



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 12, 1997

OFFICE OF THE
GENERAL COUNSEL

G. Paul Bollwerk, III, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Dear Administrative Judges:

In accordance with the Licensing Board's "Memorandum and Order (Ruling on State of Utah Motion for Protective Order)" dated November 21, 1997, enclosed herewith is a copy of a proposed Protective Order concerning the disclosure of the Applicant's Security Plan and the safeguards information contained therein, in this proceeding. The enclosed draft Protective Order has been agreed upon by Counsel for the State of Utah, Counsel for the Applicant, and the NRC Staff.

Sincerely,

A handwritten signature in cursive script that reads "Sherwin E. Turk".

Sherwin E. Turk
Counsel for NRC Staff

Enclosure: As stated

cc w/ encl.: Service List

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

_____)	
In the Matter of)	
)	
PRIVATE FUEL STORAGE L.L.C.)	Docket No. 72-22-ISFSI
)	
(Independent Spent)	ASLBP No. 97-732-02-ISFSI
Fuel Storage Installation))	
_____)	

MEMORANDUM AND ORDER
(Protective Order Governing Non-Disclosure of Security Plan Information)

This Protective Order governs the disclosure and use of "protected information" contained in or concerning the Security Plan for this facility, including the safeguards contingency plan, and any amendments thereto (the "Security Plan").¹ Counsel and experts for the State of Utah (the "State") and Private Fuel Storage L.L.C. (the "Applicant") in this

¹ As used in this Order, "protected information" has the same meaning as used in the Affidavit of Non-Disclosure, annexed hereto. This Order does not limit access to protected information by persons authorized to receive such information pursuant to 10 C.F.R. § 73.21(c)(1)(i) and (iii).

proceeding² who have executed an Affidavit of Non-Disclosure, in the form attached, shall be permitted access to "protected information" upon the following conditions:

1. Only those portions of the Security Plan and its protected information which are both relevant to and necessary for the preparation or litigation of the State's contentions shall be shown to the Applicant's or State's Counsel or expert(s) pursuant to this Order.

2. Notwithstanding any other provisions set forth herein, and without waiving any objections the parties may have as to any proposed expert's qualifications to testify concerning matters in this proceeding, the following persons may be afforded access to protected information under this Order, for the purpose of preparing and/or responding to contentions: Denise Chancellor, Esq., Fred G. Nelson, Esq., Connie Nakahara, Esq., William J. Sinclair, Karma Pathakis, Rebecca Waldron, and Jean Braxton (State of Utah); and Jay E. Silberg, Esq., Ernest L. Blake, Jr., Esq., Paul A. Gaukler, Esq., William Hollaway, Virginia Seymour, and Kimberly Steele (Applicant). Additions or substitutions to this list of individuals for whom

² In addition to the State of Utah, other persons or entities have petitioned for leave to intervene in this proceeding, including (1) the Confederated Tribes of the Goshute Reservation and David Pete, (2) Ohngo Gaudadeh Devia, (3) the Skull Valley Band of Goshute Indians, and (4) Castle Rock Land and Livestock, L.C., Skull Valley Company, LTD., and Ensign Ranches of Utah, L.C. Only the State of Utah has expressed an interest in viewing the Applicant's Security Plan at this time; and other petitioners did not respond to the State's motion for protective order. See "Memorandum and Order (Ruling on State of Utah Motion for Protective Order)," dated November 21, 1997, at 2. Inasmuch as other petitioners have not expressed an interest in obtaining access to the Security Plan, this protective order is addressed only to the State's request for access to the Safeguards Information contained therein. Neither the State of Utah, nor other organizations or groups that petitioned for leave to intervene, are to be given access to protected information, except that the State's Counsel and experts (and specified support staff), alone, may obtain such access under the terms of this order.

access to protected information may be provided under this Order may be agreed upon by the Applicant, NRC Staff and the State in writing and/or approved by the Licensing Board.³

