consultation also affords the public a meaningful opportunity to review and comment on the collective assessment of the project by the government. This opportunity for public comment is critical because it facilitates "'widespread discussion and consideration of the environmental risks and remedies associated with the pending project ' thereby augmenting an informed decisionmaking process." LaFlamme v. FERC, 852 F.2d 389, 398 (9th Cir. 1988), quoting Warm Springs Dam Task Force v. Gribble, 621 F.2d 1017, 1021 (9th Cir. 1980) (per curiam).

However, during the course of preparing the Draft Environmental Impact Statement ("DEIS") for the CEC, such consultation did not take place with all of the appropriate federal agencies. The Department of Energy, the Environmental Protection Agency headquarters in Washington, D.C., and the Department of State -- agencies that have significant information bearing on NEPA matters at issue in this licensing proceeding -- were not part of any consultation process in the drafting of the DEIS.[5]

Department of Energy

The Department of Energy ("DOE"), an agency that has directed operations at enrichment facilities for decades, obviously should have been consulted regarding the CEC enrichment facility proposed by LES. The DOE clearly has expertise regarding a wide range of issues pertaining to such facilities. For example, had DOE been consulted, it could have provided meaningful input on the need for the proposed facility. DOE's November 1993 edition of "World Nuclear Capacity and Fuel Cycle Requirements 199" (DOE/EIA-0436(93) at p. 28) states unequivocally that "[t]he enrichment services market is highly competitive with

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5 The DEIS indicates that Science Applications International Corporation was the principal preparer of the DEIS and "relied heavily" on information submitted by the applicant, Louisiana Energy Services, with input from the NRC staff and the Louisiana Department of Environmental Quality. NUREG-1484 at xxviii. The only other reference to consultation with federal agencies lists the National Weather Service Station in Shreveport, Louisiana and the Region VI office of EPA, but there is no indication that the "consultation" with these latter two agencies was significant. NUREG-1484 at 7-1.

capacity far in excess of annual requirements." Through various tables and projections, this document makes clear that through at least the year 2010, there is no need for additional uranium enrichment capacity anywhere in the world.

Furthermore, if there is no need for the facility, then the "no action" alternative, which NEPA requires to be considered (40 C.F.R. § 1502.14 (d)), emerges as the best alternative. See also, Chelsea Neighbor Association v. United States Postal Service, 389 F.Supp. 1171, 1181 (SD NY 1975) (noting that a proper NEPA analysis requires consideration of all alternatives, including "total abandonment" of the project).

In addition, DOE is currently attempting to discern whether an "agreement for cooperation" between the United States and the foreign governments who are partners in the LES partnership is required under the Atomic Energy Act ("AEA"), 42 U.S.C. § 2153, prior to licensing the proposed facility. (Congressman John D. Dingell, Chairman of the House Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce has also launched an investigation of this matter; see Attachment 3, letter dated October 21, 1992 from Congressman Dingell to DOE.)

The AEA requires such an agreement where classified information relating to nuclear materials production will be shared with foreign governments, and the agreement must be approved by both the Congress and the President. The AEA also specifically states that all such agreements must provide for the protection of the

"environment from radioactive, chemical or thermal contamination . . . ."

DOE insight on this critical environmental and national security issue is clearly relevant to the DEIS. Should DOE determine that such an agreement is required (as CANT believes it is), then it is premature to proceed with the preparation of an environmental impact statement before the terms of the agreement -- including provisions pertaining to environmental protection -- are even reached.

Finally, as discussed more fully in Contention W, below, (and incorporated herein) DOE is currently grappling with the immense problem of permanent disposal for all of the DUF6 generated by various operations of the United States government. Clearly, comments from DOE regarding a new source (the CEC) of even more DUF6 are germane to assessing the environmental impacts of the proposed CEC facility.

Department of State

The Department of State, one of the agencies entrusted with the national security of this country, should have been consulted regarding the CEC enrichment facility proposed by LES. The Department of State clearly has expertise regarding a wide range of national security issues which come into play at facilities (especially foreign-dominated facilities[6]) which enrich uranium.

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6 According to attachment D of the "LES Project Financial Plan" at page 3, Urenco Investments -- a wholly owned subsidiary of Urenco Ltd. which in turn is owned in equal shares by the United Kingdom, the Netherlands, and Germany -- has majority operating control of the CEC.

(For example, the "agreement for cooperation" issue raised in basis 2, above.) These national security issues must be considered as part of the DEIS process. NRC regulations require that all effects --"environmental and other" -- of a proposed action be assessed. 10 C.F.R. § 51.71(d).

