

September 3, 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
	)	
(Private Fuel Storage Facility)	)	ASLBP No. 97-732-02-ISFSI

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

**I. INTRODUCTION**

Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") hereby moves for reconsideration and clarification of certain limited aspects of the Atomic Safety and Licensing Board's ("Licensing Board" or "Board") Memorandum and Order (Granting in Part and Denying in Part Motion for Partial Summary Disposition Regarding Contention Utah K/Confederated Tribes B), LBP-99-35, 50 NRC \_\_ (August 30, 1999). Specifically, Applicant requests reconsideration of the denial of summary disposition of the part of Contention Utah K/Confederated Tribes B ("Utah K") concerning the firing of military ordnance in training on Dugway Proving Ground ("DPG"). In addition, Applicant requests clarification of the Board's ruling with respect to the part of Utah K concerning

the use of air-delivered ordnance other than cruise missiles on the Utah Test and Training Range ("UTTR").

## II. LEGAL DISCUSSION

### A. Standard for Reconsideration

A motion for reconsideration is appropriate to ask the deciding body to reexamine existing evidence that may have been misunderstood or overlooked. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-10, 47 NRC 288, 296 (1998) (citing Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-83-25, 17 NRC 681, 687 (1983)); see id. at 297-98. It is also appropriate to ask the deciding body to clarify its ruling on a matter. See id. at 295, 296-97.<sup>1</sup>

### B. Reconsideration of the Denial of Summary Disposition Concerning the Firing of Military Ordnance on Dugway Proving Ground

The Applicant requests the Board to reconsider its denial of summary disposition of that part of Utah K concerning the firing of military ordnance on DPG. LBP-99-35, slip op. at 28. The Board ruled that the State had provided a sufficient showing to establish the existence of a genuine issue of material fact, in that the State had provided a sworn assertion regarding the "current training use" of a multiple launch rocket system on DPG that has the range to reach the Private Fuel Storage Facility ("PFSF"). Id. at 26, 28. PFS respectfully requests the Board to reconsider its ruling in light of facts PFS provided

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<sup>1</sup> A party may not, however, base a motion for reconsideration on new information or a "new thesis." Private Fuel Storage, LBP-98-10, 47 NRC at 292 (citing Louisiana Energy Services, L.P. (Claiborne Enrichment Center), CLI-97-2, 45 NRC 3, 4 (1997)).

in its motion for summary disposition<sup>2</sup> –not controverted by the State – which show that the current training use of the rocket system, even though it has the range to reach the PFSF, does not pose a credible hazard to the PFSF because the weapons are fired away from the PFSF as well as the safety procedures employed by the Army.

PFS's Motion for Summary Disposition concerning the firing of military ordnance on DPG was not premised on a claim that no ordnance fired on Dugway had sufficient range to reach the PFSF. Rather, PFS's motion and statement of material facts only asserted that "the ranges of most of the weapons [fired on DPG] are insufficient to reach the PFSF." PFS Mot. at 11; Statement of Material Facts at ¶ C.2 (emphasis added). PFS's motion asserted additional facts – sworn to by Colonel Carruth (a former commander of DPG) – that the mere use of a weapon on DPG with the range to reach the PFSF does not pose a credible hazard to the facility because 1) the weapons are fired away from the direction of the PFSF, and 2) the Army employs stringent safety precautions to prevent the firing of weapons from causing unintended harm. PFS Mot. at 11; Statement of Material Facts at ¶ C.2; Carruth Aff. at ¶¶ 6-8. Neither the State of Utah nor its declarant, General Matthews, controvert Colonel Carruth's statements regarding the Army's safety precautions or the direction in which the weapons are fired.<sup>3</sup>

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<sup>2</sup> Applicant's Motion for Partial Summary Disposition of Utah Contention K and Confederated Tribes Contention B, dated June 7, 1999 [hereinafter PFS Mot.].

<sup>3</sup> See State of Utah's Opposition to Applicant's Motion for Summary Disposition of Utah Contention K and Confederated Tribes Contention B, dated July 22, 1999, at 9 [hereinafter State Resp.]; Matthews Dec. at ¶¶ 10-11; Statement of Material Facts in Dispute Regarding Utah Contention K and Confederated Tribes Contention B at ¶ 5; State of Utah's Reply to NRC Staff's Response in Support of Applicant's Partial

Accordingly, PFS asks the Board to reconsider its ruling and grant PFS summary disposition of the portion of Utah K concerning the use of military ordnance on DPG, given that the State has failed to controvert in any respect these material facts pled by PFS which show that the use of weapons with sufficient range to reach the PFSF does not pose a hazard to the facility.