3. Only the Applicant's or State's Counsel and experts who have been qualified in accordance with the requirements of this Order and who have executed an Affidavit of Non-Disclosure in the form attached hereto, may have access to protected information on a "need to know" basis pursuant to this Order. The State and Applicant shall advise each other, the NRC Staff, and the Licensing Board of the names and qualifications of any persons, not named herein, for whom access to protected information is sought. To be qualified for access to protected information, an expert must be demonstrated to possess the technical competence necessary to evaluate the portions of the Security Plan which he or she may be shown. If a proposed expert's qualifications are challenged, the sponsoring party must demonstrate that the expert is qualified to evaluate each section of the Security Plan which is to be reviewed by that expert. An expert's qualifications to review and evaluate portions of the Security Plan pursuant to this Order may be determined by written agreement among the Staff, Applicant and State, or, in the absence of such agreement, by further Order of the Licensing Board.

³ In addition, it is noted that certain persons employed by or on behalf of the Applicant (including Jay E. Silberg, Esq.) or the State of Utah (including William J. Sinclair) are already authorized to have access to the protected information that is subject to this Order; such persons need not execute the Affidavit of Non-Disclosure attached hereto but are required to comply with the provisions of 10 C.F.R. § 73.21. Further, the provisions of this Protective Order do not apply to NRC employees, consultants and contractors; they are subject to internal NRC requirements governing the treatment of protected information (*see* NRC Management Directive 2.6, "NRC Sensitive Unclassified Information Security Program"). However, all persons who make service of documents containing protected information on other persons authorized to receive such information in this proceeding shall act in accordance with the procedures for service of documents specified in this Order and the attached Affidavit of Non-Disclosure.

4. Counsel and experts who receive any protected information (including transcripts of *in camera* hearings, filed testimony or any other document that reveals protected information) shall maintain its confidentiality as required by 10 C.F.R. § 73.21 and the annexed Affidavit of Non-Disclosure, the terms of which are hereby incorporated in this protective order.

5. Counsel and experts who receive any protected information shall use it solely for the purpose of participation in this proceeding in matters directly pertaining to the Security Plan and any further proceedings in this case directly involving security matters, and for no other purpose.

6. Counsel and experts shall keep a record of all documents containing protected information in their possession and shall account for and deliver that information to the Licensing Board (or to a Commission employee designated by the Board), for disposal or safekeeping as may be determined to be appropriate by the Licensing Board, or to a person authorized to receive protected information on behalf of the Applicant, in accordance with the Affidavit of Non-Disclosure attached hereto.

7. There shall be a limit of two transcripts per party for any proceeding conducted on the record in which protected information is disclosed or discussed. Parties shall not reproduce or photocopy these transcripts without the express prior approval of the Licensing Board.

8. In addition to the requirements specified in the Affidavit of Non-Disclosure, all pleadings and correspondence in this proceeding (including testimony) that contain any protected information shall be segregated and:

- (a) served on lead counsel⁴ and the members of this Board only;⁵
- (b) served by United States first class, registered, express, or certified mail, by internal NRC mail, by overnight delivery (*e.g.*, express mail), or by personal delivery, only; and
- (c) served in two sealed envelopes or wrappers, including (1) an outer mailing envelope, and (2) a heavy, opaque inner envelope bearing the name and address of the addressee and the statement "PRIVATE. TO BE OPENED BY ADDRESSEE ONLY." Addressees shall take all necessary precautions to ensure that they alone will open envelopes so marked. The outer envelope or wrapper will contain the intended recipient's name and address, and will bear no marking or indication that the document within contains protected information.⁶

9. Counsel, experts or any other individual who has reason to suspect that documents containing protected information may have been lost or misplaced (for example, because an expected paper has not been received) or that protected information has otherwise become available to unauthorized persons shall notify this Board promptly of those suspicions and the reasons for them.

⁴ The following attorneys shall be considered "Lead Counsel" for service purposes: Jay E. Silberg (Applicant); Denise Chancellor (State of Utah); and Sherwin E. Turk (NRC Staff).

⁵ The Secretary of the Commission (Rulemaking and Adjudications staff) shall not be served. Because of the nature of the subject matter, the Licensing Board will make necessary arrangements with the Secretary's office to ensure that material entitled to confidential treatment under 10 C.F.R. § 2.790 is not made public.

