

June 28, 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 OBJECTIONS AND NON-PROPRIETARY RESPONSES
TO STATE'S SECOND REQUESTS FOR DISCOVERY (GROUPS II & III)**

Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") files the following objections and non-proprietary responses to "State of Utah's Second Set of Discovery Requests Directed to the Applicant" ("State's Second Discovery Requests"), an electronic copy of which was served on the Applicant on Thursday, May 13, 1999. The Applicant is filing responses to the discovery requests for the Group II and Group III contentions, in accordance with the Board's Order dated June 17, 1999, granting extension for such filing to on or before June 28, 1999.¹

¹ The following Group II and Group III contentions set forth in the State's Second Discovery Requests are addressed in this Response: the requests set forth with respect to Utah L, the requests set forth with respect to Utah S, and the requests set forth with respect to Utah DD. The responses to the State's Second Discovery Requests for Utah E are being filed in a separate proprietary response.

I. GENERAL OBJECTIONS

These general objections apply to the Applicant's responses to all of the State's Second Discovery Requests addressing Group II and Group III contentions.

1. The Applicant objects to State's instructions and definitions on the grounds and to the extent that they request or purport to impose upon the Applicant any obligation to respond in manner or scope beyond the requirements set forth in 10 C.F.R. §§ 2.740, 2.741 and 2.742.

2. The Applicant objects to State's Request for Production of Documents to the extent that it requests discovery of information or documents protected under the attorney-client privilege, the attorney work product doctrine, and limitations on discovery of trial preparation materials and experts' knowledge or opinions set forth in 10 C.F.R. § 2.740 or other protection provided by law. The Applicant has provided the State with a Privilege Log which identifies documents subject to these privileges and protections, which the Applicant reserves the right to supplement.²

² PFS has with respect to some of the specific requests objected on grounds of privilege. The specific mention of privilege in some of the objections does not mean that there are no documents on which PFS claims privilege with respect to documents for which a privilege objection is not specifically raised. The Privilege Log identifies those documents on which PFS claims privilege, which Log PFS will be updating upon completing its update of documents relevant to admitted contentions maintained at Parsons Behle and Latimer in Salt Lake City. See Response to General Interrogatory No. 2 and General Document Request No. 2.

3. The Applicant objects to the State's interrogatories and document requests to the extent they seek discovery beyond the scope of the Utah contentions, as admitted by the Board in this proceeding. The State is only permitted to obtain discovery on matters that pertain to the subject matter with which the State is involved in this proceeding. 10 C.F.R. § 2.740(b).

II. GENERAL DISCOVERY REQUESTS

A. GENERAL INTERROGATORIES

Pursuant to agreement between the State and PFS, these general interrogatories apply to all Utah admitted contentions, are in addition to the ten interrogatories per contention allowed by the Board's Order dated April 22, 1998 (LBP-98-7), and are continuing in accordance with 10 C.F.R. § 2.740(e).

GENERAL INTERROGATORY NO. 1. State the name, business address, and job title of each person who was consulted and/or who supplied information for responding to interrogatories, requests for admissions and requests for the production of documents. Specifically note for which interrogatories, requests for admissions and requests for production each such person was consulted and/or supplied information.

If the information or opinions of anyone who was consulted in connection with your response to an interrogatory or request for admission differs from your written answer to the discovery request, please describe in detail the differing information or opinions, and indicate why such differing information or opinions are not your official position as expressed in your written answer to the request.

APPLICANT'S RESPONSE: In addition to counsel for PFS, the following persons were consulted and/or supplied information in responding to the discovery requests for the Group II and Group III Contentions in the State's Second Discovery Requests:

John D. Parkyn
Chairman of the Board
Private Fuel Storage L.L.C.
P.O. Box C4010
La Crosse, WI 54602-4010
Utah Contention E, S

John Donnell
Project Director
Private Fuel Storage L.L.C.
7677 East Berry Ave
Denver, CO 80111-2137
Utah Contention E

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Utah Contention DD

Eileen Supko
Senior Consultant
Energy Resources International, Inc.
1015 18th Street, N.W. Suite 650
Washington, DC 20036
Utah Contention E

In response to whether the information or opinions of anyone who was consulted in connection with PFS's response to an interrogatory or request for admission differs from the PFS's written answer to the discovery request, PFS is unaware of any such difference among those consulted.

