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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of )

PRIVATE FUEL STORAGE L.L.C. )

Docket No. 72-22

(Private Fuel Storage Facility) )

ASLBP No. 97-732-02-ISFSI

**JOINT MOTION TO DISMISS UTAH CONTENTION T**

Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") and the State of Utah ("State") file this joint motion for dismissal with prejudice of Utah Contention T, "Inadequate Assessment of Required Permits and Other Entitlements" ("Utah T"). PFS and the State seek dismissal on the ground that the parties have reached an acceptable resolution of the contention.

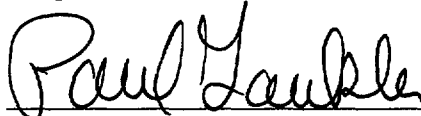
On April 22, 1998, the Atomic Safety and Licensing Board ("Licensing Board" or "Board") admitted Utah T. Private Fuel Storage, L.L.C. (Independent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 197-98. In Utah T, as admitted, the State asserts that the PFS "Environmental Report does not list," as required by 10 C.F.R. § 51.45(d), all permits, licenses, approvals and other entitlements that must be obtained in connection with the PFS license application. Id. at 255.

The State and PFS have successfully completed negotiations concerning the settlement of Utah T. The parties have agreed to record their disagreement in the PFS Environmental Report concerning the permits, licenses, approvals and other entitlements that must be obtained in connection with the PFS license application. The State and PFS have agreed that, if a listing and description of the permitting requirements asserted by the State to be applicable to the PFS facility is included as part of the PFS Environmental Report, Utah T may be dismissed with prejudice.

Attached as Exhibit 1 to this Motion is a listing of the various permits, licenses, approvals and other entitlements that the State claims must be obtained by PFS in connection with the PFS facility. As the Exhibit makes clear, PFS believes that many of the permits identified by the State in Exhibit 1 are not required, and PFS continues to believe that the Environmental Report as currently constituted identifies the appropriate environmental permitting needs for the project. Both PFS and the State have agreed, however, to the addition of Exhibit 1 to the PFS Environmental Report upon which basis they further agree that Utah T may be dismissed with prejudice. PFS will add the new language to the Environmental Report as a part of the first revision of the Environmental Report following dismissal of the contention.

The Board should therefore dismiss Utah T, with prejudice, because PFS and the State have agreed upon an acceptable resolution of the matter. Counsel for Applicant has discussed this motion with counsel for the NRC Staff who does not object to the Board's granting of this joint motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul Gaukler", written over a horizontal line.

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Dated: August 10, 2001

## EXHIBIT 1

Final Settlement Utah Contention T - August 10, 2001

The State contends that PFS's Environmental Report does not list all permits, licenses, approvals and other entitlements which must be obtained in connection with the PFS ISFSI License Application and the report does not describe the status of compliance with these requirements as required by 10 CFR § 51.45(d). While the following list of permits and approvals may not be complete, the State believes they should be included in the ER. PFS does not agree that many of these permits are required primarily on the basis that PFS contends that the State has no jurisdiction on the Skull Valley Band of Goshute Indians Reservation. The State believes that State permits are in many cases required. The Skull Valley Goshutes have no environmental regulations. The federal government, in many of the listed circumstances, does not have rules which cover the PFS activities. The State believes that because of this void in regulatory oversight, the State's interests are potentially directly affected and, therefore, State approvals must be obtained and State requirements must be met to protect State interests.

PFS contends it has previously identified environmental permitting needs for this project and it is committed to complying with all applicable environmental regulations. Further, PFS does agree with the State that some of the environmental permits, licenses and/or registrations identified by the State in the following list will be required for either the construction or operation of the PFS facility. However, PFS does not agree with some of the statements made by the State in its following listing of permits, nor does PFS agree with the need for many of the permits identified by the State in its listing.

The State and PFS do agree that if the following State description of requirements is included as part of the licensing proceeding application, the State's Contention T may be withdrawn.

## State and Other Permits<sup>1</sup>

### 1. Water Quality

Utah Code Ann. ("UCA") § 19-5-107 provides that it is unlawful for any person to discharge a pollutant into waters of the state or to cause pollution which constitutes a menace to the public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water, or to place or cause to be placed wastes in a location where there is probable cause to believe they will cause pollution. It is also unlawful, without first securing a permit from the Executive Secretary, to construct, install, modify, or operate any treatment works, the operation of which would probably result in a discharge. Treatment works includes disposal fields and lagoons under UCA § 19-5-102(14).

