



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION VIII
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OCT 19 1998

8EPR-EP

Dr. Edward Y. Shum
 Spent Fuel Project Office
 Office of Nuclear Material Safety and Safeguards
 Nuclear Regulatory Commission
 Washington, D.C. 20555

David Allison, Superintendent
 Uintah and Ouray Agency
 Bureau of Indian Affairs
 Ft. Duchesne, Utah 84026

RE: Scope of the EIS for the proposed
 Independent Spent Fuel Storage Installation
 at the Skull Valley Reservation, Utah

Dear Dr. Shum and Mr. Allison:

The Region VIII Office of the Environmental Protection Agency offers the following scoping comments for the upcoming EIS on the proposal by Private Fuel Storage (PFS) to operate an Independent Spent Fuel Storage Installation (ISFSI) at the Skull Valley Indian Reservation in Tooele County, Utah. We understand we are submitting these comments past the official scoping period and appreciate your consideration of these comments.

If a license is issued pursuant to 10 CFR Part 72 by the Nuclear Regulatory Commission (NRC), PFS could legally receive, possess, store, and transfer spent nuclear fuel from nuclear power reactors in the U.S. to the proposed Skull Valley ISFSI, and maintain that spent fuel in a dry storage system for a specified time period.

EPA jurisdiction over the proposed ISFSI is limited

EPA's jurisdiction in this matter is narrow and generally limited to the applicant's compliance with Section 402 of the Clean Water Act. Such compliance will require a stormwater discharge permit to cover non-radiological discharges during construction and

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possibly during operation of the proposed activity. It appears that a permit would not be required for the stormwater runoff from the storage containers. The site is not considered a hazardous waste treatment, storage, or disposal facility under the Resource Conservation and Recovery Act (RCRA) because the facility will not be managing any RCRA-regulated wastes. EPA's RCRA jurisdiction could be triggered if the facility does manage RCRA-regulated wastes. The accidental release of any hazardous substances, pollutants, or contaminants into the environment may trigger other EPA jurisdictional authorities at this facility. The proposed ISFSI would not generate air emissions during normal operations. The emission of fugitive dust during construction does not result in emissions that would trigger the need for any permit under the Clean Air Act. Pursuant to Section 309 of the Clean Air Act, EPA is authorized to review the proposed action of other federal agencies in accordance with the National Environmental Policy Act (NEPA) and make those reviews public.

EPA will administer the NPDES permit requirements under the Clean Water Act

EPA is the permitting authority for the necessary NPDES stormwater permit pursuant to Section 402 of the Clean Water Act. An NPDES permit issued by EPA Region VIII would be needed for the discharge of stormwater runoff from the site during construction. On February 17, 1998, EPA reissued the general permits for stormwater discharges associated with construction activities. General permit number UTR10*##I covers construction activities for many of the Indian Lands in Utah, including the Skull Valley Band of Goshute Reservation. Application for coverage under the general permit requires the submittal of a completed Notice of Intent (NOI) form at least 48 hours prior to start of construction. A stormwater pollution prevention plan (SWPPP) must be prepared prior to submitting the NOI. The SWPPP must describe details of the site specific controls (i.e. best management practices) which will be implemented and maintained during the project to minimize discharge of pollutants, including sediment and other construction related pollutants. Specific requirements for the SWPPP are included in Part IV of the permit. The NOI form, the construction general permit, a fact sheet explaining the conditions in the permit, and other stormwater information can be obtained from Vern Berry of our staff and are available on the Region VIII stormwater web page at: "<http://www.epa.gov/region08/html/npdes/storm.html>".

If a vehicle maintenance facility associated with transportation activities were to be located at the site, a permit would be required for the discharge of stormwater runoff from that facility. EPA Region VIII would be the permitting authority. The Region does not have a general permit that would be applicable to such a discharge, therefore it would be necessary for the operator of that facility to apply for an individual permit. The application would have to be submitted at least 180 days prior to the expected start of operation.



Should the environmental risks associated with transportation of spent fuel from PFS-affiliated power plants be analyzed in the EIS?

The applicant's proposal, if approved, would have the affect of significantly increasing the transport of spent nuclear fuel many times greater than present conditions. The unprecedented volume of shipment of spent nuclear fuel under PFS's proposal of up to 80,000 tons is of larger magnitude than the proposed shipments under the Nuclear Waste Policy Act (NWPA) of 70,000 tons. The technical requirements and effective implementation to ensure minimal environmental and public health risks during the proposed shipment are essentially the same for either the PFS proposal or the government's proposal under the NWPA. Yet the applicant's proposal in its Environmental Report calls on NRC to forego any further NEPA analysis of these transportation risks (other than the direct impacts of proposed shipments from I-80 at Rawley Junction, Utah south to Skull Valley).

We suggest the NRC examine the role of the Interstate Commerce Commission and the Department of Transportation in licensing and approving this unprecedented volume of proposed shipments and determine the NEPA obligations of these agencies in this regard. Of course the absence of federal jurisdiction is not relevant to whether the analysis of this unprecedented increase of spent nuclear fuel shipments should be analyzed in the upcoming EIS. Consider the application of the following guidance from Council on Environmental Quality (CEQ):

"If an EIS is prepared in connection with an application for a permit or other federal approval, must the EIS rigorously analyze and discuss alternatives that are outside the capability of the applicant or can it be limited to reasonable alternatives that can be carried out by the applicant? Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant."

CEQ recognizes that alternatives outside the capability of the federal agency must still be analyzed if they are reasonable:

"Must the EIS analyze alternatives outside the jurisdiction or capability of the agency or beyond what Congress has authorized? An alternative that is outside the legal



jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies." [See Section 1500.1(a) and Section 1506.2(d) of 40 CFR Part 1500 and the Forty Questions and Answers about the NEPA Regulations, March, 1981, CEQ.]