Furthermore, the Department of State has actual and/or potential access to documents relevant to the possibility that Urenco Ltd., (the foreign corporation that owns the LES partner that will have operating control of the proposed facility), may have been involved in the transfer of critical nuclear technology to Iraq. (The International Atomic Energy Agency is currently investigating this matter.) Accordingly, the Department of State may well be in a position to comment upon whether a licensee with such close ties to Urenco Ltd. is in fact qualified to operate a nuclear facility in the United States.

Environmental Protection Agency

The Environmental Protection Agency in Washington D.C., the chief agency entrusted with environmental matters in this country, should have been consulted regarding the CEC enrichment facility proposed by LES. The EPA clearly has expertise regarding a wide range of environmental issues which pertain to the proposed facility, beyond the rather straightforward issue of air and water permits (which Region VI of the EPA did handle). For example, EPA headquarters just recently concluded a major study, which involved extensive public participation, on uses and

effects of Hydrogen Fluoride ("HF"), including uranium hexafluoride ("UF6").[7] Those responsible for conducting this study should have been consulted about the consequences of having yet another major producer (the proposed CEC facility) of UF6 and HF in this country. (See also, the discussion regarding hydrofluoric acid in the Basis supporting Contention W, below, which is incorporated herein.)

Department of Transportation

Operation of the CEC may involve the manufacture and transportation of large quantities of hydrofluoric acid as a result of LES' tails disposal plan. Yet, the DEIS provides no indication that the NRC Staff has consulted with the federal Department of Transportation ("DOT") regarding potential adverse environmental risks and impacts associated with HF transportation, and ways those impacts can be minimized or avoided. The NRC should have consulted with the DOT regarding transportation hazards associated with HF and other chemicals to be transported to or from the CEC.

CANT Has Satisfied the Late-Filed Contention Standard.

CANT has satisfied the Commissions' five-pronged standard in 10 C.F.R. § 2.714(a)(1) for submission of a late-filed contention.

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7 U.S. Environmental Protection Agency, "Hydrogen Fluoride Study, Final Report, September 1993, EPA550-R-93-001," Report to Congress, Section 112NG Clean Air Act Amendments.

(i) CANT has good cause for filing this contention after the original deadline for contentions. The NRC did not announce the availability of the DEIS until November 24, 1993 (58 Fed. Reg. 62148), and CANT did not receive a copy of the DEIS until several days thereafter. CANT also notes that preparation of this contention required CANT to obtain assistance from parties who were not available to CANT until after the winter holidays. CANT filed this contention as soon as possible after these persons became available. Thus, this contention is being filed within a very short time of CANT's having received a copy of the DEIS.

(ii) There is no other means by which CANT's interest can be protected. This is the only proceeding in which the environmental impacts of the CEC, as assessed by all appropriate agencies, will be considered under NEPA.

(iii) CANT's participation in the proceeding can be expected to aid in the development of a sound record with regard to this issue. Although no expert witnesses are required for this purely legal issue, CANT will brief this matter fully for the record, from the public interest perspective, thus aiding in the ultimate decision on this contention.

(iv) CANT is the only citizen intervenor group admitted to this proceeding. Thus, there are no other parties to this proceeding who can represent CANT's interests.

(v) Although admission of this contention will broaden the issues minimally, it will not delay the conclusion of this proceeding significantly because this contention involves only a question of law.

Contention W: The DEIS Is Inadequate Because It Fails to Address the Impacts, Costs, and Benefits of Ultimate Disposal of DUF6 Tails, or the Cumulative and Generic Impacts of DUF6 Tails Disposal.

According to the DEIS, the 3,830 metric tons ("tonnes") of depleted uranium hexafluoride ("DUF6") tails produced annually by the CEC will be converted to triuranium oxide (U3O8). DEIS at 2-31. However, the DEIS contains no information whatsoever regarding the nature and environmental impacts of the process for converting DUF6 to U3O8, or the impacts of permanently disposing of these U3O8 tails. Given this utter lack of information, it is also impossible to determine from the DEIS the basis for the NRC's estimate that tails disposal will cost $12.6 million/year. DEIS at 2-31. In any event, the NRC does not even appear to have factored the $12.6 million estimate into its cost-benefit analysis. See DEIS § 4.5.

Moreover, the NRC has failed to evaluate the cumulative and generic impacts of adding to the huge (and growing) national inventory of DUF6 tails, for which the U.S. government has yet to identify an acceptable means of disposal. The NRC, in consulta-

tion with the Department of Energy, should be required to evaluate these impacts before LES can be licensed to produce more DUF6.

Basis: NEPA requires an EIS to be comprehensive and assess all reasonably foreseeable, cumulative impacts of a proposed project. This "cumulative-impacts analysis" required under NEPA must address reasonably foreseeable future actions, such as the impacts of ultimate disposal of DUF6 tails from the proposed CEC facility. 10 C.F.R. § 1508.7. The analysis must:

> consider (1) past and present actions without regard to whether they themselves triggered NEPA responsibilities and (2) future actions that are 'reasonably foreseeable,' even if they are not yet proposals and may never trigger NEPA-review requirements.

