

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

) Docket No. 72-22-ISFSI

)
) PRIVATE FUEL STORAGE, LLC
) (Independent Spent Fuel
) Storage Installation)

) ASLBP No. 97-732-02-ISFSI

) April 8, 2002

STATE OF UTAH'S MEMORANDUM IN OPPOSITION TO APPLICANT'S
MOTION TO STRIKE PORTIONS OF TESTIMONY OF DON A. OSTLER
REGARDING CONTENTION UTAH O

INTRODUCTION

Private Fuel Storage, LLC, filed Applicant's Motion to Strike Portions of Testimony of Don A. Ostler Regarding Contention Utah O ("Applicant's Motion") on April 1, 2002. Applicant's Motion is without merit and should be denied as explained below.

DISCUSSION

A. Motion to strike references to PFS's "start clean stay clean" philosophy.

PFS would like references to the "start clean stay clean" philosophy stricken, apparently asserting that it was clear that there was never an intention to "start clean and stay clean" with respect to potential non-radiological pollutants. Applicant's Motion at II.B.1. The FEIS¹ demonstrates that the NRC Staff expects that "facility design and operating procedures would minimize the possibility that contaminants would enter the hydrologic

¹ NUREG 1714, *Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, Utah* (December 2001) ("FEIS").

environment,” FEIS at 4-12, and that best management practices will be used to prevent or reduce pollution. FEIS at 2-29 to 2-30; *see also* PFS Environmental Report at 9.1-9, rev. 13. It is the effectiveness of these intentions that Mr. Ostler addressed in his testimony.

PFS and the Staff may not have used the magic words “start clean stay clean” to address nonradiological pollutants, but the FEIS indicates that the Staff believes Applicant’s philosophy for managing those pollutants will be similar to its philosophy for managing radiological pollutants. Mr. Ostler’s statements should not be stricken, but should instead be used as a starting point for exploring what philosophy PFS will apply in the absence of “start clean stay clean” for potential non-radiological pollutants.

B. Motion to strike references to radiological cleanup requirements.

The Applicant has moved to strike a reference to 10 CFR Part 20, Standards for Protection Against Radiation. Applicant’s Motion at II.B.2. The Applicant has apparently completely misunderstood the purpose of this reference. The FEIS, at 9-15, relies upon 10 CFR Part 20 for demonstrating that NRC will require PFS to take site cleanup actions in case of an accident. Mr. Ostler’s point is that this authority does not apply to non-radiologic contamination, and therefore provides no support or comfort that appropriate action will be taken in the event of an accident with non-radiologic contaminants. That point is well within the scope of Contention Utah O, and PFS has no basis for striking Mr. Ostler’s testimony.

C. Motion to strike references to monitoring for radiologics.

The Applicant has moved to strike several references to radiological monitoring and sampling. Applicant’s Motion at II.B.4. The Applicant and the FEIS have provided very

little information about how PFS will detect, during the course of its operations, whether there is contamination on site and the extent of such contamination. Information that can be gleaned from any discussion of how PFS intends to detect contamination, whether radiological or non-radiological, is relevant to PFS's ability – or inability – to detect contamination. Mr. Ostler has over 29 years' experience in evaluating surface and ground water monitoring and sampling; in his position as the State regulator responsible for surface and groundwater sampling and monitoring at industrial facilities, he is an expert on the efficacy of PFS's environmental controls, if any, that may be described in the PFS Safety Analysis Report, Environmental Report or the Staff's EIS. It is therefore appropriate for the State to look to the information provided by PFS and the Staff in the related context of radiological monitoring and sampling to see whether the Applicant demonstrates that it knows how to do that work. As described in Mr. Ostler's footnote 4, the Applicant has not demonstrated that knowledge.

Although not directly related to the non-radiologics that are pertinent to this hearing, Mr. Ostler's references to radiological monitoring and sampling should not be stricken because they are relevant to the Applicant's ability to perform these functions for potential non-radiological pollutants.

CONCLUSION

As described above, the Applicant is simply mistaken about the pertinence of many of Mr. Ostler's references to radiological pollutants. The remaining references are few and can easily be managed by cross-examination during the hearing. For the foregoing reasons,

the State of Utah respectfully requests that the Board deny the Applicant's Motion to strike portions of Don A. Ostler's testimony.

DATED this 8th day of April, 2002.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of STATE OF UTAH'S MEMORANDUM IN OPPOSITION TO APPLICANT'S MOTION TO STRIKE PORTIONS OF TESTIMONY OF DON A. OSTLER REGARDING CONTENTION UTAH O was served on the persons listed below by electronic mail (unless otherwise noted) with conforming copies by United States mail first class, this 8th day of April, 2002:

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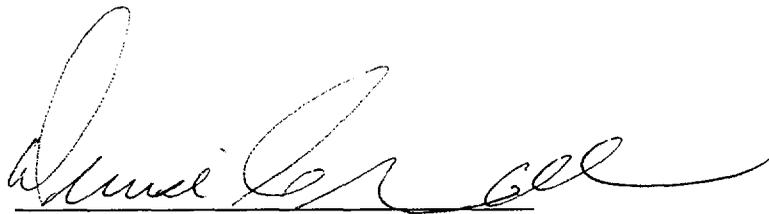
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