GENERAL INTERROGATORY NO. 2. To the extent that PFS has not previously produced documents relevant to any Utah admitted contention, identify all such documents not previously produced. PFS may respond to this request by notifying the State that PFS has updated its repository of documents relevant to admitted contentions at Parsons Behle and Latimer.

APPLICANT'S RESPONSE: As jointly agreed to by the State and PFS, PFS will notify the State upon updating its repository of documents relevant to admitted contentions maintained at Parsons Behle and Latimer in Salt Lake City.

GENERAL INTERROGATORY NO. 3. For each admitted Utah contention, give the name, address, profession, employer, area of professional expertise, and educational and scientific experience of each person whom PFS expects to call as a witness at the hearing. For purposes of answering this interrogatory, the educational and scientific experience of expected witnesses may be provided by a resume of the person attached to the response.

APPLICANT'S RESPONSE: The Applicant has not identified any additional persons whom it expects to call as witnesses at the hearing with respect to the State's admitted contentions beyond those identified in the Applicant's Response to the State's First Set of Discovery Requests. See Response to State's First Set of Discovery Requests,

General Interrogatory No. 3 as supplemented. The Applicant will supplement this response in accordance with 10 C.F.R. § 2.740(e) as it obtains further information.

GENERAL INTERROGATORY NO. 4. For each admitted Utah contention, identify the qualifications of each expert witness whom PFS expects to call at the hearing, including but not limited to a list of all publications authored by the witness within the preceding ten years and a listing of any other cases in which the witness has testified as an expert at a trial, hearing or by deposition within the preceding four years.

APPLICANT'S RESPONSE: See Response to General Interrogatory 3 above.

GENERAL INTERROGATORY NO. 5. For each admitted Utah contention, describe the subject matter on which each of the witnesses is expected to testify at the hearing, describe the facts and opinions to which each witness is expected to testify, including a summary of the grounds for each opinion, and identify the documents (including all pertinent pages or parts thereof), data or other information which each witness has reviewed and considered, or is expected to consider or to rely on for his or her testimony.

APPLICANT'S RESPONSE: See Response to General Interrogatory 3 above.

B. GENERAL DOCUMENT REQUESTS

The State requests the Applicant to produce the following documents directly or indirectly within its possession, custody or control to the extent not previously produced by the Applicant during informal discovery:

REQUEST NO 1. All documents in your possession, custody or control that are identified, referred to or used in any way in responding to all of the above general interrogatories and the following interrogatories and requests for admissions relating to specific contentions.

APPLICANT'S RESPONSE: To the extent PFS has not previously produced such documents, PFS will forward them to its repository of documents maintained at Parsons Behle and Latimer in Salt Lake City, Utah.

REQUEST NO. 2. To the extent that PFS has not already produced documents to date, all documents in your possession, custody or control relevant to each Utah

admitted contention, and to the extent possible, segregated by contention and separated from already produced documents.

APPLICANT'S RESPONSE: PFS will update its repository of documents relevant to admitted contentions maintained at Parsons Behle and Latimer in Salt Lake City, as jointly agreed to by the State and PFS. PFS will notify the State upon updating its repository of documents at Parsons Behle and Latimer. See Response to General Interrogatory No. 2.

REQUEST NO. 3. All documents (including experts' opinions, workpapers, affidavits, and other materials used to render such opinion) supporting or otherwise relating to testimony or evidence that you intend to use at the hearings on each Utah admitted contention.