⁶ Because of the nature of the subject matter, the parties shall not make any facsimile or e-mail transmission to the Licensing Board or parties of document(s) which contain or discuss protected information, in contrast to the procedure which has been established for the service of other documents in this proceeding. *See* Memorandum and Order (Initial Prehearing Order), dated September 23, 1997, at 5. With this restriction in mind, and in order to facilitate the Licensing Board's preparation of an electronic hearing database (*see id.* at 7-8), the parties may submit copies of documents which contain or discuss protected information on a 3.5 inch diskette, but shall not make any e-mail or facsimile transmissions thereof.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland
December __, 1997

AFFIDAVIT OF NON-DISCLOSURE

I, _____, being duly sworn, state:

1. As used in this Affidavit of Non-Disclosure,

(a) "Protected information" is (1) any form of the Security Plan, including the safeguards contingency plan, and any amendments thereto (the "Security Plan"), or portions thereof, for the Private Fuel Storage Facility proposed by Private Fuel Storage L.L.C. ("Applicant"), or (2) any information obtained by virtue of these proceedings which is not otherwise a matter of public record and which deals with or describes details of the Security Plan.

(b) An "authorized person" is (1) an employee, consultant or contractor of the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") entitled to access to protected information; (2) a person who, at the invitation of the Atomic Safety and Licensing Board ("Licensing Board"), has executed a copy of this affidavit; or (3) a person employed by or on behalf of Private Fuel Storage L.L.C. (the "Applicant") and authorized by it in accordance with NRC regulations to have access to protected information.

(c) A "document" means any audio or video tape recording or written matter of any kind, whether produced, reproduced, or stored on paper, cards, tapes, ribbons, disks, belts, charts, film, computer files, computer disks or diskettes, computer storage devices or any other medium, and includes, without limitation, books, reports, studies, statements, speeches, notebooks, calendars, working papers, manuals, memoranda, notes,

instructions, directions, records, correspondence, diaries, diagrams, drawings, lists, telephone logs, minutes, and photographs, and also includes, without limitation, originals, copies (with or without notes or changes thereon), and drafts.

2. I have read the Protective Order issued in this proceeding and will comply in all respects with its terms and conditions with respect to the protected information produced in connection therewith. I shall safeguard protected information in accordance with the terms of this Affidavit.

3. I shall not disclose protected information to anyone except an authorized person, unless that information has previously been disclosed in the public record of this proceeding. I will safeguard documents containing protected information in written or recorded form (including any portions of transcripts of *in camera* hearings, filed testimony or any other documents that contain such information), so that the protected information contained therein remains at all times under the control of an authorized person and is not disclosed to anyone else.

4. I will not reproduce or copy any protected information by any means without the Licensing Board's (or the Commission's) express approval or direction, except to the extent necessary to make required service on the Licensing Board or other party authorized under the protective order to receive such service. I understand that I may, however, take notes concerning such protected information, subject, however, to the terms of this Affidavit and the attached Protective Order. So long as I possess protected information, I shall continue to take these precautions until further order of the Licensing Board or the Commission.

5. I shall safeguard and hold in confidence any data, notes, or copies of protected information and all other papers which contain any protected information by means of the following:

(a) my use of the protected information will be made only at a facility provided for use by designated Counsel and experts in (1) a designated office of the Utah Department of Environmental Quality in Salt Lake City, UT (2) an office of the NRC Staff in Rockville, MD, or (3) an office to be provided by the Applicant in Washington, D.C. Any such facility is to be located in a controlled access building which is either attended around the clock or locked at night.

(b) When not under my direct control or the direct control of another individual authorized to have access thereto, I will keep and safeguard all documents containing protected information (including, without limitation, any notes which I may take) in a safe or other locked security storage container to be obtained by the provider of the facility referred to in paragraph 5(a) above and to be located at all times at the above designated location. Access to the safe or other security storage container will be positively controlled by use of keys or other comparable means. Keys and/or knowledge of lock combinations protecting safeguards information shall be limited to authorized persons.