Fritiofson v. Alexander, 772 F.2D 1225, 1245 (5th Cir. 1985) (citations omitted; emphasis added.) See also Sierra Club v. Sigler, 695 F.2d 957, 970 (5th Cir. 1983) (quoting Scientists' Institute for Public Information, Inc. v. Atomic Energy Commission, 481 F.2d 1079, 1092 (D.C. Cir. 1987)). In this case, conversion to U3O8 and disposal of the enormous quantity of tails to be generated at the CEC could have significant impacts on the environment. Yet, in flagrant violation of NEPA, the DEIS for the CEC contains virtually no information about this aspect of the operation of the CEC.[8]

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[8] While the Licensing Board has ruled ruled that the NRC has no regulatory requirement for a concrete plan for the disposal of DUF6, the Commission does require LES to have a "plausible strategy" for tails disposition. LBP-91-41, Slip op. at 9 (December 19, 1991). As discussed above, NEPA also requires the evaluation of all reasonably foreseeable consequences of the NRC's licensing action, which includes disposition of a huge quantity of depleted uranium tails. Thus, now that LES

For instance, the DEIS does not identify or discuss the process by which LES intends to convert DUF6 to U3O8. Depending on the type of process chosen by LES, conversion of DUF6 to U3O8 could have significant adverse environmental impacts and costs. France is the only country which currently converts DUF6 to U3O8. The French process generates as a byproduct large quantities of hydrofluoric acid (HF), an extremely toxic and corrosive chemical. Given its chemical properties, long-term storage of HF could pose more severe environmental and health hazards than long-term storage of DUF6. Yet, the DEIS says nothing about this potentially significant environmental impact of DUF6 conversion.

Moreover, it is doubtful that the HF generated by DUF6 conversion would be marketable. The HF generated by the French process is slightly contaminated with uranium. Although the French government is able to market its HF, there is little chance that contaminated HF would be salable in the United States. See Uranium Enrichment Organization, "The Ultimate Disposition of Depleted Uranium" (Oak Ridge National Laboratories: 1990). Another reason that the marketability of HF in the United States is questionable is because there is already a large existing supply of HF, and decreasing CFC production may slow demand. Sohneil Pub. Co., "Chemical Profiles: Hydrofluoric Acid" (1992).

(continued)
has identified conversion to U3O8 and offsite disposal as its disposition strategy, NEPA requires the NRC to evaluate the environmental impacts of such conversion and tails disposal, and to include those impacts in its cost-benefit analysis.

The DEIS also fails to identify the means for long-term storage of U3O8, or evaluate its environmental impacts. Thus, it is completely impossible to determine where the storage will take place, whether new excavation or construction is required for the storage, what type of containment is to be used for the storage, the effectiveness of containment, or the impacts of the storage facility on the surrounding environment and community. The NRC cannot ignore these potentially signficant impacts, which would be directly caused by the licensing and operation of the CEC.

Finally, in violation of NEPA, the DEIS fails entirely to address the cumulative or generic impacts of LES' proposal to add over 10,000 tonnes of DUF6 tails to the existing national inventory from other uranium enrichment plants. As of 1993, the United States government and private companies have accumulated about 500,000 tonnes of DUF6, for which it has no identifiable means of permanent disposal. This DUF6 is sitting in corroding cannisters at DOE enrichment plants and other facilities. Over a year ago, the NRC Staff "recogniz[ed] that the total volume of waste to be generated for the LES Claiborne Enrichment Center is part of a much larger national inventory." Thus, the NRC stated that "LES DU tails disposition may be addressed as part of the national inventory disposal scheme." Letter from John W. N. Hickey (NRC) to W. Howard Arnold (LES) (September 22, 1992) (Attachment 4). Yet, the DEIS completely fails to address critical questions regarding the generic and cumulative impacts of

LES' proposed method for waste disposal.[9] For instance, it fails to discuss the national capacity to convert DUF6 to U3O8, and whether LES will compete with government facilities for that capacity. The DEIS also fails to identify any locations where the U3O8 will be disposed of, or to discuss whether such sites are limited, and whether they should be used for disposal of the existing inventory of U3O8. It also fails to consider the environmental impacts of transporting HF, the highly dangerous byproduct of DUF6 conversion to U3O8.[10]

CANT submits that these issues should be addressed in a generic environmental impact statement by the NRC and the DOE. At the very least, the NRC should have consulted DOE regarding the potential cumulative impacts of DUF6 generation by the CEC on the DOE's program for disposing of the national inventory. Thus, before the CEC can be licensed, the NRC should be required to evaluate, in consultation with the DOE, the cumulative and generic impacts of permitting LES to to generate a substantial additional quantity of DUF6.

