

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	Docket No. 72-22-ISFSI
)	
PRIVATE FUEL STORAGE, LLC)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel)	
Storage Installation))	April 29, 1998

**MOTION AND MEMORANDUM OF OHNGO GAUDADEH DEVIA
[OGD]
REQUESTING RECONSIDERATION OF CONTENTIONS**

Ohngo Gaudadeh Devia [OGD] hereby requests the Atomic Safety and Licensing Board [the Board] to reconsider its rejection of several of OGD's contentions filed in this matter.

I. Background

OGD filed a petition to intervene in this matter September 12, 1997. On November 24, 1997, OGD filed its Contentions Regarding the Materials License Application of Private Fuel Storage [PSF] in an Independent Spent Fuel Storage Installation [ISFSI]. In a Memorandum and Order dated April 22, 1998, the Board granted OGD's petition to intervene, but rejected all but one of OGD's

contentions. Based on the explanation below, OGD requests the Board to reconsider and accept for further inquiry OGD's Contentions B, J and N.

II. Argument

OGD Contentions B, J and N are appropriate for consideration by the Board. As demonstrated below, in stating these contentions, OGD has met its burden of establishing with specificity a genuine dispute, has properly challenged the PFS application and has requested compliance with, rather than challenged the content of, relevant regulations.

A. Contention B: Emergency Plan Fails to Address the Safety of Those Living Outside of the Facility.

Apparently,¹ the Board dismissed OGD's assertion that the emergency plan (EP) fails to include sufficient safety provisions for individuals living outside

¹ In dismissing many of OGD's contentions, the Board repeats a list of reasons for the rejection and refers to a general analysis of contention admissibility standards. Because the list and general standards are not connected factually or specifically to any given contention or basis for that contention, it is difficult to determine the reasoning behind the Board's decision and therefore, to respond adequately to the Board's determinations. *See* Administrative Procedures Act, 5 U.S.C. § 557(c) (requiring a statement of "findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record"); SEC v. Chenery Corp., 318 U.S. 80, 94 (1943) ("[T]he orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained").

the facility because it determined that the EP is adequate under the relevant regulations. Memo and Order at 128-29; Staff Contentions Response at 41-44 (responding to similar contention by Utah) & 78-79. However, as OGD asserted in Contention B, the plan does not meet the requirements of these regulations.

While NRC regulations may not require an emergency planning zone, they do mandate a plan that includes a "commitment to" and a "means to" promptly notify offsite response organization and request offsite assistance. 10 C.F.R. § 72.32. In addition, PFS must comply with the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub.L. 99-499. Id. (These reporting requirements do not . . . release licensees of complying with (the Right-to-Know-Act).") Finally, subject to the Board's determination regarding the licensing requirements for the intermodal transfer point, PFS must comply with these same emergency plan regulations with respect to that facility.

By citing these provision and specifically pointing out PFS's failure to meet the regulatory requirements, OGD has established a material dispute adequate to warrant further inquiry. In addition, by noting PFS's failure to comply with the relevant regulations, OGD is seeking compliance with and is not challenging the content of those regulations and has properly challenged the PFS application.

B. Contention J: Failure to Comply with all Permits, Licenses and Approvals Required for the Facility.

The Board apparently rejects OGD's Contention J based the contention's reference to a trust responsibility and the potential for credible accidents. These issues aside, OGD states a contention that warrants further investigation by the Board to guarantee compliance with regulation 10 C.F.R. § 51.45. As OGD asserts in Contention J, the environmental report [ER] does not adequately address the status of PFS's compliance with all permits, licenses and approvals required for the facility.

By pointing to this failure, OGD has met its burden of establishing a genuine dispute and has properly challenged the PFS application. Furthermore, by suggesting PFS's failure to comply with the relevant regulations, OGD is not contesting the content of those rules but is, instead, asking that they be applied to the ISFSI application.

C. Contention N: Contamination of Water Supply and Potential Lowering of Water Table Are Not Adequately Addressed.

The Board's rejection of OGD Contention N focuses again on the trust responsibility owed tribal members by the federal government. However,

putting aside considerations of a trust relationship with the tribe, OGD's contention regarding ground water contamination and water uses should be admitted.

OGD states with specificity that its members rely on well water for their culinary needs, *see* Affidavits of Lester Wash at ¶ 7; Garth Bear at ¶ 5; Abby Bullcreek at ¶ 8; Margene Bullcreek at ¶ 8 attached to OGD's Petition to Intervene, and reasonably anticipate that the facility's significant water needs (1500 gallons per day) may adversely impact their water supply. Yet, this impact has not been addressed in the applicant's license. *See* NRC's Request for Additional Information, Section 2.5.1 at SAR 2-1 to 2-2 (requesting information regarding the withdrawal and use of water on or near the proposed site)

Furthermore, the relevant regulations require PFS to evaluate the proposed site for

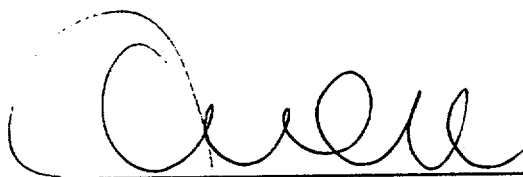
effects on populations in the region resulting from the release of radioactive materials under normal and accident conditions during normal and accident conditions during operation and decommissioning of the ISFSI

10 C.F.R. § 72.100 (a); *see also* 72.100 (b) (impacts on environment). Thus, by requesting that the application deal sufficiently with the risks posed by possible contamination of water supply, OGD is seeking compliance with the disclosure requirements of the relevant regulations and has not questioned the content of

these regulations. By pointing to deficiencies in the license application with regard to water use and contamination, OGD has established with specificity a genuine dispute.

FOR the reasons stated above, OGD respectfully requests the Board to reconsider and admit OGD's Contentions B, J and N.

DATED this 5th day of May, 1998.

A handwritten signature in black ink, appearing to read 'Joro Walker', written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that copies of MOTION AND MEMORANDUM OF OHNGO GAUDADEH DEVIA REQUESTING RECONSIDERATION OF CONTENTIONS and OHNGO GAUDADEH DEVIA'S PARTICIPATION IN MAY 19, 1998 PREHEARING CONFERENCE were served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 5th day of May, 1998:

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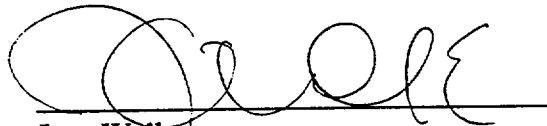
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