Transportation risks associated with the transport of spent nuclear fuel are controversial regarding their environmental risks, and additional disclosure on the incremental risks presented by operating the proposed ISFSI may be warranted. An analysis of the practical alternatives to reducing such risks will be analyzed by the Department of Energy in concert with NRC for its upcoming EIS for the nuclear repository at Yucca Mountain. As this EIS is ahead of the scheduled EIS for Yucca Mountain, the NRC should consider including an analysis of reasonable alternatives to reduce transportation risks within the Skull Valley ISFSI EIS process. Such an assessment could include an analysis of who pays for the emergency preparedness planning, training, and response.

Recommended Alternatives to be analyzed in the EIS:

EPA suggests that the following examples represent the range of alternatives that could be analyzed in the upcoming EIS:

- 1) The impacts associated with the entire transportation corridor: EPA recommends that the EIS analyze the complete array of environmental risks and means to reduce those risks along the entire transportation corridor that originates at the nuclear reactor and culminates at Skull Valley. This would include rail and truck shipments, the potential route designation, licensing conditions and compliance for potential carriers, and the means that the utilities would work with the responsible state and local governments to handle emergency response in the case of transport accidents.

- 2) The impacts of No Action on this ISFSI and the spent nuclear fuel remains on-site until there is an alternative site: An effective analysis of the environmental risks and benefits of taking no federal action could include comparing the impacts of extended storage at the licensed nuclear reactors versus transport to this or another centralized interim spent nuclear fuel storage facility. A No Action Alternative could also analyze the relative environmental risks of delaying consideration of any ISFSI until the federal government has made its decisions on the proposed Yucca Mountain facility now expected to be decided by 2002 and potentially operational in 2010.



3) The impacts of this ISFSI if a federal facility for spent fuel is unavailable at the time of PFS's contract expiration: An analysis of the impacts of moving the spent fuel after its storage period (believed to be 20 years, or possibly 40 years, under the contract) either back to its origin or to a federal repository if necessary. Such an analysis would include the effects of fuel decay and degradation.

4) Financial Assurance: As part of the proposed action, NRC could consider alternative mitigation in the terms of sufficient financial assurance to protect the environment. NRC could describe the costs and benefits of the proposed \$1.5 billion facility especially in terms of the environmental protection costs. The establishment of bonding or a trust fund adequate for the government to operate the ISFSI facility in case of financial limitations of the applicant could be explored in this EIS in order to provide full disclosure of the potential costs for which the government could be responsible.

By what specific means does NRC propose to carry out its responsibility in this EIS process to comply with the Environmental Justice guidance by CEQ and with NRC's federal trust obligation to Indian Tribes potentially impacted by the project?

In December 1997, the Council of Environmental Quality issued additional guidance supplementing Executive Order 12898 to further 1) ensure the participation of minority and or low-income populations, 2) develop effective public participation strategies, 3) ensure meaningful community representation and 4) seek tribal representation in the process in a manner consistent with the government-to-government relationship between the United States and tribal governments. It was expressed at the June 1998 scoping meeting that several minority populations, including members of the Skull Valley Band of Goshutes could be affected by the proposed action. In addition, the Confederated Tribes of Goshute Reservation at Ibapah, Utah, allege that their aboriginal lands could be affected by the alternative ISFSI transportation routes in Tooele County. NRC must inform and effectively evaluate the proposed action and alternatives on the cultural, social, and economic circumstances of these minority communities in a meaningful way especially because the legal, technical, and financial complexities of the proposed activity are without precedent. NRC must consider the environmental justice concerns implicated by this project and include its analysis of the environmental justice issues in NRC's NEPA documentation.

Furthermore, as an agency of the federal government, NRC has a trust obligation to work with the two Goshute Bands affected by this project as sovereign tribal governments. Specifically NRC must consult and coordinate with the Tribes [See Executive Order 13084, August 12, 1998] and NRC must work with the Tribes on a government-to-government basis [Executive Memorandum, April 29, 1994.]



We suggest that NRC and its consultants may wish to devise a specific public participation plan for both Goshute Bands that identifies the means to inform these tribal members of the proposed action and alternatives.

EPA's NEPA team for the EIS on the Proposed ISFSI at Skull Valley

EPA has formed a technical team to aid in implementation of its obligations under Section 402 of the Clean Water Act and Section 309 of the Clean Air Act for the proposed ISFSI at Skull Valley. Team members include:

<u>Position/Function</u>	<u>Name</u>	<u>Title</u>	<u>Phone</u>
NEPA Team Leader	Wes Wilson	Env. Engineer	303/312-6562
Legal Assistance	Kimi Matsumota	Attorney	303/312-6875
Radiation Physics	Richard Grahamn	Env. Engineer	303/312-7080
Stormwater NPDES permit	Vern Berry	Env. Engineer	303/312-6234
Environmental Justice	Marcella DeVargas	Env. Prot. Spec.	303/312-6161
Tribal Assistance Program	Sue Groves	Env. Prot. Spec.	303/312-6068

Please call these team members directly if you have questions in that subject area; otherwise you may call the team leader, Mr. Wilson, to direct your inquiry to EPA.

Sincerely,



Cynthia Cody, Chief
NEPA Team

cc: Chairman Bear, Skull Valley Band of Goshutes, Skull Valley, Utah
Chairman Pete, Confederated Tribes of Goshute, Ibapah, Utah
Dianne Neilson, Department of Environmental Quality, SLC, Utah
Richard Swedberg, DOT, Lakewood, Co.



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