

December 22, 1997

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
PRIVATE FUEL STORAGE L.L.C.)	Docket No. 72-22-ISFSI
)	
(Independent Spent)	
Fuel Storage Installation))	

NRC STAFF'S COMMENTS IN RESPONSE
TO MEMORANDUM AND ORDER
(PROTECTIVE ORDER AND SCHEDULE FOR
FILING SECURITY PLAN CONTENTIONS)

On December 17, 1997, the Licensing Board issued a memorandum and order in which it (a) set forth the terms of a protective order and nondisclosure affidavit for use in connection with the disclosure of safeguards information contained in or concerning the Applicant's physical security plan in this proceeding, and (b) established a schedule for the filing of security plan contentions.¹ The Licensing Board directed, *inter alia*, that the State of Utah, Applicant and/or NRC Staff ("Staff") should advise the Licensing Board of any objections they may have to the modifications adopted by the Board to the proposed form of order and affidavit which they had submitted previously, in a pleading to be filed on or before December 22, 1997 (Order at 2, n.2). In accordance with the Licensing Board's Order, the Staff herewith notes one

¹ "Memorandum and Order (Protective Order and Schedule for Filing Security Plan Contentions)," December 17, 1997 ("Order").

objection to the modifications adopted by the Licensing Board, and two requests for further modification of the protective order.

1. In paragraph I.H.1.b (Order at 8), the Licensing Board modified the provisions for service by personal delivery, so as to only authorize "personal delivery by an individual who otherwise is authorized access pursuant to 10 C.F.R. § 73.21(c)." While 10 C.F.R. § 73.21(c) affords access to protected information to persons with a "need to know," to whom disclosure is ordered pursuant to § 2.744(e), the Staff suggests that this provision be modified to clearly permit personal delivery by any person authorized to have access to protected information by order of the Licensing Board or Commission regardless of whether they have a "need to know" such information -- *i.e.*, the Staff requests that this provision be modified to read as follows: ". . . or by personal delivery by an individual who otherwise is authorized access pursuant to 10 C.F.R. § 73.21(c) or an Order issued by the Licensing Board or Commission in this proceeding."

2. Denise Chancellor, Esq., has been designated by the Governor of the State of Utah as an additional person authorized to have access to safeguards information on his behalf pertaining to this facility; on December 12, 1997, the Governor's designation was acknowledged by the NRC Staff. Accordingly, the protective order (at page 5, note 3) should be modified to read as follows: "In addition, we note that certain persons employed by . . . the State (including William J. Sinclair and Denise Chancellor, Esq.) are already authorized"

3. Counsel for the Applicant has informed the undersigned that the Applicant seeks authorization for its attorneys and staff (who are otherwise afforded access to protected information by the protective order), to work with protected information at the office of the

Applicant's contractor in Denver, CO. Accordingly, Counsel for the Applicant requests that paragraph 5(a)(iii) (page 3 of the affidavit) be modified to read as follows: "(a) my use of the protected information will be made only at . . . or (iii) an office to be provided by the Applicant or its contractor, Stone & Webster Engineering Corp., in Washington, D.C. and/or Denver, CO."

4. The undersigned has discussed these proposed modifications with Counsel for the Applicant and Counsel for the State, and is authorized to state that they do not object to these proposed modifications.

Respectfully submitted,



Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 22nd day of December 1997

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
PRIVATE FUEL STORAGE, L.L.C.)	Docket No. 72-22-ISFSI
)	
(Independent Spent)	
Fuel Storage Installation))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S COMMENTS IN RESPONSE TO MEMORANDUM AND ORDER (PROTECTIVE ORDER AND SCHEDULE FOR FILING SECURITY PLAN CONTENTIONS" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system (with E-mail copies as indicated); or by deposit in the United States mail, first class, as indicated by an asterisk (with E-mail copies) this 22nd day of December, 1997:

Office of the Secretary
ATTN: Rulemakings and Adjudications
Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to PSL@NRC.GOV)

James M. Cutchin, V
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(by E-mail to JMC3@NRC.GOV)

G. Paul Bollwerk, III, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to GPB@NRC.GOV)

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(E-mail copy to JRK2@NRC.GOV)

Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Office of the Commission Appellate
Adjudication
Mail Stop: 16-G-15 OWFN
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Jay E. Silberg, Esq.*
SHAW, PITTMAN, POTTS &
TROWBRIDGE
2300 N Street, N.W
Washington, DC 20037-8007

Jean Belille, Esq.*
Land and Water Fund of the Rockies
2260 Baseline Road, Suite 200
Boulder, CO 80302

Clayton J. Parr, Esq.*
KIMBALL, PARR, WADDOUPS,
BROWN & GEE
185 S. State St., Suite 1300
P.O. Box 11019
Salt Lake City, UT 84147-0019

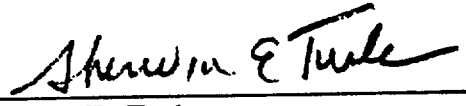
John Paul Kennedy, Sr., Esq.*
1385 Yale Ave.
Salt Lake City, Utah 84105

Danny Quintana, Esq.*
Danny Quintana & Associates, P.C.
50 West Broadway
Fourth Floor
Salt Lake City, UT 84101

Denise Chancellor, Esq.*
Fred G. Nelson, Esq.
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, Utah 84114-0873

Connie Nakahara, Esq.*
Utah Dept. of Environmental Quality
168 North 1950 West
P.O. Box 144810
Salt Lake City, UT 84114-4810

Diane Curran, Esq.*
Harmon, Curran & Spielberg
2001 "S" Street, N.W.
Suite 430
Washington, D.C. 20009



Sherwin E. Turk
Counsel for NRC Staff