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June 17, 1998

Dr. Edward Y. Shum
U.S. Nuclear Regulatory Commission
Mail Stop 06G22
Washington, DC 20555

RE: Docket # 72-22 Private Fuel Storage L.L.C. ISFSI/EIS Scoping

Dear Dr. Shum:

Thank you for this opportunity to comment on the scope of the Environmental Impact Statement (EIS) for the above-mentioned project. The Wyoming Outdoor Council (WOC) is a non profit statewide Wyoming conservation organization with approximately 2,000 members. Our members reside throughout the state and elsewhere, in Salt Lake City, UT, along the I-80 rail and highway route in southern Wyoming, and in Fremont County, Wyoming where another private large scale, off-site facility for high level radioactive waste is proposed. The following comments supplement the oral comments provided at the public scoping meeting held on June 2, 1998.

First of all, let us state that we contend that the Nuclear Regulatory Commission (NRC) does not have the authority to license a large scale, off-site centralized storage facility for commercial reactor spent fuel. We believe the action proposed within this EIS is not allowed by the Nuclear Waste Policy Act (NWPA). Under 42 U.S.C. 10101 Subtitle B, Section 135(h) the law states:

"Notwithstanding any other provision of law, nothing in this Act [42 U.S.C. 10101 et seq.] shall be construed to encourage, authorize, or require the private or federal use, purchase, lease, or other acquisition of any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government on the date of the enactment of this Act."

The proposed Private Fuels Storage (PFS) Independent Spent Fuel Storage Installation (ISFSI) is both "located away from the site of any civilian nuclear power reactor" and "not owned by the Federal Government," thus making it a legally unauthorized project.

We understand that this debate regarding the NRC's authority to permit such a project may not be a topic for the EIS to resolve. However, the controversy regarding the national precedent of such a facility must be acknowledged and considered as an integral part of the EIS report. Our comments below will highlight this point further, as well as raise other issues.

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Major federal action is inadequately defined in notice of intent.

Although WOC agrees that the proposed ISFSI permit for PFS is a major federal action warranting the preparation of an EIS, the NRC (agency) has failed to adequately define and notice the complete "major federal action" that it proposes. In its issuance of its scoping announcement, **the agency has already erroneously limited the scope of its analysis** to "the construction and operation of the proposed ISFSI." The NRC has failed to recognize that if it issues a permit to PFS, it will be launching a significant major federal action that will affect the quality of the human environment far beyond the site-specific details of construction and operation of the ISFSI.

The scope of this EIS must be broadened to consider the direct and indirect impacts of this project within the context of our nation's high level radioactive waste policies and programs. This facility will be the largest of its kind ever proposed for licensing by the NRC. It will contain the largest concentration of commercial reactor spent fuel ever consolidated in one place in the United States. The size of the facility--40,000 metric tons, is larger than the temporary, interim facility (MRS) ever contemplated by Congress in the NWPA, and will be nearly one-half in size to the permanent repository.

Operation of the facility will launch a globally unprecedented transport of spent fuel on our nation's highways and railways, without (and this is significant itself), the Congressionally recognized (and funded) financial assistance to States for transportation planning, emergency preparedness and infrastructure.

Also, no one or agency can assure that this proposed "temporary facility" will not become permanent. By issuing this license--which conflicts with the "linkages" policy outlined in the NWPA to ensure a "temporary" facility does not become a defacto permanent one--the NRC may be derailing our nation's high level radioactive waste program.

NEPA regulations require analysis of the new national program & policy this PFS license represents.

Private Fuel Storage's ISFSI will cause so many connected and cumulative actions upon the U.S. environment and our nation's policies to make it significant in both context and intensity, as defined in the Council on Environmental Quality's Implementing Regulations for the National Environmental Policy Act (NEPA). When considering major federal actions *significantly* affecting the quality of the human environment, in 40 CFR § 1508.27, those implementing regulations state under "(a) Context" that

"the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality."

Under "(b) Intensity", significance also has to do with

"(2) The degree to which the proposed action affects public health or safety"

"(4) the degree to which the effects ...are likely to be highly controversial"

"(5) The degree to which possible effects on the human environment are highly uncertain or involve unique or unknown risks"

"(6) the degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration."

"(7) Whether the action is related to other actions with individually insignificant impacts. Significant exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significant can not be avoided by terming an action temporary or by breaking it down into smaller component parts."

"(10) Whether the action threatens a violation of Federal, State or local law or requirements imposed for the protection of the environment."

