

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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|---------------------------|---|---------------------------|
| In the Matter of: |) | Docket No. 72-22-ISFSI |
| PRIVATE FUEL STORAGE, LLC |) | ASLBP No. 97-732-02-ISFSI |
| (Independent Spent Fuel |) | |
| Storage Installation) |) | July 13, 1999 |

STATE OF UTAH'S MOTION TO DISMISS
UTAH CONTENTIONS F AND P

The State of Utah hereby moves for the dismissal of Utah Contentions F and P with prejudice, which relate to the training program for the Private Fuel Storage Facility. *See* LBP-98-7, 47 NRC 142, 252 (1998). The State seeks dismissal on the ground that it has settled its dispute with the Applicant, as reflected in the attached letter from Paul A. Gaukler to Diane Curran (July 13, 1999). Both the Applicant and the NRC Staff support this motion.

The State suggests that as a result, the Applicant's pending Motion for Summary Disposition of Utah Contentions F and P — Training and Certification (June 11, 1999), is moot, and should also be dismissed.

DATED this 13th day of July, 1999.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S MOTION TO DISMISS UTAH CONTENTIONS F AND P was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 13th day of July, 1999:

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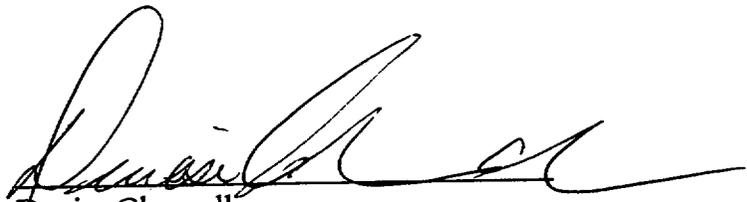
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July 13, 1999

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**Re: Private Fuel Storage, L.L.C.
Settlement of Contentions Utah F & P**

Dear Diane:

The purpose of this letter is to confirm the settlement reached between Private Fuel Storage, L.L.C. ("PFS") and the State of Utah (the "State") with respect to Contentions Utah F & P, as admitted by the Atomic Safety and Licensing Board. Your letter of June 30, 1999 proposed a settlement of Utah F & P based on PFS committing to incorporate into the Safety Analysis Report ("SAR") for the Private Fuel Storage Facility ("PFSF") (a) certain information provided in PFS's responses to Requests for Additional Information ("RAIs"), (b) certain information provided in the Declaration of Michael Ladd filed in support of PFS's Motion for Summary Disposition of Utah F & P, and (c) language stating that federal laws and regulations governing railroad engineers would apply to all locomotive operators employed by PFS at the Intermodal Transfer Point ("ITP") and the PFSF. The State's June 30, 1999 letter identified six points on which the State sought the inclusion of specific language in the SAR as the basis for settling Utah F & P. We have discussed each of the six points with the State as well as with NRC Staff counsel. The agreement that PFS and the State have reached with respect to each of the six points follows.

First, the PFSF SAR will incorporate Mr. Ladd's statement in paragraph 6 of his declaration that PFS will follow the same Systematic Approach to Training ("SAT") for the training of PFSF personnel in their respective duties as that mandated by the NRC for the training of nuclear plant operators under 10 C.F.R. § 55.4. The application of this SAT process will result in a training program for PFSF personnel that differs substantively from that required for nuclear plant operators, because of their far different duties and functions, but the process or approach to the training of PFSF personnel under 10 C.F.R. § 72.192 will include the five elements of the SAT set forth in 10 C.F.R. § 55.4.

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Second, the PFSF SAR will incorporate the statement in paragraph 38 of Mr. Ladd's declaration that during the implementation of the PFS training program, course descriptions and outlines will be written and derived, by following the Systematic Approach to Training, that will provide greater detail related to initial familiarization, certification and qualification, and continuing training for all PFSF technical disciplines.

Third, the PFSF SAR will incorporate the language in the "Response" section of PFS's May 19, 1998 response to RAI 9-10 (attached as Exhibit 2 to the Ladd declaration).