This contention is supported by the attached affidavit of Dr. Arjun Makhijani, President of the Institute for Energy and Environmental Research in Takoma Park, Maryland. If the conten-

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9 The DEIS does not even state why the NRC Staff apparently no longer considers that disposition of the CEC tails should be addressed as part of the national inventory disposal scheme.

10 As discussed above in Contention U, the NRC violated NEPA in failing to consult with the U.S. Department of Transportation regarding the environmental impacts of HF transportation.

tion is admitted, CANT intends to have Dr. Makhijani present expert testimony regarding the inadequacy of the DEIS' discussion of LES' plans for disposing of DUF6, and the potential adverse environmental impacts of DUF6 conversion to U3O8 and long-term disposal.

CANT Has Satisfied the Late-Filed Contention Standard.

Assuming for purposes of argument that the late-filed contention standard applies to this contention, CANT has satisfied it, as discussed below.

(i) NRC regulations at 10 C.F.R. § 2.714(b)(2)(iii) provide that:

> On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report. The petitioner can amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's document.

This contention satisfies both 10 C.F.R. § 2.714(b)(2)(iii) and the Commission's "good cause" standard because the DEIS is the first time that the NRC or LES has specifically identified conversion of DUF6 to U3O8 as the chosen means for disposing of the DUF6 tails at the CEC.[11] Thus, the "data and conclusions" in the

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[11] In previous documents and correspondence, conversion to U3O8 and disposal in abandoned mines was discussed as a potential solution to LES' DUF6 disposal problem, but was never specifically identified to the public as LES' proposal. See, e.g., letter from John W. N. Hickey (NRC) to W. Howard Arnold (LES) (September 22, 1992); letter from Peter G. Leroy (LES) to John W. N. Hickey (NRC) (December 14, 1992).

DEIS "differs significantly from the data and conclusions in the applicant's document."[12] Accordingly, CANT has good cause for filing this contention after the original deadline for contentions.

CANT also notes that preparation of this contention required CANT to obtain expert assistance from Dr. Makhijani, who was not available to CANT until after the winter holidays. CANT filed this contention as soon as possible after Dr. Makhijani became available.

(ii) There is no other means by which CANT's interest can be protected. This is the only proceeding in which the environmental impacts of the CEC will be considered under NEPA.

(iii) CANT's participation in the proceeding can be expected to aid in the development of a sound record with regard to this issue. As stated in the attached affidavit of Dr. Arjun Makhijani, this contention is based on a technical evaluation of the CEC by Dr. Makhijani, who has extensive expertise in the areas of nuclear engineering, including nuclear waste disposal. Dr. Makhijani is prepared to testify in the licensing proceeding regarding the inadequacy of the DEIS' discussion of LES' plans

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12 LES originally contemplated selling the tails. The most recent amendment to LES' environmental report states that LES still hopes to sell the tails, but is making arrangements for disposal if they are unmarketable. However, the Environmental Report is very vague about the means of disposal, stating only that "UF6 conversion and disposal opptions will vary," will be "accomplished elsewhere," and will involve conversion to "a stable, non-volatile uranium compound prior to disposal." Environmental Report at 4.4-11 (October 1993).

for disposing of DUF6, and the potential adverse environmental impacts of DUF6 conversion to U3O8 and long-term disposal.

(iv) CANT is the only citizen intervenor group admitted to this proceeding. Thus, there are no other parties who can represent CANT's interests.

(v) Admission of this contention may broaden the issues and delay the conclusion of this proceeding, but it is unlikely to be significant. The Board has already admitted another related contention, Contention B, which challenges the adequacy of LES' decommissioning cost estimates. The scope of that contention necesarily includes factual issues raised by this contention regarding the cost of DUF6 coversion and disposal; thus, admission of this contention will not broaden the factual aspects of the existing case. Rather, any delay or broadening of the case will be limited to the introduction of new legal issues under NEPA. When viewed together with CANT's good cause for filing this contention late and the great environmental significance of the issues raised by this contention, the factors weigh in favor of admission.

Respectfully submitted,

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January 18, 1994

CERTIFICATE OF SERVICE

I, Diane Curran, certify that on January 18, 1994, copies of the foregoing CITIZENS AGAINST NUCLEAR TRASH'S FIRST SUPPLEMENT TO CONTENTIONS ON THE CONSTRUCTION PERMIT/OPERATING LICENSE APPLICATION FOR THE CLAIBORNE ENRICHMENT CENTER were served by first-class mail or as otherwise indicated on the following parties:

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