

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

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In the Matter of

PRIVATE FUEL STORAGE, L.L.C.

(Independent Spent Fuel
Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

November 12, 1999

MEMORANDUM AND ORDER
(Granting Motion to Compel
Interrogatory Answers)

By motion dated July 20, 1999, applicant Private Fuel Storage, L.L.C., (PFS) seeks a Licensing Board directive compelling intervenor State of Utah (State) to provide more complete answers to several interrogatories relating to contention Utah O, Hydrology, that PFS propounded on May 13, 1999. In its July 30, 1999 response, the State asserts that it has provided as complete a response as possible given the information it has been supplied by PFS relative to the subject matter of contention Utah O. For the reasons set forth below, we grant the PFS motion to compel.

The interrogatories in question -- numbers 2, 3, 4, and 6 -- ask for State responses outlining:

(1) the specific contaminants from the PFS sewer/wastewater system, detention basin,

independent spent fuel storage installation (ISFSI) operations, and ISFSI construction activities that the State contends could enter Skull Valley, Utah surface water or groundwater; the contamination means/mechanism for entering each pathway; and the technical/scientific bases for the State's contentions (Interrogatory 2);

(2) the likelihood that each of the identified contaminants would enter the Skull Valley surface water or groundwater through the identified pathways and the technical/scientific basis for the State's probability conclusions on releases, including likely radiological releases (Interrogatory 3);

(3) the specific perennial and intermittent surface water bodies that would be contaminated by PFS facility construction, operation, and decommissioning, and the technical/scientific bases therefor (Interrogatory 4); and

(4) the measurable or adverse downgradient hydrological resource impacts, and the asserted impact mechanisms, that the State contends would result from the asserted pathways and contaminants previously identified in interrogatory responses, and the technical/scientific bases therefor (Interrogatory 6).

See [PFS] Second Set of Formal Discovery Requests to Intervenors [State] and Confederated Tribes (May 13, 1999) at 13-14. The State's answers to Interrogatory Nos. 2, 3, and 6 refer to its response to contention Utah 0 Interrogatory No. 1, in which the State described the pathways from the PFS sewer/wastewater system, detention basin, ISFSI operations, and ISFSI construction activities through which Skull Valley surface water and groundwater contamination would occur and the basis for its conclusions regarding those pathways. For Interrogatory No. 4, which is

also referenced in the answer to Interrogatory No. 3, the State response refers to a State-provided list of forty-five surface waters and declares that the State contends all surface waters downgradient of the PFS Skull Valley facility or the Rowley Junction, Utah intermodal transfer facility (ITF), or any that are crossed by transportation routes such as the Low Junction rail corridor, could be contaminated from accidents, spills, negligence, or intentional acts. See [State] Response to [PFS] Motion to Compel Answers to Interrogatories for Utah Contention 0 (July 30, 1999) [hereinafter State Response], exh. 2, at 81-85 (June 28, 1999 State responses to PFS second set of Group II and Group III discovery requests).

In light of the issue framed by the State's contention Utah 0 and the information that forms the basis for that contention, we see nothing on the face of these interrogatories that renders them objectionable. Nor can we conclude, on the basis of the State's responses up to this point, that it has fulfilled its duty to provide "complete, explicit, and responsive" answers to these particular interrogatories. Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 583 (1975). The crux of the State's defense of its answers is that PFS in its application and responses to State discovery requests has not provided the State with the information

necessary to permit it to answer these questions. See State Response at 3-4. We have several problems with that objection, however.

First, the State's declaration that it cannot provide a further particularized response to these questions because PFS has not produced all the information the State wants or needs regarding water quality matters does not, in and of itself, carry the day. Certainly, in this instance in which PFS has outlined in some detail the nature of its facility and how that facility will operate in the context of the State's concerns about surface and groundwater contamination, see [PFS] Objections and Non-Proprietary Response to State's First Requests for Discovery (April 21, 1999) at 45-60, such an argument is not persuasive.

The State's assertion that it is unable to provide more particularized answers to these interrogatories also is belied by its own filing describing the experience of its potential expert witness, Don E. Ostler, relative to the matters at issue in contention Utah O. According to the State, as a former permitting and review engineer in the State Bureau of Water Quality and as the current Director of the Division of Water Quality of the Utah Department of Environmental Quality, over the past twenty-six years Mr. Ostler has reviewed hundreds of water pollution control plans from a variety of point and nonpoint sources and now

is responsible for implementing and enforcing the State's water quality program. This, the State asserts, has provided him with the expertise and experience to evaluate the water quality information submitted by PFS and provide interrogatory answers. See State Response at 7. Given his credentials, with the information provided in the PFS application and the PFS answers to the State's own discovery requests regarding contention Utah 0, it appears to us that the State should be able to provide a more detailed response to the PFS interrogatories at issue, or at least a better explanation about what is lacking that precludes it from answering those interrogatories in more detail. See Pilgrim, LBP-75-30, 1 NRC at 583 & n.10.