(c) Any secretarial work performed at my request or under my supervision will be performed only at the above location by a secretary who has executed an Affidavit of Non-Disclosure pursuant to the Order attached hereto.

(d) If requested, necessary typing and reproduction equipment will be furnished by the provider of a facility referred to in paragraph 5(a) above (it being understood that a nominal photocopying or equipment usage charge may be assessed); in addition, if requested, the facility provider will make available a telephone, and a facsimile machine for the receipt of non-protected information only, it being understood that protected information shall not be discussed by telephone or communicated by facsimile transmission. If protected information is processed on or with automatic data processing, computerized word processing equipment, or a personal or laptop computer, access to such equipment shall require the use of an entry code for access to stored protected information; if use of an entry code is not feasible, protected information may be processed on, but shall not be stored in, such equipment; and any such word processing equipment, data processing equipment, or computer that is used to process or store protected information shall be operated as stand-alone or free-standing equipment, not connected to any other such equipment by means of a Local Area Network (LAN) or Wide Area Network (WAN) or other data-sharing system. Further, in the event that any protected information is backed up or stored on a computer hard drive or other device, that drive or device shall be capable of being removed and shall be stored in the safe or locked security storage container referred to in paragraph 5(b) above, when not in use.

(e) All mailings by me or on my behalf involving protected information shall be made from a facility referred to in paragraph 5(a) above.

(f) Each document that contains Safeguards Information, as defined in 10 C.F.R. § 73.2, shall be marked "Safeguards Information" in a conspicuous manner to indicate the presence of protected information, as set forth in 10 C.F.R. § 73.21(e).

6. If I prepare documents containing protected information in order to participate in further proceedings in this case, I will assure that any secretary or other individual who must receive protected information in order to help me prepare those documents has executed an affidavit like this one and has agreed to abide by its terms. Copies of any such affidavit will be filed with the Licensing Board before I reveal any protected information to any such person.

7. I shall use protected information only for the purpose of preparation for any proceedings in this case dealing with Security Plan issues, and for no other purpose.

8. I shall keep a record of all documents containing protected information in my possession, including any copies of those documents or portions thereof made by me or on my behalf. At the conclusion of this proceeding, I shall account to the Licensing Board or to a Commission employee designated by that Board for all the documents or other materials containing protected information in my possession and deliver them as provided herein. When I have finished using the protected information they contain, but in no event later than the conclusion of this proceeding (including any related appeals to the Commission), I shall deliver those documents and materials to the Licensing Board (or to a Commission employee designated by the Board), for disposal or safekeeping as may be determined to be appropriate by the Licensing Board, or to a person authorized to receive protected information on behalf of the Applicant.

9. I make this agreement with the following understandings: (a) I do not waive any objections that any other person may have to execute an affidavit such as this one; (b) I do not waive any objections that I may have or raise at a subsequent time in this proceeding, concerning an expert's qualifications to testify concerning Security Plan issues; and (c) I will not publicly discuss or disclose any protected information that I receive by virtue of this proceeding, and will not corroborate the accuracy or inaccuracy of information obtained outside this proceeding by using protected information, or my knowledge thereof, gained through the hearing process.

10. I acknowledge that any violation of the terms of this Affidavit or the Protective Order attached hereto, which incorporates the terms of this Affidavit, may result in the imposition of sanctions as the Licensing Board may deem to be appropriate, including, but not limited to, referral of the violation to appropriate bar associations and other disciplinary authorities. I further acknowledge that any unauthorized disclosure of protected information or breach of the protective order issued in this proceeding may be grounds for the imposition of civil and/or criminal penalties, as set forth in 10 C.F.R. § 2.744(e) and sections 223 and 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2273 and 2282.

WHEREFORE, I do solemnly agree to safeguard such protected information as may be disclosed to me in this proceeding, in accordance with the terms of this Affidavit.

(Name)

Subscribed to and sworn before me
this ___th day of December, 1997

Notary Public

My commission expires: _____