Surface waters in the Skull Valley area are classified under Utah Admin. Code ("UAC") R317-2-13.14, Unclassified Waters, which provides that all surface waters not specifically classified are presumptively Class 2B, 3D. Water Quality Standards and numeric criteria are listed in UAC R317-2 for these classes of waters.

#### a. UPDES Storm water

In circumstances where the State has jurisdiction, if there will be a storm water discharge, a UPDES permit is required under UAC R317-8-2.1(1)(d). Even if the storm water permit is covered by a general permit, the Executive Secretary may call for a permit on a case-by-case basis under the provisions of UCA R317-8-2.1(3) and R317-8-2.5(2)(b). It should be specifically noted that UAC R317-8-3.1(2) requires that facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences the industrial activity which may result in a discharge of storm water associated with that industrial activity.

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<sup>1</sup> The following permits are those that the State of Utah contends are, or may be, required with respect to the PFS project. As stated above, PFS does not agree with the need for many of the permits identified by the State below. Those permits that PFS believes are, or may be, required for the PFS project are identified in Sections 9.1 to 9.5 of the Environmental Report.

PFS proposes a detention pond to collect storm water. PFS takes the position that no monitoring of contaminants in the detention pond is required. PFS states that under current state and federal storm water regulations since the storm water flows into an on-site detention pond and since PFS considers there is no possibility of discharge to the waters of the United States, a UPDES or NPDES storm water permit, with its associated monitoring and reporting requirements, is not applicable to PFS and its operations. Nevertheless, PFS states that it considers it prudent to obtain samples of water from the detention pond to verify that storm-water runoff is free of contamination.

For construction activities of five acres or more, a state UPDES permit is required for storm water discharges associated with those activities. UAC R317-8-3.9(6)(d)10. A state general permit may be issued which requires 48 hours prior notification of construction activities and development of a Storm Water Pollution Prevention Plan ("SWPPP") prior to construction to be kept on site for review. The Executive Secretary may call for a specific permit if circumstances warrant. PFS has represented that a draft Erosion Control Plan, utilizing best management practices, is under preparation as described in Section 9.3 of the ER, although PFS believes that such a plan is not required since no jurisdictional waters of the United States are impacted. Both construction activities for the Low corridor railroad and for the ISFSI involve five acres or more.

b. Construction Permit - Septic Tank Systems.

If the domestic wastewater discharges exceed 5,000 gallons per day, the requirements of UAC R317-5 must be met and a construction permit must be issued by the State. UAC R317-5-1.3.

If the discharges are less than 5,000 gpd, the requirements of UAC R317-4 et seq must be met, and approval of plans and specifications must be given by the local health department having jurisdiction. UAC R317-1-2.5(A). Both State and local approvals require construction inspections to insure compliance with State requirements.

c. Construction Permit - Wastewater detention pond

UAC R317-1-2.2 requires a construction permit for construction of the wastewater detention pond. Design requirements are contained in UAC R317-3.

PFS describes its proposed detention pond as being free-draining and sized to accommodate a 100-year storm event. Water dissipates by evaporation and percolation into the subsoils. This would not meet the State design requirements unless the storm water is uncontaminated. If the storm water is contaminated by substances of concern, design standards would be governed by criteria established by the ground water permit in order to protect ground water quality, and the current design would not meet standards.

d. Ground water Permit - UAC R317-6-6 and 317-6-6.2(C)

No person may construct a new facility which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including ponds and lagoons whether lined or not, without a ground water discharge permit from the State. UAC R317-6-6. On July 8, 1997, because of the potential for pollution of waters of the State, the Executive Secretary of the Utah Water Quality Board called for an application from PFS under the provisions of UAC R317-6-6.2(C) as an exception to any permit by rule which may be applicable. A ground water discharge permit will be issued only if the State determines that the Applicant has demonstrated that it will meet applicable class TDS limits, ground water quality standards protection levels and permit limits, monitoring requirements, and sampling and reporting requirements. In addition, the Applicant must use best available technology to minimize the discharge of any pollutant, and there must be no impairment of present and future beneficial uses of the ground water. UAC R317-6-6.4(A).

The application for a ground water discharge permit must include maps showing all water wells and a geologic, hydrologic, and agricultural description of the geographic area. The applicant must identify the type, source and characteristics of the water, information on control measures, and information to classify the ground water sufficient to determine the applicable protection levels. A proposed monitoring and compliance plan must be submitted identifying ground water flow direction and gradient, monitoring well construction, parameters to be monitored, and plans and specifications for construction, modification, and operation of the systems. A complete description of information required in the application is contained in UAC R317-6-6.3.