**C. Request for Clarification of the Ruling Concerning Air-Delivered Ordnance on the UTTR Other Than Cruise Missiles or Potential Non-Crash Hazards from Aircraft Overflights**

The Applicant also requests the Board to clarify its ruling concerning the use of air-delivered ordnance other than cruise missiles on the UTTR. See LBP-99-35, slip op. at 37-38. In its ruling concerning hazards associated with the UTTR, the Board addressed three issues: 1) crash hazards posed by aircraft flying over the PFSF, 2) non-crash hazards arising from aircraft flying over the PFSF (e.g., aircraft inadvertently dropping ordnance or fuel tanks), and 3) cruise missile launches on the UTTR. Id. at 5-6, 37-38. The Board has deferred ruling on the air crash hazard, id. at 5-6, and non-crash overflight hazards, id. at 37, and it denied PFS's motion with respect to cruise missiles, id. at 37-38. The Board, however, did not speak to the fourth issue concerning hazards on the UTTR, the hazard allegedly posed by aircraft using air-delivered ordnance other than cruise missiles on targets located within Defense Department land boundaries on the UTTR. In discussing the cruise missile issue, the Board stated:

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Motion for Summary Disposition of Utah Contention K and Confederated Tribes Contention B – Inadequate Consideration of Credible Accidents, dated August 4, 1999, at 2-3 [hereinafter State Reply].

Concerning the issue of cruise missile activity, the circumstances of the recent cruise missile incidents provide a basis for disputing PFS material facts D11 through D13 and D15 through D19 that is sufficient to demonstrate that a genuine dispute exists regarding material facts concerning the possible impact of cruise missile activities upon the PFS facility.

Id. at 37-38. The Board, however, did not discuss the hazard to the PFSF allegedly posed by the use of air-delivered munitions on the UTTR aside from cruise missiles (which is encompassed within the scope of PFS material facts D.11 through D.13), either in its ruling, id., or its discussion of the State's opposition to PFS's motion, id. at 33-37.

PFS requests clarification of the Board's ruling only with respect to the hazard allegedly posed by the use of air-delivered ordnance other than cruise missiles on the UTTR<sup>4</sup>, i.e., PFS asks the Board to clarify that its motion is granted regarding that issue. In its motion, PFS stated that the use of air-delivered ordnance on the UTTR (cruise missiles aside) would not pose a hazard to the PFSF, in that the targets for the ordnance and the weapon launch/drop boxes are far from the PFSF site and weapon releases on the UTTR are carefully planned and strictly controlled (the Air Force has never experienced a weapon release on the UTTR outside an intended launch or target area). PFS Mot. at 17-18; Cole Dec. at ¶ 20; Statement of Material Facts at ¶¶ D.11-D.13. In its response to PFS and reply to the NRC Staff, however, the State only addressed cruise missiles and did not discuss the use of other air-delivered ordnance against targets inside Defense

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<sup>4</sup> PFS does not seek clarification of the Board's ruling on the issue of non-crash overflight hazards, which the State asserts could include aircraft inadvertently dropping ordnance on the PFSF while flying over the site. The Board has clearly deferred that issue. LBP-99-35, slip op. at 37.

Department land boundaries on the UTTR (as opposed to the accidental dropping of ordnance by aircraft flying over the PFSF). See State Resp. at 5-7, 9; Matthews Dec. at ¶¶ 13-17; see also State Reply at 8-10.<sup>5</sup> Therefore, because PFS's statements of fact were uncontroverted by the State, PFS asks the Board to clarify its ruling and state that PFS's motion with respect to the use of air-delivered ordnance on the UTTR other than cruise missiles is granted.

Respectfully submitted,



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Dated: September 3, 1999

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<sup>5</sup> The State's Statement of Material Facts in Dispute, which challenges PFS's Statement of Material Facts regarding air-delivered ordnance use on the UTTR, relies on statements by its witnesses that concern only cruise missiles or ordnance inadvertently dropped on the PFSF by aircraft flying over the site. Statement of Material Facts in Dispute at ¶¶ 14-16 (citing Resnikoff Dec. at ¶¶ 12-13 (discussing the effects of the impact of a bomb dropped by an aircraft flying over the site); Matthews Dec. at ¶¶ 13-17 (discussing cruise missiles and aircraft overflights)).

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of Applicant's Motion for Reconsideration and Clarification of Ruling on the Applicant's Motion for Summary Disposition of Contention Utah K/Confederated Tribes B were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 3rd day of September 1999.

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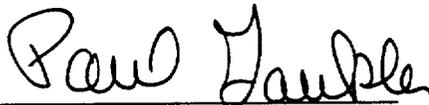
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