APPLICANT'S RESPONSE: Applicant objects to this Request as being overly broad, vague, unduly burdensome and seeking privileged material. Applicant will provide such documents, with respect to its witnesses/experts, as agreed to by the State and PFS. See Applicant's Objections and Non-Proprietary Responses to State's First Requests for Discovery, Response to General Interrogatory No. 5 (Apr. 21, 1999).

III. UTAH CONTENTION L (GEOTECHNICAL)

A. REQUEST FOR ADMISSIONS - Utah Contention L

REQUEST FOR ADMISSION NO. 1. Do you admit that PFS has no plans to install either on site or off site strong ground motion monitoring at or near the proposed ISFSI site.

APPLICANT'S RESPONSE: PFS objects to this request as beyond the scope of the contention as admitted by the Licensing Board. Contention Utah L concerns the characterization of geology, seismology, ground motion, and subsurface soils of the PFSF

site. Contention Utah L does not include issues concerning emergency planning for response and mitigation of potential off-normal events, including natural phenomena such as seismic events, that may occur at the PFSF.

REQUEST FOR ADMISSION NO. 2. Do you admit that the only Category 1 alert response by PFS to a seismic event is to obtain the magnitude of the earthquake from the National Earthquake Information Center.

APPLICANT'S RESPONSE: PFS objects to this request as beyond the scope of the contention as admitted by the Licensing Board. Contention Utah L concerns the characterization of geology, seismology, ground motion, and subsurface soils of the PFSF site. Contention Utah L does not include issues concerning emergency planning for response and mitigation of potential off-normal events, including natural phenomena such as seismic events, that may occur at the PFSF.

REQUEST FOR ADMISSION NO. 3. Do you admit that following a seismic event, in the absence of an on-site strong ground motion monitor, PFS could not verify that the design basis ground motion of the facility had not been exceeded and that the ISFSI could continue to safely operate.

APPLICANT'S RESPONSE: PFS objects to this request as beyond the scope of the contention as admitted by the Licensing Board. Contention Utah L concerns the characterization of geology, seismology, ground motion, and subsurface soils of the PFSF site. Contention Utah L does not include issues concerning emergency planning for response and mitigation of potential off-normal events, including natural phenomena such as seismic events, that may occur at the PFSF. PFS further objects to this request as a compound question. Fed. R. Civ. P. 36 ("[e]ach matter of which an admission is requested shall be separately set forth"). The State requests PFS to admit both that "PFS

could not verify that the design basis ground motion of the facility had not been exceeded" and that PFS could not verify "that the ISFSI could continue to safely operate." Utah Sec. Disc. Req. at 26.

B. DOCUMENTS REQUESTS - Utah Contention L

The State of Utah requests the Applicant to produce the following documents directly or indirectly within its possession, custody or control to the extent not previously produced by the Applicant during informal discovery.

DOCUMENT REQUEST NO. 1. Please produce the Holtec document transmitted from Maria C. Pepe of Holtec to Wen S. Tseng of CEC and titled "Storage Pad Seismic Response Acceleration Time History," dated May 20 and 22, 1997.

APPLICANT'S RESPONSE: PFS and Holtec have searched their files and are unable to identify or locate a Holtec document transmitted from Maria Pepe to Wen Tseng dated May 20 and 22, 1997 and titled "Storage Pad Seismic Response Acceleration Time History."

IV. CONTENTION S (DECOMMISSIONING)

A. REQUEST FOR ADMISSIONS - Utah Contention S

REQUEST FOR ADMISSION NO. 1. Do you admit that, if a temporary or permanent federal repository is not available for all the SNF shipped to PFS within the 20 year license being applied for in this proceeding, PFS has no contingency plan other than to apply for a license renewal.

APPLICANT'S RESPONSE: PFS objects to this request because it is outside the scope of the contention as admitted by the Licensing Board. As basis three for its proposed Contention Utah S, the State attempted to allege that:

[T]he shipment of the spent fuel back to the originating nuclear power plants will not be viable at the time of decommissioning of the ISFSI. . . . [T]he federal government has not provided a disposal facility to which the spent fuel could be sent. Therefore, the major prerequisite for decommissioning (i.e., a facility to which the spent fuel could be shipped so that decommissioning could begin) is simply assumed to be available. This points out another defect in the application: The Applicant has failed to identify contingent costs in the realistic event that the ISFSI cannot be decommissioned at the end of the license term.