Fourth, the State has requested that the PFSF SAR incorporate language in subsection (b) of PFS's February 10, 1999 response to RAI ITP-1 (attached as Exhibit 2 to the Declaration of John A. Vincent filed in support of PFS's Motion for Summary Disposition of Utah B) which states that: "To the extent that PFS acts as a carrier [from the main rail line to the PFSF], PFS would comply with the applicable [U.S.] Department of Transportation (DOT) statutes and regulations pertaining to rail carriers or to motor carriers, as appropriate, and the related hazardous material transportation requirements." PFS will incorporate the requested language subject to a disclaimer, requested by the NRC Staff, that incorporation of this commitment in the PFSF SAR does not constitute a license condition or licensing commitment under the 10 C.F.R. Part 72 license for the PFSF, does not render the commitment subject to 10 C.F.R. § 72.48, and does not obligate the NRC Staff to enforce these requirements, or undertake enforcement action with respect to violation of these requirements, under the 10 C.F.R. Part 72 license for the PFSF.

Fifth, the State has requested that the PFSF SAR incorporate language in subsection (b) of PFS's February 10, 1999 response to RAI ITP-1, which states that if the rail option is chosen to transport casks from the main rail line to the PFSF and PFS acts as a rail carrier for the utility customers, PFS would operate as a rail carrier and meet the applicable requirements of a rail carrier, including 49 U.S.C. Subtitle IV (Part A), Subtitle V, and associated implementing regulations in Title 49 of the Code of Federal Regulations. PFS will incorporate the requested language subject to the same disclaimer, set forth above, that incorporation of this commitment in the PFSF SAR does not constitute a license condition or licensing commitment under the 10 C.F.R. Part 72 license for the PFSF, does not render the commitment subject to 10 C.F.R. § 72.48, and does not obligate the NRC Staff to enforce these requirements, or undertake enforcement action with respect to violation of these requirements, under the 10 C.F.R. Part 72 license for the PFSF.

The State has also requested that in conjunction with these changes, the language in Section 9.1-25 of the SAR, which requires "all mechanics" to become "licensed locomotive operators if a rail line is developed to the site," should be changed to require that if a rail line is developed to the site, all mechanics must become licensed "engineers" and be subject to

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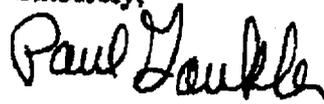
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the requirements of 49 U.S.C. § 20135 and 49 C.F.R. Part 240 and that the SAR should also provide that if an ITP is used, any locomotive operators at the ITP will be subject to the same requirements for railroad engineers. PFS will revise the SAR to provide that (a) if a rail line is developed to the site, all PFS locomotive operators will become licensed "engineers" in accordance with 49 U.S.C. § 20135 and 49 C.F.R. Part 240, and (b) if an ITP is used, any PFS locomotive operators at the ITP will similarly become licensed railroad engineers in accordance with 49 U.S.C. § 20135 and 49 C.F.R. Part 240, subject to the same disclaimer, set forth above, that incorporation of these commitments in the PFSF SAR does not constitute a license condition or licensing commitment under the 10 C.F.R. Part 72 license for the PFSF, does not render the commitment subject to 10 C.F.R. § 72.48, and does not obligate the NRC Staff to enforce these requirements, or undertake enforcement action with respect to violation of these requirements, under the 10 C.F.R. Part 72 license for the PFSF.

Sixth, the State has requested that the PFSF SAR incorporate language in subsection (b) of PFS's February 10, 1999 response to RAI ITP-1, which states that if the heavy-haul option is chosen and PFS acts as a carrier for the utility customers, PFS would meet the requirements for motor carriers which apply to both motor and common contract carriers, including Subtitle VI (motor vehicle and driver requirements). PFS will incorporate language from the RAI response which provides that, if the heavy-haul option is chosen and PFS acts as a carrier for the utility customers, PFS would meet the applicable U.S. DOT requirements for motor carriers, including 49 U.S.C. Subtitle VI (motor vehicle and driver requirements), subject to the same disclaimer, set forth above, that incorporation of this commitment in the PFSF SAR does not constitute a license condition or licensing commitment under the 10 C.F.R. Part 72 license for the PFSF, does not render the commitment subject to 10 C.F.R. § 72.48, and does not obligate the NRC Staff to enforce these requirements, or undertake enforcement action with respect to violation of these requirements, under the 10 C.F.R. Part 72 license for the PFSF.

Please advise me if this letter does not conform in any manner to your understanding of the agreements that we have reached for the settlement of Contention Utah F & P. If it conforms to your understanding, the State will file, as we have agreed, a motion to dismiss with prejudice Contention Utah F & P based on our settlement as set forth above.

Sincerely,



Paul A. Gaukler

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Diane Curran, Esq.
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cc: Denise Chancellor, Esq.
Sherwin Turk, Esq.

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