

September 9, 1999

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 RESPONSE TO  
"APPLICANT'S MOTION FOR RECONSIDERATION  
AND CLARIFICATION OF RULING ON THE  
APPLICANT'S MOTION FOR SUMMARY DISPOSITION  
OF CONTENTION UTAH K/CONFEDERATED TRIBES B"

On September 3, 1999, Private Fuel Storage, L.L.C. ("PFS" or "Applicant") filed a motion seeking reconsideration and clarification of the Licensing Board's decision ruling on Applicant's motion for summary disposition of Contention Utah K/Confederated Tribes B.<sup>1</sup> In its Motion, PFS requests that the Board reconsider its denial of summary disposition on one aspect of this contention, concerning the firing of military ordnance in training on Dugway Proving Ground (DPG), based on undisputed evidence presented in support of its summary disposition motion that the weapons involved in such training are fired away from the PFS facility, and stringent safety procedures are employed by the Army to prevent the firing of such weapons from

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<sup>1</sup> See (1) "Applicant's Motion for Reconsideration and Clarification of Ruling on the Applicant's Motion for Summary Disposition of Contention Utah K/Confederated Tribes B" ("Motion"), dated September 3, 1999; (2) *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-99-35, 50 NRC \_\_\_ (Aug. 30, 1999); and (3) "Applicant's Motion for Partial Summary Disposition of Utah Contention K/Confederated Tribes Contention B," dated June 7, 1999.

causing unintended harm (Motion at 1, 3). Further, PFS seeks clarification from the Licensing Board with respect to one aspect of the Applicant's motion for summary disposition which was not explicitly addressed in the Board's ruling, and which was not disputed by any other party, to indicate that the use of air-delivered ordnance other than cruise missiles on the Utah Test and Training Range (UTTR) does not pose a credible hazard to the PFS facility (*Id.* at 4-6).

The Staff has reviewed the Applicant's motion for summary disposition and the pleadings that were filed by the State of Utah and the Staff in response thereto.<sup>2</sup> Based on its review of these documents, the Staff submits that the Applicant's Motion, Statement of Material Facts, and supporting evidence concerning these issues -- which were not contested by any other party -- demonstrated that it was entitled to summary disposition on these issues as a matter of law.<sup>3</sup>

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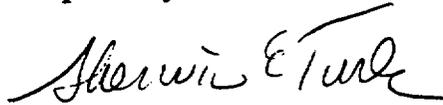
<sup>2</sup> See (1) "State of Utah's Opposition to Applicant's Motion for Partial Summary Disposition of Utah Contention K and Confederate[d] Tribes Contention B," dated July 22, 1999; (2) "NRC Staff's Response to Applicant's Motion for Partial Summary Disposition of Utah Contention K and Confederated Tribes Contention B," dated July 22, 1999 ("Staff Response"); and (3) "State of Utah's Reply to NRC Staff's Response in Support of Applicant's Partial [sic] Motion for Summary Disposition of Utah Contention K and Confederated Tribes Contention B - Inadequate Consideration of Credible Accidents," dated August 4, 1999.

<sup>3</sup> The Staff has previously expressed its view that conventional weapons testing at the DPG, and munitions testing at the UTTR, do not present a credible hazard to the PFS facility. See Staff Response at 10-11 and 12. The Staff has further indicated that in forming its position concerning DPG weapons testing, it considered, *inter alia*, that "the firing of weapons at the Dugway Proving Ground is governed by safety regulations and all range firing is monitored; [and] guns on the firing ranges are oriented away from the proposed facility. . . ." See "NRC Staff's Objections and Responses to the State of Utah's Second Set of Discovery Requests Directed to the NRC Staff," dated August 20, 1999, at 7.

CONCLUSION

For the reasons set forth above, the Staff supports the Applicant's Motion and recommends that it be granted.

Respectfully submitted,



Sherwin E. Turk  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 9th day of September 1999

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S RESPONSE TO APPLICANT'S MOTION FOR RECONSIDERATION AND CLARIFICATION OF RULING ON THE APPLICANT'S MOTION FOR SUMMARY DISPOSITION OF CONTENTION UTAH K/CONFEDERATED TRIBES B" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the Nuclear Regulatory Commission's internal mail system, as indicated by an asterisk, with copies by electronic mail, or by deposit in the United States mail, first class, as indicated by double asterisk, with copies by electronic mail as indicated, this 9th day of September, 1999.

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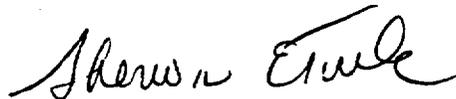
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