State of Utah's Contentions at 124-25 (Nov. 23, 1997) (Basis 3 of Contention Utah S).

The Licensing Board explicitly found this basis of Contention Utah S inadmissible.

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47

NRC 142, 256 (1998) ("Inadmissible as to . . . bas[i]s three . . ."). The State's Request for Admission No. 1 regarding the availability of a government disposal facility where the spent fuel could be sent and contingent plans to address unavailability of a government facility relate to the State's proposed Basis Three which was specifically excluded by the Board. Moreover, the dispositioning of spent fuel after it leaves the PFSF is not part of the operations or decommissioning of the PFSF. Therefore, PFS objects to this request because it is outside of the scope of Contention Utah S as admitted by the Board.

REQUEST FOR ADMISSION NO. 2. Do you admit there is no "reasonable assurance" of license renewal at the end of the 20 year term of the license being applied for in this proceeding.

APPLICANT'S RESPONSE: PFS objects to this request because it is outside of the scope of the contention as admitted by the Licensing Board. See Utah S - Response

for Request for Admission No. 1. The likelihood of achieving license renewal for the PFSF was not part of Contention Utah S, as admitted by the Board. Contention Utah S relates to decommissioning the PFSF after the PFSF operating license has expired. It does not concern the process of renewing the license to operate (rather than decommissioning) the PFSF. Nevertheless, without waiving its objections, PFS denies that there is no "reasonable assurance" that the PFSF license will be renewed at the end of the initial 20-year license term.

REQUEST FOR ADMISSION NO. 3. Do you admit there is no reasonable assurance that SNF shipped to PFS could be returned to the reactor that produced it in the event that a federal repository is either not open or is unable to take all the SNF at PFS at or before the end of PFS's 20 year license.

APPLICANT'S RESPONSE: PFS objects to this request because it is outside of the scope of the contention as admitted by the Licensing Board. See Utah S - Response for Request for Admission No. 1. The Board specifically excluded from Contention Utah S consideration of the proposed Basis Three which alleged *inter alia* that "the shipment of the spent fuel back to the originating nuclear power plants will not be viable at the time of decommissioning of the ISFSI." State of Utah's Contentions at 124 (emphasis added). The State's Request for Admission No. 3 the ability to return spent fuel back to the originating reactors is relates to contention Basis Three that was specifically excluded from Contention Utah S by the Licensing Board. Private Fuel Storage, LBP-98-7, supra, 47 NRC at 256. Moreover, the dispositioning of spent fuel after it leaves the PFSF is not part of the operations or decommissioning of the PFSF. Therefore, PFS objects to this request because it is outside of the scope of Contention Utah S as admitted by the Board.

B. DOCUMENT REQUESTS - Utah Contention S

DOCUMENT REQUEST NO. 1. Please provide all documents addressing PFS's plan for the disposal of the SNF stored at the proposed ISFSI in the event that - for whatever reason - a federal repository is not able to receive all the SNF shipped to the PFS ISFSI within the 20 year license period, and the license is not renewed.

APPLICANT'S RESPONSE: PFS objects to this request because it is outside of the scope of the contention as admitted by the Licensing Board. See Utah S - Response for Request for Admission No. 1. The Board specifically excluded from Contention Utah S the State's proposed Basis Three addressing *inter alia* the availability of a federal government disposal facility to which the spent fuel could be sent at the end of the PFSF license term so that decommissioning could begin. State of Utah's Contentions at 125; Private Fuel Storage, LBP-98-7, supra, 47 NRC at 256. The State's Document Request No. 1 is outside of the scope of Contention Utah S, as admitted by the Board.