While the ground water potentially affected by the PFS facility is as yet unclassified, it is likely the highest class

of ground water, Class IA - Pristine Ground Water. Protection levels are listed in UAC R317-6-4. Ground water quality standards are listed in UAC R317-6-2.

PFS has represented that ground water in the area of the ISFSI site is approximately 125 feet below the surface. PFS has also indicated that the volume of water in the cask storage area produced by a typical rainstorm will probably settle into the eight-inch thick compacted gravel surface surrounding the storage pads and not drain to the detention pond. These facts raise additional permit and ground water protection issues.

Even if an exemption may apply which establishes a permit by rule, the Executive Secretary has the authority to call for a ground water permit for lagoons and leach fields if the Executive Secretary determines that the discharge is likely to cause increases above water quality standards or limits or would otherwise interfere with probable future beneficial use of the ground water. UAC R317-6-6.2(C).

e. Section 404 Permits and State Certification

A Section 404 permit is required from the U.S. Army Corps of Engineers for discharge of dredged or fill materials into waters of the United States which includes inland waters, lakes, rivers, streams including wetlands and tributaries to navigable waters. 33 U.S.C. § 1344. State certification of 404 permits is required under Section 401 of the Clean Water Act, 33 U.S.C. § 1341. The State must certify that the permit will not cause an exceedance of state water quality standards or otherwise be in violation of a state requirement. PFS represents, however, that it has performed a survey (with which the Army Corps of Engineers has concurred) that has determined that there are no jurisdictional waters of the United States present along the proposed Low corridor railroad and has further determined that there are no jurisdictional waters in the area of the PFS site.

f. UIC - Class V Permit

UAC R317-7 et seq. regulates underground injections. Under State jurisdiction, the septic tank/leach fields are Class V wells under UAC R317-7-3.5(I) because they are used to inject the waste or effluent from a multiple dwelling, business establishment, community, or regional business establishment septic tank. The systems are not exempted by UAC R317-7-3.5(i) because they have the capacity to serve more than 20 persons per day or there is the potential they will not be used solely for



the disposal of sanitary waste. While new Class V injection wells are authorized by rule and are not required to obtain a UIC permit under UAC R317-7-6, the Executive Secretary of the Utah Water Quality Board may require the owner or operator of a Class V well to apply for and obtain an individual permit for specific circumstances to include, where appropriate, protection of Underground Sources of Drinking Water ("USDW"). The ground water in the area of the Goshute Reservation is a USDW by definition. UAC R317-7-2.54.

EPA requirements for the PFS septic tank/leach fields which serve 20 or more people, 40 CFR 144.26(a), is simply registration. There are no construction standards or requirements. EPA has similar authority to the State to require a UIC permit. The State could request EPA call for a UIC permit if it asserts jurisdiction. At a minimum, since the two PFSF septic tank/leach fields will qualify as Class V injection wells, a UIC inventory form would need to be filed with EPA prior to placing these septic tank/leach field systems into service. PFS represents that it is in the process of filing a UIC inventory form with the EPA.

## 2. Drinking Water

### a. Construction Permit - Drinking Water System

Under authority of UCA § 19-4-104(1)(b), the Utah's Drinking Water Board requires the submission to its Executive Secretary of plans and specifications for approval prior to construction of any public water system. UAC § R309-102-2. For the purpose of protection of the public health and the environment, the public drinking water system must meet the construction and operation requirements and standards in UAC R309-201 et seq. There must be protective zones established for wells used in the system before the system can be approved. UAC R309-600 et seq. A public drinking water system is defined as any system, either publicly or privately owned, providing water for human consumption and other domestic uses, which has at least 15 service connections, or serves an average of at least 25 individuals daily at least 60 days out of the year. PFS has represented it will be employing a significant number of individuals, including Utah citizens, above the 25 person threshold. It will be providing water for human consumption and other domestic uses that must meet State requirements. EPA has no comparable construction standards and approval process.

b. Drinking Water Requirements

During operation of the system, the public water system must meet the monitoring and operation requirements of the State rules. Water quality maximum contaminant levels must be met with appropriate monitoring and reporting. UAC R309-103 and 104. Even if PFS is determined not to be subject to state requirements, it would qualify as a public drinking water system under the federal Safe Drinking Water Act, 42 U.S.C. §§ 300g et seq., and would be subject to the operation and monitoring requirements of implementing federal rules.

PFS takes the position that no drinking water permits are required because the potable water supply will come from the Skull Valley Band of Goshutes.

