



OFFICE OF THE  
GENERAL COUNSEL

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

February 2, 1998

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:

As I stated on January 27, 1998, during the prehearing conference, an error was discovered in the corrected page of the Staff's December 24, 1997, Response to Contentions that was sent to the Board and parties on December 31, 1997.

Please replace that page with the corrected page now being provided. I apologize for any inconvenience.

Sincerely,

*Catherine L. Marco*

Catherine L. Marco  
Counsel for NRC Staff

cc w/encl: Service List

Therefore, Congress was aware of the existence of 10 C.F.R. Part 72 when it enacted the NWPA. Had Congress desired to prohibit the licensing of private, away-from-reactor fuel storage, it certainly could have done so. Congress, however, did not intend to prohibit the licensing of such facilities and did not so act.

In sum, the Commission has the authority to license a private, away-from-reactor ISFSI, as proposed by the applicant. The Commission's authority is derived from the AEA, which provides for the regulation of special nuclear material, source material, and byproduct material, which are contained in spent fuel. Part 72 of the Commission's regulations was promulgated as a lawful exercise of that authority. The NWPA did nothing to impinge or limit the Commission's authority to license private, away-from-reactor fuel storage. Therefore, this contention should be rejected.

**UTAH Contention B. License Needed for Intermodal Transfer Facility.**

PFS's application should be rejected because it does not seek approval for receipt, transfer, and possession of spent nuclear fuel at the Rowley Junction Intermodal Transfer Point ("ITP"), in violation of 10 CFR § 72.6(c)(1).

**Staff Response:**

In this contention, the State of Utah asserts, in essence, that the Rowley Junction Intermodal Transfer Point ("ITP") -- a rail siding off the Union Pacific main rail line, with a 150-ton gantry crane and tractor/trailer yard -- is an integral part of the instant ISFSI application, and should therefore be treated as part of the ISFSI site (Utah Contentions at 10). In support of this assertion, the State asserts that since the Applicant has not indicated it will be