These NEPA definitions (and others I have not cited) clearly show that the proposed action is nationally significant beyond the site-specific circumstances of construction and operations. This point is further clarified in § 1502.3 (b) of the CEQ regs, requiring the preparation of an EIS for "broad Federal actions such as the adoption of new federal programs..." This NRC action will certainly set into action a new Federal program (private off-site storage facilities) and constitutes a policy decision (a "decision in principle"), setting a national precedent of allowing such facilities.

A review of the history of current amendments to the NWPA shows how this NRC action represents a national policy/program shift. The current legislation, S104 and HR 1270, originally contained language to authorize private interim facilities to store spent fuel. After debate, these bills passed their respective houses, but only after that language was removed from each bill. One could say that at this time Congress has decided not to allow private facilities as national policy. Yet this NRC action will change that, overriding this recent Congressional action. Does the agency have the power to so rewrite national policy? Whatever the answer, this policy and program action, its implications and impacts need to be considered within the EIS.

Transportation impacts throughout the United States need to be evaluated.

The NEPA criteria for scope under § 1508.25 require the agency to consider 3 types of actions, including

"(1) connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they :

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend upon the larger action for their justification."

The transportation of 40,000 metric tons of high level radioactive waste across our country and through other states to get to the PFS facility is a connected action that must be evaluated within the scope of this EIS. This transportation will also cause cumulatively significant impacts --another feature requiring discussion within the EIS [see § 1508.25 (a) (2)]. As well, this transportation is significant in intensity as outlined above.

In addition, if an ISFSI permit is issued to PFS, the NRC will be taking action that is contradictory to national policy for transportation in the NWPA. Under section 180(c) of NWPA, the U.S. Department of Energy (DOE) is required to provide financial and technical assistance to states and Tribes along the transportation routes for spent nuclear fuel and high level radioactive waste for training emergency response personnel, planning and infrastructure. Congress deemed this support for emergency response necessary for the federal MRS (a similar facility, but smaller in capacity than the proposed Utah one) and the permanent repository. This Congressional intent is also reiterated in the current bills Congress.

Yet the Private Fuel Storage facility will have none of this emergency response support to states and Tribes, in direct contradiction to national policy. Once again, this is a huge program and policy shift initiated by the NRC, through the issuance of this license. The impacts of this insufficient transportation route preparedness must be evaluated in the EIS.

Other transportation impacts that need to be evaluated include:

- preparedness, or lack of, by local communities to respond to a transportation emergency
- safety analysis of entire route, both rail and highway, with projected accident rates and estimates of the potential for an accident to release radiation, with worse case scenario
- analysis of the above with the estimated proportion of shipments coming by highway, rail, or dedicated trains
- if dedicated trains are used, a safety analysis of the shipment consolidation point
- radiation exposures during routine operations to populations along transportation corridors, including safety inspection workers with yearly occupational doses, members of public residing, working or institutionally confined near shipping routes
- sabotage and terrorist attack vulnerability and precautions

The possibility that this facility could become a defacto, permanent facility must also be considered in the EIS.

This is a very likely indirect impact of permitting the PFS project, well documented and discussed within the legislative history of the NWPA. In fact, because this project violates the linkages placed in the NWPA to prevent such a defacto permanent facility and the Yucca Mt. facility has not yet been deemed suitable, the NRC must consider this a reasonably foreseeable outcome. Because neither the NRC nor PFS can guarantee that the wastes will ever be removed once they are transferred to Utah, the agency must evaluate the site for suitability as a permanent facility.

In addition, many believe the siting of a so-called "temporary" facility will derail our nation's difficult work at establishing a permanent repository. Once waste is in Utah, it could easily become politically expedient to leave it there instead of continuing with Yucca Mountain. Combined with the Wyoming proposed project, Owl Creek Energy Project, these two private facilities will have a capacity of 80,000 metric tons of spent fuel, close to the projected capacity of the permanent repository. The NRC's licensing of this facility may change the entire course of our nation's high level

radioactive waste program. The probability of such a significant program shift requires EIS analysis.

Financial and cost/benefit analyses must be included in the EIS.

The EIS must ensure that PFS can provide the financial assurance for decommissioning, transportation and operations accidents and also for the probable scenario of long term, permanent storage of the spent fuel at the Utah site.

The report must also evaluate the negative economic impacts of the site to the local economy, the state of Utah, and to communities along the transportation corridors. Public stigma regarding such waste, fear of transportation, and private property devaluation are all well documented impacts of high level radioactive waste facilities. Stigma alone, regardless of actual threat, can have broad negative impacts to tourism and recreation economies. These negative economic impacts will probably be especially pronounced with this facility, given it is highly controversial, will set a national precedent and be the largest concentration of such highly-feared wastes.

