



RAS 3445
State of Utah

DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF THE EXECUTIVE DIRECTOR

Michael O. Leavitt
Governor

Dianne R. Nielson, Ph.D.
Executive Director

Brent C. Bradford
Deputy Director

168 North 1950 West
P.O. Box 144810
Salt Lake City, Utah 84114-4810
(801) 536-4400
(801) 536-0061 Fax
(801) 536-4414 T.D.D.
www.deq.state.ut.us Web

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September 27, 2001

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

The Commissioners
U.S. Nuclear Regulatory Commission
Mail Stop O-16 G15
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Re: SECY-98-126 and the Private Fuel Service Licensing Proceeding, Docket No. 72-22

Dear Commissioners:

The State has just learned that the NRC Staff has sent, or is about to send, to the Commissioners a proposed change to the Rulemaking Plan, SECY-98-126, Geological and Seismological Characteristics for Siting and Design of Dry Cask ISFSIs, 10 CFR Part 72.

The State has not seen the changes to the Rulemaking Plan but suspects that the Staff is asking the Commissioners to approve a change to the Rulemaking Plan that would sustain the position which the Staff has taken in its recommendation to approve an exemption from 10 CFR § 72.102(f)(1) requested by Private Fuel Storage ("PFS"). The State has severely criticized the technical bases underlying the Staff's rationale supporting the exemption.

The purpose of this letter is to put the Commissioners on notice that proposed changes to the Rulemaking Plan are issues that have been committed to adjudication in a properly noticed formal adjudicatory hearing before the Atomic Safety and Licensing Board. The State is concerned that the Staff is attempting to inappropriately, and possibly illegally, gain support for its position through rulemaking and undermine the on-going adjudicatory process.

The State requests the Commissioners, in their deliberations and considerations regarding change the Rulemaking Plan, SECY-98-126, take into account the site-specific issues being litigated before the Licensing Board and the State's vested right to a full and fair hearing on this issue.

Best regards,

Dianne R. Nielson, Ph.D.
Executive Director

cc: PFS Service List (attached)

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SECY-02

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PFS SERVICE List

Emile L. Julian, Assistant for
Rulemakings and Adjudications
Rulemaking & Adjudication Staff
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington D.C. 20555
e-mail: hearingdocket@nrc.gov
(original and two copies)

Richard A. Meserve, Chairman
U.S. Nuclear Regulatory Commission
Mail Stop O-16 G15
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
e-mail: chairman@nrc.gov

Edward McGaffigan, Jr., Commissioner
U.S. Nuclear Regulatory Commission
Mail Stop O-16 G15
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
e-mail: sfc@nrc.gov

Greta J. Dicus, Commissioner
U.S. Nuclear Regulatory Commission
Mail Stop O-16 G15
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
e-mail: cmrdicus@nrc.gov

Nils J. Diaz, Commissioner
U.S. Nuclear Regulatory Commission
Mail Stop O-16 G15
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
e-mail: cmrdiaz@nrc.gov

Jeffrey S. Merrifield, Commissioner
U.S. Nuclear Regulatory Commission
Mail Stop O-16 C1
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
e-mail: jmer@nrc.gov

G. Paul Bollwerk, III, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, DC 20555
E-Mail: gpb@nrc.gov

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, DC 20555
E-Mail: jrk2@nrc.gov
E-Mail: kjerry@erols.com

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, DC 20555
E-Mail: psl@nrc.gov

Sherwin E. Turk, Esq.
Catherine L. Marco, Esq.
Office of the General Counsel
Mail Stop - 0-15 B18
U.S. Nuclear Regulatory Commission
Washington, DC 20555
E-Mail: set@nrc.gov
E-Mail: clm@nrc.gov
E-Mail: pfscase@nrc.gov

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Jay E. Silberg, Esq.
Ernest L. Blake, Jr., Esq.
Paul A. Gaukler, Esq.
Shaw Pittman
2300 N Street, N. W.
Washington, DC 20037-8007
E-Mail: Jay_Silberg@shawpittman.com
E-Mail: ernest_blake@shawpittman.com
E-Mail: paul_gaukler@shawpittman.com

John Paul Kennedy, Sr., Esq.
David W. Tufts
Durham Jones & Pinegar
111 East Broadway, Suite 900
Salt Lake City, Utah 84111
E-Mail: dtufts@djplaw.com

Joro Walker, Esq.
Land and Water Fund of the Rockies
1473 South 1100 East, Suite F
Salt Lake City, Utah 84105
E-Mail: utah@lawfund.org

Larry EchoHawk
Paul C. EchoHawk
Mark A. EchoHawk
EchoHawk PLLC
P.O. Box 6119
Pocatello, Idaho 83205-6119
E-mail: paul@echohawk.com

Tim Vollmann
3301-R Coors Road N.W. # 302
Albuquerque, NM 87120
E-mail: tvollmann@hotmail.com

James M. Cutchin
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-Mail: jmc3@nrc.gov
(*electronic copy only*)

Office of the Commission Appellate
Adjudication
Mail Stop: 16-G-15 OWFN
U. S. Nuclear Regulatory Commission
Washington, DC 20555
(*United States mail only*)