

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
(Independent Spent Fuel
Storage Installation)

)
) ASLBP No. 97-732-02-ISFSI

)
) July 30, 1999

**STATE OF UTAH'S RESPONSE TO APPLICANT'S MOTION TO COMPEL
ANSWERS TO INTERROGATORIES FOR UTAH CONTENTION O**

I. INTRODUCTION

The State hereby responds to the Applicant's July 20, 1999, Motion to Compel the State to answer four interrogatories (Nos. 2-4 and 6) with respect to Utah Contention O, Hydrology ("Motion").¹ In general, Contention O deals with the Applicant's failure to adequately assess the health, safety and environmental effects from the construction, operation, and decommissioning of the independent spent fuel storage installation ("ISFSI") and intermodal transfer facility ("ITF").² The

¹The State's response is supported by the Declaration of Don O. Ostler, PE., attached hereto as Exhibit 1; Mr. Ostler also supported the State's answers to Interrogatories 2-4 and 6.

²Contention O, as admitted by the Board, is as follows:

CONTENTION: The Applicant has failed to adequately assess the health, safety and environmental effects from the construction, operation, and decommissioning of the ISFSI and the ITP, as required by 10 C.F.R. §§ 72.24(d), 72.100(b) and 72.108, with respect to the following contaminant sources, pathways, and impacts:

1. Contaminant pathways from the Applicant's sewer/wastewater system;

interrogatories in question deal with contamination from Private Fuel Storage's ("PFS's") sewer/wastewater system, the retention pond, and PFS's operation, construction and decommissioning of the ISFSI. The State has responded to the Applicant's interrogatories based on the status of the case and the information currently available. As discussed below, the Applicant's motion is completely without merit. Accordingly, the Applicant's motion should be denied.

The State and the Applicant endeavored to informally resolve outstanding discovery disputes. The Applicant identified 21 items of concern in the State's discovery responses, while the State raised concerns, in particular about the Applicant relying on its interpretation of the scope of a contention to not respond to the State's

facility operations, including firefighting activities; and construction activities.

2. Contaminant pathways from the Applicant's retention pond in that:
 - a. The ER fails to discuss potential for overflow and therefore fails to comply with 10 C.F.R. Part 51.
 - b. ER is deficient because it contains no information concerning effluent characteristics and environmental impacts associated with seepage from the pond in violation of 10 C.F.R. § 51.45(b) and § 72.126(c) & (d).
3. Potential for groundwater and surface water contamination.
4. The effects of Applicant's water usage on other well users and on the aquifer.
5. Impact of potential groundwater contamination on downgradient hydrological resources.

In the Matter of Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LPB 98-7, 47 NRC 142, 192-93 (1998).

requests. With the exception of item 12 (the basis of the Motion), the State and the Applicant were able to resolve, for now, all outstanding issues with respect to responses by each party to the other's discovery requests. The State is surprised that the Applicant felt compelled to go forward with this motion, particularly when consideration is given to the fact that Contention O is part of Group III contentions,³ the hearing for which is tentatively set for April 2, 2001.⁴

II. ARGUMENT

The Applicant's Motion gives the impression that the State simply did not take the time to respond to the interrogatories. But this is not the case. As can be seen from the State's responses to the Applicant's Requests for Admissions and Interrogatories for Contention O, which are attached hereto as Exhibit 2, the State responded to discovery to the extent that it had the relevant information and, where appropriate, explained the outstanding issues that precluded it from responding. Furthermore, the way in which the ISFSI will be constructed, operated and decommissioned is strictly in the control of PFS; this is not information that can be generated by the State. To date, PFS has not provided adequate information or design

³All of the contentions in Group III deal with National Environmental Policy Act ("NEPA") issues, with the exception of Utah Contention O, which does not deal exclusively with NEPA issues.

⁴This date will likely be set back because the final Environmental Impact Statement is now expected to be issued in February 2001 instead of the originally anticipation date of September 2000.

details of its facilities (e.g., retention pond, wastewater system) and other various contaminant-causing activities to allow the State to conduct a thorough analysis of the Applicant's contaminant-causing activities.

PFS states in its Motion that "no such lack of detail can be claimed, particularly with respect to radiological contaminants." Applicant's Motion at 4 (*emphasis in original*). The Motion then refers to Chapter 6 of the SAR and Sections 3.4 and 5.1 of the Environmental Report ("ER") as support for the statement that the facility "will be designed and operated to preclude releases of radioactivity under normal operating conditions." Motion at 5. Chapter 6 of the SAR contains the information as originally submitted in June 1997.⁵ The Environmental Report too contains little, if any, new information on which the State could answer any differently than it answered in its June 28 discovery response.⁶

The State has a fundamental disagreement with PFS that its normal operation "preclude releases" of contaminants. Contention O, as admitted, deals, in part, with deficiencies in the ER with respect to contaminant pathways (basis 2); it also deals, in part, with the potential for groundwater and surface water contamination (basis 3).

⁵The only change to Chapter 6 from the original adds a clause to a sentence dealing with ventilation systems to protect against offgas or particulate release. SAR at 6.2-1 (Rev. 1).

⁶Section 3.4 adds one sentence to the original submittal: "Removable contamination identified on the cask outer surfaces will be wiped off with rags that can be disposed of as solid radioactive waste." ER at 3.4-2 (Rev. 1), while § 5 adds information about radiation exposure.