The EIS also needs to evaluate the cost effectiveness of this type of facility compared to continued storage on-site at reactors until a permanent repository is opened.

Need of such a facility and its overall impact on national high level radioactive waste management policy must be evaluated in EIS.

Does the PFS project advance our nation's progress to solving our nuclear waste crisis? Or, as mentioned earlier, will this project harm our country's efforts to site a permanent repository? Is this facility needed for public safety reasons? These questions must be examined with the EIS. Many of this issues should be addressed within a "no action" alternative.

Worst case scenario impacts must be evaluated.

NEPA regulations (§ 1502.22) make clear that where there is scientific uncertainty (such as whether Yucca Mountain will be deemed suitable, for example),

"...the agency must include a worse case analysis of the potential impacts of the proposal and an indication of the probability or improbability of their occurrence if (a) the information relevant to adverse impacts is essential to a reasoned choice among alternatives...NEPA requires that impacts statements, at a minimum, contain information to alert the public and Congress to all known possible environmental consequences of action. Thus, one other the federal governments most important obligations is to present to the fullest extent possible the spectrum of possible consequences that may result from agency decisions, and their details of their potential consequences for the human environment." (See *Federal Register* Vol. 46, No. 55 p. 18032, Council on Environmental Quality.)

In order to have a reasoned choice among alternatives and particularly for the no-action alternative, this EIS must detail the consequences of the PFS site becoming permanent and also the impacts of a transportation accident that releases radiation in a populated area.

Other brief comments.

- the EIS must detail possible conflicts between the proposed action and the objectives of the above-mentioned federal policies, as required under § 1506.2(d).
- The State of Utah needs to become a lead agency jointly with the NRC on this EIS, due to their unique position to identify and evaluate site-specific and state concerns.
- The Department of Energy also needs to become a cooperating agency on the EIS, because of their jurisdiction by law over transportation impacts, planning and emergency preparedness for spent fuel transportation.

Need for adequate analysis within the EIS of social, political, and economic impacts, beyond just simply the scientific and technical.

The NRC is predominantly a technology and science-driven regulatory agency. We fear that this EIS will be colored by this agency jurisdiction, to the detriment of other important social science analyses. Historically, our nation's high level radioactive waste management policies have been driven by politics, economic and societal values. It is critical that this EIS evaluate the impacts of this license into these fields as well. We have raised these specific issues already: the politics of our national nuclear waste management program; public stigma and fear in causing negative economic impacts and property devaluation; the likelihood of the PFS facility becoming a defacto permanent facility; public fear of these wastes; the consequences of a transportation accident, etc.

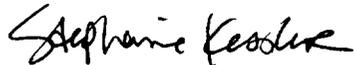
NEPA requires that agencies use an interdisciplinary approach to their analysis, including both natural and social sciences. In addition, the law clearly states that "unquantified environmental amenities and values" be given "appropriate consideration in decisionmaking along with economic and technical considerations." We contend that allowing a private high level off-site spent fuel facility of this magnitude, with its associate waste transport, is in direct conflict with our national values as reflected by state and federal laws and legislative histories. Our country's overall nuclear waste policy is the expression of these "unquantified environmental amenities and values" and must be part of this EIS consideration.

In summary, the Wyoming Outdoor Council has grave concerns about this proposed project. Our members will be impacted by the transportation of wastes through our state as it moves to the PFS facility. If the NRC issues a license to this project, it will act as defacto federal authorization for other such private facilities. This will greatly impact Wyoming as it begins to deal with the proposed private storage facility here in Fremont County.

NEPA does not allow agencies to segment or break down actions into smaller parts in order to avoid proper analysis of the proposed federal action. Yet the NRC has done this by limiting the scope of its notice to solely the on-site construction and operation aspects of the PFS ISFSI. We request the agency to reissue it scoping notice to include identification of the associated nation-wide transportation of spent fuel, and to identify the changes in national policy this action represents. The public will then need additional opportunity to comment on this redefined major federal action.

Thank you for consideration of our comments. Please ensure that we remain on your mailing list for all reports and correspondence regarding this project.

Sincerely,



Stephanie Kessler
Special Project Associate

cc: Dave Finley, WY DEQ Solid and Hazardous Waste Division
Mike Barrash, WY Attorney General's Office
Mary Olson, Nuclear Information and Resource Service
Connie Nakahara, UT Office of High Level Nuclear Waste Storage Opposition