3. Water Rights

a. Well Permit

UCA § 73-3-25 requires that "no person may construct a well in this state without first obtaining a license." Well drillers are required to comply with the rules enacted by the State Engineer in UAC R655-4 et seq. Prior to commencing work on any well, all drillers must file a written notice of intention to start as provided in UAC R655-4-4 which must include a currently valid authorization to drill, approved by the State Engineer as described in UAC R655-4-4.1. Wells intended for public water systems must comply with the requirements of the Utah Department of Environmental Quality ("DEQ") rules. UAC R655-4-10.1.2.

PFS has projected the maximum withdrawal rate for the proposed PFSF well to be approximately 10,000 gal/day (11.2 ac-ft/yr) during the first nine months of construction. The rate will decrease thereafter, with the average withdrawal from the well over the 42-year licensing period estimated at 2,040 gal/day (2.3 ac-ft/yr). Evaluation of potential draw down from wells and impact on private or reservation ground water would be part of the evaluation to obtain the approvals required from the State Engineer.

b. Certificate of Appropriation of Water

UCA § 73-3-1 et seq. requires an application and certificate to appropriate waters of the State, including ground water on the Skull Valley Indian Reservation.

c. Change of Point of Diversion, Place or Nature of Use of Water.

Any change of place of diversion or use or change of purpose for which water was originally appropriated requires the grant of an application. UCA § 73-3-3.

4. Air Quality

a. State Approval Order.

Any person intending to construct, modify, or relocate a new installation which will or might reasonably be expected to become a source or an indirect source of air pollution or any person intending to install a control apparatus or other equipment intended to control emission of air contaminants is required to submit to the Executive Secretary of the Utah Air Quality Board a notice of intent and to receive an approval order prior to initiation of construction, installation, modification or relocation. UCA § 19-2-108 and UAC R307-401-1. Submitted with the notice of intent must be a description of the processes, expected emissions, control apparatus, location and elevation of emission points, sampling points, operating schedule, and construction schedule. UAC R307-401-2. A public review and comment period for State approval is required (UAC R307-401-4), and best available technology as defined in UAC R307-101-2 must be applied (UAC R307-401-6). An evaluation must be made as to whether National Primary and Secondary Ambient Air Quality Standards and Prevention of Significant Deterioration concentration requirements are met. UAC R307-401-6.

PFS has represented that it will use a concrete batch plant, diesel generator, and gas heating units (propane less than 10,000 lbs - 8000 gal tank). To the extent the State has jurisdiction, all of these activities would require an approval order from the State Division of Air Quality.

The State would treat all activities of PFS as a single source for purposes of issuing an approval order which would require inclusion of the gas heating units and fugitive dust control as part of the State permit.

A State or federal PSD permit may be required if emission thresholds are exceeded. UAC R307-405-6 and 40 CFR § 52.21.

b. Fugitive Dust.

To the extent applicable, the control of fugitive dust

requirements in UAC R307-205-3 and 4 must be complied with. Construction activities for the Low corridor, ITP and ISFSI site will require the control of fugitive dust. PFS represented that a draft Construction Emissions Control Plan (CECP) has been developed. The CECP does not need to be filed with or receive approval from Federal and State agencies.

c. Title V Permit

The concrete batch plant is a potential NSPS source and therefore a Part 70 Source. UAC R307-415-4(1)(b) and R307-415-5a(3)(c), 40 CFR § 71.3(a)(2) and § 71.4(b) (tribal area). To the extent the State has jurisdiction, PFS would be required to apply for and obtain a Title V Permit. 40 CFR § 70.3(a)(2)

The aggregate processing for the batch plant is not defined and may be covered by 40 CFR Part 60 Subpart 000 as an NSPS source which would also make it an area source subject to the requirements of Title V of the federal Clean Air Act. In that circumstance, the State Title V requirements or the Part 71, EPA requirements would be applicable.

The diesel generator, depending on the amount of nitrogen oxides emissions, may trigger a requirement for a Title V permit. UAC R307-415-4.

Title V of the Clean Air Act requires submission of information for a permit that documents the emission characteristics of the PFS emission points and inventories of Title III Hazardous Air Pollutants.