As a consequence, we grant the July 20, 1999 PFS motion to compel relative to contention Utah 0 Interrogatory Nos. 2, 3, 4, and 6. The State's revised response to those interrogatories should be filed on or before Monday, November 22, 1999. In setting this schedule, however, we suggest that the parties may wish to consult further regarding the substance of the State's response to these questions to determine whether contention Utah 0 may be the subject of additional discovery during the Group III "limited window" that would place the State in a better posture to provide a full response to the PFS interrogatories at issue, thereby alleviating the need for

later supplemental answers as additional information comes to light.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD*



G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

November 12, 1999

* Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant PFS; (2) intervenors Skull Valley Band of Goshute Indians, Ohngo Gaudadeh Devia, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State; and (3) the NRC staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

PRIVATE FUEL STORAGE, LLC

(Independent Spent Fuel Storage
Installation)

Docket No.(s) 72-22-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (GRANTING MOTION...) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Docket No.(s)72-22-ISFSI
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Dated at Rockville, Md. this
12 day of November 1999


Office of the Secretary of the Commission

November 10, 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))

**JOINT REPORT ON ADMINISTRATIVE MATTERS
CONCERNING PROPRIETARY INFORMATION**

Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") files this joint report pursuant to the Atomic Safety and Licensing Board's Memorandum and Order (Ruling on Summary Disposition and Discovery Motions Regarding Contention Utah H), LBP-99-42, ___ NRC ___, dated November 2, 1999. In Section II.D of LBP-99-42, the Board requested the State, PFS, and the Staff to advise the Board in a joint filing whether they have any objection to the public release of any part of LBP-99-42 because it would involve the disclosure of proprietary information subject to nondisclosure under 10 C.F.R. § 2.790. The Board also requested that the parties advise the Board in a joint filing (1) whether they anticipate that any hearing on contention Utah H, contention Utah GG, or any other contention will involve the use of proprietary information such that the proceedings should be closed; and (2) if a closed hearing is necessary, whether proceedings on those contentions should be held in conjunction with the closed hearing

on contention Security-C as outlined in the parties' November 1, 1999 joint report on scheduling for that issue, or should be conducted under another schedule, bearing in mind the Board's preference for conducting closed hearings at the Atomic Safety and Licensing Board Panel Hearing Room in Rockville, Maryland.

Counsel for the Applicant has conferred with counsel for the State and counsel for the Staff with respect to the above matters. Concerning whether any of the parties object to the public release of any part of LBP-99-42 because it would involve the disclosure of proprietary information, the Applicant is able to inform the Board that none of the parties object to the public release of any part of LBP-99-42, and it may be so released.

Concerning whether any hearing on Utah contentions H and GG will involve proprietary information such that the proceedings should be closed, the parties do anticipate that some parts of the evidence on these contentions, as well as on other contentions, primarily Utah E on financial qualifications and Utah S on decommissioning, may involve proprietary information such that parts of the hearing would need to be closed. However, the parties believe that it is too early to determine the extent to which proprietary information would be involved and the extent to which the hearing would therefore need to be closed. The parties believe that they will be in a much better position to ascertain the extent to which proprietary information will be involved in any hearing on these and other contentions after having prepared and filed direct testimony on the contentions.

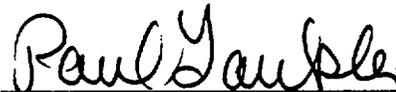
The parties do not favor holding any closed hearings that may be necessary on the above contentions in conjunction with the closed hearing on contention Security-C as outlined in the parties' November 1, 1999 joint report on scheduling for that issue. The dates proposed by the parties with respect to Security C were premised on the hearing involving a single contention and were selected to minimize overlap with other scheduled activities, i.e., summary disposition and preparing and filing direct testimony on the remaining contentions.

The parties believe that to the extent that all or portions of any of the hearing on the other contentions will involve proprietary information, such that the hearing will need to be closed, the closed portion of the hearing could be conducted in Utah in conjunction with the hearing on the other contentions as currently scheduled. Although the attendance at the closed portions of the hearing would need to be restricted and other precautions may need to be undertaken, hearings involving proprietary matters would not trigger the security measures required for Safeguards Information, such as use in a controlled access building. Thus, a closed hearing involving proprietary matters could more easily be undertaken in Salt Lake City than one involving Safeguards Information. Also, it would have the advantage of allowing those portions of the hearing on a contention which do not involve proprietary information to be open to the public and avoid unnecessary travel and moving of hearing materials during the middle of the hearing (assuming that both the closed and non-closed portions of the hearings would be

held in the same general time frame, regardless of where they are held, as the parties believe is most reasonable).

In summary, none of the parties object to the public release of any part of LBP-99-42. Further, the parties believe that the question of the extent to which closed hearings will be required should be postponed until after the parties file their direct testimony at which time both the Board and the parties will have a much better idea of the extent to which the hearing on the various contentions will involve proprietary information. The parties further believe that closed hearings involving proprietary matters should not be held in conjunction with the closed hearing on contention Security-C in Rockville, Maryland, but instead should be held in conjunction with the regularly scheduled hearings in Salt Lake City, Utah.

Respectfully submitted,



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Dated: November 10, 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

CERTIFICATE OF SERVICE

I hereby certify that copies of the Joint Report on Administrative Matters Concerning Proprietary Information 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 10th day of November 1999.

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