PFS also objects to this request as outside the scope of this proceeding as it requests documents addressing "PFS's plan for the disposal of the SNF stored at the [PFSF]." State's Second Disc. Req. at 34 (emphasis added). The NRC's regulations in 10 C.F.R. Part 72 do not require an ISFSI license applicant to address the disposal of spent nuclear fuel. See 10 C.F.R. § 72.2. In fact, federal law provides that only the federal government can dispose of spent nuclear fuel; private companies are barred from the disposal of spent nuclear fuel as a matter of law. See 42 U.S.C. § 10,131(a)(4) (the Nuclear Waste Policy Act).

V. CONTENTION DD (ECOLOGY AND SPECIES)

A. INTERROGATORIES - Utah Contention DD.

INTERROGATORY NO. 5. Describe the effect that the operation and maintenance of the proposed ISFSI, including the electric line to be constructed parallel to the site access road, the operation and maintenance of the ITF and the operation and maintenance of the Low rail spur may have on the prey base for the peregrine falcon, including but not limited to, species such as shorebirds (e.g., snowy plover and mountain plover), swifts, swallows, and waterfowl and the peregrine's secondary prey source, including the bobolink, burrowing owl, caspian tern, long-billed curlew, and short-eared owl.

APPLICANT'S RESPONSE: PFS objects to this interrogatory as overbroad.

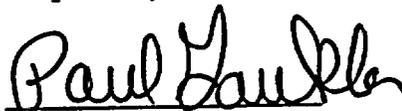
Utah Contention DD, as admitted by the Board, is limited to "peregrine falcons nesting in the Timpie Springs Waterfowl Management Area." Licensing Board Memorandum and Order (Memorializing Prehearing conference Rulings), May 20, 1998 at page 2. To the extent the State requests information concerning peregrine falcons nesting at locations other than the Timpie Springs Waterfowl Management Area, PFS objects to such requests because they are beyond the scope of this contention, as admitted by the Board. Nevertheless, without waiving its objection, PFS provides the following information regarding peregrine falcons that nest in the Timpie Springs Waterfowl Management Area.

Construction and operation of the ISFSI, its associated infrastructure including the electric line and site access road, the Intermodal Transfer Point ("ITP") and the Low corridor rail line will not directly impact any unique shorebird habitat. As noted in the Environmental Report (Page 4.1-4), those birds that are disturbed by construction and operation noise and activities will likely move to other nearby suitable habitats. Thus, no long-term changes in populations are expected.

The ITP site is located closest to shorebird habitat. That site is contained entirely within a disturbed upland area adjacent to an existing road that does not provide significant habitat for the peregrine prey base. Although adjacent areas provide habitat for a variety of shorebirds, operation and maintenance of the ITP is not likely to have any measurable impact on the peregrine falcon.

As noted on Page 4.1-6 of the PFSF Environmental Report, the only known peregrine falcon nest site in the region of the proposed facility is located in the Timpie Springs Waterfowl Management Area, approximately 24 miles north of the site and about 11 miles from the closest point of the Low Corridor rail line. The ITP is the only proposed PFS-related site located within 10 miles of the nest. Since 80 percent of foraging occurs within a mile of the nest, and the average hunting area is a 10-mile radius around the nest, any peregrine falcon occurrence around the PFSF site and the Low Corridor rail line would be unusual and infrequent. Even if construction and operation of the PFSF and the Low Corridor rail line had some minor adverse impacts on potential prey base populations, the change would not likely affect existing peregrine falcons nesting on the Timpie Springs Wildlife Management Area since the prey populations that would be affected are not within the territory in which they generally forage.

Respectfully submitted,



Jay E. Silberg
Ernest L. Blake, Jr.

**Paul A. Gaukler
SHAWPITTMAN
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Washington, DC 20037
(202) 663-8000**

Dated: June 28, 1999

Counsel for Private Fuel Storage L.L.C.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
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PRIVATE FUEL STORAGE L.L.C.) Docket No. 72-22
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(Private Fuel Storage Facility)) ASLBP No. 97-732-02-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the Applicant's Objections and Non-proprietary Responses to State's Second Requests For Discovery (Group II and Group III) and the Declarations of Susan Davis, Paul A. Gaukler, John D. Parkyn and Eileen Supko 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 28th day of June 1999.