The State's discovery responses to Contention O make it clear that simply because PFS says its normal operation will preclude releases does not mean that, in fact, there is not the potential for the release of contaminants. For example, PFS does not plan to have any redundant contaminant control systems built into its operation (e.g., liners for the retention pond) and no enforceable monitoring systems to ascertain whether there has been a release of contaminants. Furthermore, PFS has not conducted any analysis of the permeability of soils beneath the site to determine the potential for contaminant transport. Nor has PFS characterized the groundwater beneath the site to determine such things as groundwater flow and groundwater chemistry. See Exhibit 2 (State's Responses to Interrogatory No. 5 and Request for Admission No. 4).

While the Applicant maintains that its storage pads will not become contaminated under normal operations, it has nonetheless developed a Preliminary Decommissioning Plan, which includes plans for decontaminating ten percent of the storage pad area. Applicant's Objections and Non-Proprietary Responses to State's First Requests for Discovery dated April 21, 1999 at 58. Thus, there is the potential that the pads may become contaminated. By contrast, the Applicant has no plans to intercept storm water that may run off contaminated storage pads and seep into ground water.⁷ The Applicant has shown that it is capable of developing some plans

⁷Since no seepage containment of stormwater is planned, it is completely logical to conclude this contamination could be carried in stormwater runoff, seep into the ground and ultimately enter ground water. PFS has not demonstrated or provided any data to prove that ground seepage cannot enter ground water.

beyond "normal operations" but it has not done so for potential contaminant sources that may affect ground or surface water.

In its discovery responses, the State explained why PFS's normal operations do not preclude the potential for release of contaminants. For example, the State in response to Request for Admission No. 4,⁸ goes out of its way to explain why PFS's site investigations and submittals are inadequate. In particular, the State noted:

The operation includes heavy equipment/maintenance, laboratory chemicals, small quantities of hazardous wastes, petroleum product storage and use, sanitary waste disposal, sumps and other potentials [sic] pollutants.... For example, there are operating procedures to detect contaminated casks or canisters. The SAR acknowledges that potential contamination can occur if proper procedures are not followed. SAR at 6.4-1 and 2. But the SAR does not properly anticipate problems when standard practices are not followed, errors are made or accidents occur. The fact that site ground water monitoring is not planned means that PFS would not know whether all their assumptions on protecting ground water are correct or whether errors and accidents have caused a problem.

See Exhibit 2 at 80-81.

Part of the Applicant's Motion is a request to compel the State to provide the technical and scientific basis for its responses. Motion at 3-4. The State's discovery response to issues brought up by the Applicant in its Motion were supported by the Declaration of Don A. Ostler, P.E. As more fully described below, Mr. Ostler's qualifications, training, and experience provide the technical and scientific basis for the

⁸In hindsight, it would have been prudent for the State to also refer to its Response to Admission No. 4 in its answers to Interrogatories 2-4 and 6. Such response is now incorporated into the answers to Interrogatories 2-4 and 6.

scope of the State's responses. *See also* Exhibit 1.

Mr. Ostler has over 26 years of experience in the review and analysis of water pollution control plans. Exhibit 1, ¶ 1. As such, he has reviewed hundreds of plans involving water pollution control from a variety of point and non-point sources.⁹ *Id.* ¶ 6. In his position as the Director of the Utah Division of Water Quality and Executive Secretary of the Water Quality Board,¹⁰ Mr. Ostler is responsible for implementing and enforcing the State's water quality program. Mr. Ostler is responsible for issuing groundwater discharge permits to all pollutant-causing entities in the State; he is also responsible for taking enforcement action against any person who pollutes surface or ground water. Mr. Ostler has the qualifications, training, and experience necessary to evaluate the information submitted by the Applicant and to provide the scientific and technical bases for the answers to the interrogatories in question, including an explanation of why PFS's normal operations do not preclude the potential for release of contaminants.

Finally, the State is fully aware of its responsibility to supplement responses to discovery request and will do so if and when it has information that causes it to change or add to any existing discovery responses. *See* 10 CFR § 2.740(e).

⁹Mr. Ostler has the educational training as a civil engineer to undertake such reviews.

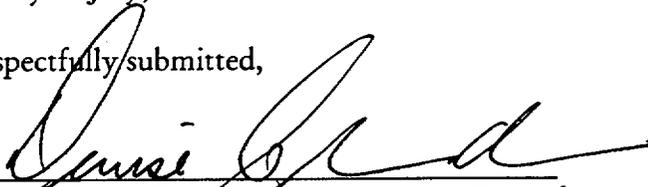
¹⁰The Executive Secretary is the statutorily appointed official responsible for approving water quality plans and issuing permits, and for conducting enforcement inspections and issuing notices of violation Utah Code Ann. § 19-5-106.

III. CONCLUSION

As described above, the State fully and completely answered the Applicant's four interrogatories. Accordingly, the Applicant's Motion to Compel should be dismissed.

DATED this 30th day of July, 1999.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S RESPONSE TO
APPLICANT'S MOTION TO COMPEL ANSWERS TO INTERROGATORIES
FOR UTAH CONTENTION O was served on the persons listed below by electronic
mail (unless otherwise noted) with conforming copies by United States mail first class,
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