40 CFR § 60.110 may be applicable to diesel tanks and would need to be documented in a Title V permit application.

5. RCRA

PFS projects that it will not generate sufficient quantities of RCRA regulated Hazardous Waste (less than 100 kg/month) to be classified as a small quantity generator. However, in order to manage and track offsite disposal of its de minimus quantities of generated RCRA wastes, PFS represents that it may still file for a RCRA ID number. The State is delegated authority to administer the complete RCRA program, and administration of the rules would depend on State and EPA determination of jurisdiction. Lead, dye, penetrant materials, fluorine, ultrasonic inspection

solutions, hydraulic and miscellaneous lubricants are substances of concern.

6. Spill Prevention for Diesel Fuel. 40 CFR 112.3(b)

7. Stream Alteration Permit - Utah State Engineer

Any stream relocation or alternation or change of the beds and banks of any natural stream must receive written approval of the State Engineer. UCA § 73-3-29.

8. Permits and Approvals under UCA § 19-3-301 et seq.

A construction and operating license from the Utah Department of Environmental Quality with approval from the Legislature and the Governor is required for a high level nuclear waste transfer, storage, decay in storage, treatment, or disposal facility. UCA § 19-3-304. A transfer facility includes any facility which transfers waste from and between transportation modes and includes an intermodal transfer point.

Information to be contained in an application and findings required for approval by DEQ are listed in UCA § 19-3-305, 306, and 307. Information that must be submitted includes identification of ground water resources in the area, transportation routes and plans, environmental, social and economic impacts of the facility, detailed engineering plans and specifications for construction, operation and closure of the facility, detailed cost estimates and funding sources, a security plan, description of site suitability to include geologic, meteorologic, and ecologic features, identification of sources of waste and persons having legal responsibility, quantitative and qualitative environmental and health risk assessments, qualification and training of personnel, quality assurance/radiation safety/ and environmental monitoring programs, regional emergency plan, and other information determined by the DEQ necessary to insure protection of the public health and the environment.

DEQ may not issue a construction and operating license to any waste transfer, storage, decay in storage, treatment, or disposal facility unless the facility location meets the siting criteria in UCA § 19-3-307. Unless an exemption is granted by the DEQ based on a demonstration that a modification of the criteria would be protective of and have no adverse impacts on

the public health and the environment, the facility may not be located within or underlain by: parks or wilderness areas, in ecologically or scientifically significant natural areas, including areas for listed or proposed endangered species, 100 year flood plains, areas 200 feet from Holocene faults, underground mines or salt beds, dam failure flood areas, landslide or mud flow areas, prime farmlands, areas within five miles of existing residential areas, areas within five miles of surface waters including intermittent streams, areas within 1000 feet of archeological sites, aquifer recharge zones, and drinking water source protections areas. The PFS facility would be required to request an exemption from a number of the listed criteria, including but not limited to proximity to waters of the State, recharge zones, water protection areas, and residential areas.

Application fees and annual fees are listed in UCA § 19-3-308. An initial fee of \$5 million is required with subsequent payment to cover additional costs to the state associated with review of the application. To cover State oversight, a per ton annual fee is assessed. A benefits agreement is required under UCA § 19-3-310 which is sufficient to offset adverse environmental, public health, social, and economic impacts to the state as a whole, and also specifically to the local area in which the facility is to be located.

#### 9. Rail Construction

No tract of any railroad may be constructed across a public road, highway, or street at grade without the permission of the Utah Department of Transportation. UCA § 54-4-15. The requirements in UAC R930-5 must be met.

#### 10. Excavation in State Right-of-Way

UCA § 72-7-102 requires that no person may dig or excavate within a right-of-way of any state highway without approval from the State. Permits may require a surety bond or other security.

#### 11. State Lands.

Easements, rights of way, or use of state lands is regulated by the Division of Forestry, Fire and State Lands. UCA § 65A-1-1 et seq.

12. Underground Storage Tank

If tanks for storage of petroleum products are underground, they are subject to State (UCA § 19-6-401 et seq. and implementing regulations, UAC § 311-200 et seq.) or federal law if the State does not have jurisdiction.

13. Liquified Petroleum Gas

The provisions of UCA § 53-7-301 et seq. and implementing rules must be complied with.

14. Fire Prevention

The provisions of UCA § 53-7-201 et seq. and implementing rules must be complied with.

15. Division of Oil Gas and Mining - Permits and Approvals

Depending on the nature of the activities, permits may be required under UCA § 40-8-1 et seq and implementing rules.

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 Joint Motion to Dismiss Utah Contention T and Exhibit 1 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 August, 2001.

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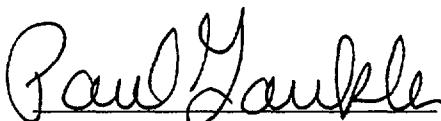
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