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

November 24, 1998

G. Paul Bollwerk, III, Chairman
Administrative Judge
Atomic Safety and Licensing Board
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

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

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

Dear Administrative Judges:

This letter is written in connection with the parties' joint status report which is being transmitted to the Licensing Board today by Counsel for the Applicant. The NRC Staff wishes to provide the following information to the Licensing Board and parties concerning its progress in reviewing the PFS application, and a potential impact on the hearing schedule.

The current schedule was adopted, in large part, based on a schedule proposed in the parties' joint status report of May 27, 1998. In proposing that schedule, the parties stated that it was subject to the "caveat that the Staff is able to take a position on the contention sufficiently in advance of the proposed March 1, 1999 cut-off date so that the parties can conduct meaningful discovery by that date." *Id.* at 2. It is this schedule that the Licensing Board largely adopted in its "Memorandum and Order (General Schedule for Proceeding and Associated Guidance)," dated June 29, 1998. In adopting that schedule, the Licensing Board observed that "if the Staff's safety and environmental review schedule changes, the [current] litigation schedule may change accordingly." *Id.* at 4.

At the time this schedule was proposed and adopted, the Staff's review schedule included a single round of Requests for Additional Information (RAIs), which were issued on April 1, 1998 (before any ruling on contentions had been issued). The Staff indicated that it would need to see the Applicant's responses to its first-round RAIs before it could predict a firm schedule, that no decision had been made as to whether a second round of RAIs would be required, and that the proposed schedule was based on a "best-case scenario." Transcript of Prehearing Conference of May 19, 1998, at 847, 849.

Partial responses to the RAIs were submitted by the Applicant on May 19, June 15, June 18, and September 15, 1998; an additional partial response (concerning geotechnical issues) is due to be submitted on December 15, 1998, although the Applicant has informed the Staff that its submission may be delayed for several months.

At this time, based on its review of the application and PFS' responses to its RAIs, the Staff has determined that a second round of RAIs is required. The Staff expects to issue these RAIs on or before December 11, 1998. The second-round RAIs include some questions that relate to issues raised in the Intervenors' Group I and II contentions; and the Staff's statement of a final position on those contentions is likely to require prior receipt and review of the Applicant's responses to the RAIs. In addition, the Applicant's expected delay in submitting its final responses to the first-round RAIs is likely to impact the Staff 's ability to state a position on related Group II contentions under the current schedule.

Accordingly, although the Staff expects to state a position on some Group I and II contentions by the dates established under the current schedule, its positions on many other Group I and II contentions will likely need to be deferred until the Staff has received and reviewed the Applicant's responses to its RAIs. Upon issuing the second-round RAIs, the Staff will seek a response schedule from the Applicant, and will then advise the Board and parties as to (a) which contentions will be addressed in the Staff's position on Group I contentions, to be filed on December 31, 1998, and (b) any schedular modifications the Staff will need to request, in order to complete its review prior to taking a position on other contentions. The Staff will promptly advise the Board and parties of developments concerning these matters.

Sincerely,

Sherwin E Turk

Sherwin E. Turk
Counsel for NRC Staff

cc: Service List