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* Adjudicatory File
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U.S. Nuclear Regulatory Commission
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* By U.S. mail only


Paul A. Gaukler

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PRIVATE FUEL STORAGE L.L.C.)	Docket No. 72-22
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(Private Fuel Storage Facility))	ASLBP No. 97-732-02-ISFSI

DECLARATION OF PAUL A. GAUKLER

Paul A. Gaukler states as follows under penalties of perjury:

- 1. I am counsel with ShawPittman in Washington, D.C.**
- 2. I am duly authorized to verify Applicant's Response to State's Second Requests for Discovery; specifically, those responses to General Interrogatory Nos. 1-5.**
- 3. I certify that the statements in such responses are true and correct to the best of my personal knowledge and belief.**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 28, 1999.


Paul A. Gaukler

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety And Licensing Board

In the Matter of

PRIVATE FUEL STORAGE L.L.C.

(Private Fuel Storage Facility)

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Docket No. 72-22

ASLBP No. 97-732-02-ISFSI

DECLARATION OF JOHN D. PARKYN

John D. Parkyn states as follows under penalties of perjury:

1. I am Chairman of the Board of Private Fuel Storage L.L.C. (PFS), a limited liability company organized and existing under the laws of the State of Delaware with its principal office currently located in La Crosse, Wisconsin.

2. I am duly authorized to verify Applicant's Response to State's Second Requests for Discovery; specifically, the responses to the Request for Admission No. 2 with respect to Utah Contention E and the Request for Admission No. 2 with respect to Utah Contention S.

3. I certify that the statements and opinions in such responses are true and correct to the best of my personal knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 28, 1999.


John D. Parkyn

**UNITED STATES OF AMERICA
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(Private Fuel Storage Facility)

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Docket No. 72-22

ASLBP No. 97-732-02-ISFSI

DECLARATION OF EILEEN SUPKO

Eileen Supko states as follows under penalties of perjury:

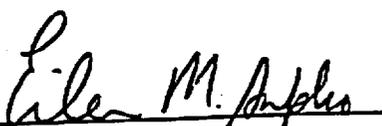
1. I am a Senior Consultant with Energy Resources International, Inc., supporting Private Fuel Storage L.L.C. ("PFS") on the Private Fuel Storage Facility ("PFSF") project. As a consultant to PFS on the PFSF, I am responsible for performing projections of utility at-reactor spent fuel storage requirements and associated analyses to be used as input to the PFS cost benefit analysis.

2. I am duly authorized to verify Applicant's Response to State's Second Requests for Discovery; specifically, the responses to the Request for Admission No. 3 with respect to Utah Contention E.

3. I certify that the statements and opinions in such responses are true and correct to the best of my personal knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 28, 1999.


Eileen Supko

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

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In the Matter of

PRIVATE FUEL STORAGE L.L.C.

(Private Fuel Storage Facility)

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Docket No. 72-22

ASLBP No. 97-732-02-ISFSI

DECLARATION OF SUSAN DAVIS

Susan Davis states as follows under penalties of perjury:

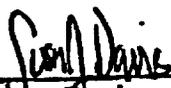
1. I am an Environmental Scientist with Stone & Webster Engineering Corporation (Stone & Webster). As an Environmental Scientist working on the Private Fuel Storage Facility, I am responsible for preparation and review of the ecological sections of the Environmental Report, ecological field efforts, and all other ecological issues as they relate to the Private Fuel Storage Facility Project.

2. I am duly authorized to verify Applicant's Response to State's Second Requests for Discovery; specifically, the response to Interrogatory No. 5 with respect to Utah Contention DD.

3. I certify that the statements and opinions in such responses are true and correct to the best of my personal knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 28, 1999.



Susan Davis