RAS 6280

March 31, 2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
PRIVATE FUEL STORAGE L.L.C.	)	Docket No. 72-22-ISFSI
	)	
(Private Fuel Storage Facility)	)	ASLBP No. 97-732-02-ISFSI

APPLICANT'S MOTION FOR RECONSIDERATION OF PARTIAL INITIAL DECISION REGARDING CREDIBLE ACCIDENTS

On March 10, 2003, the Atomic Safety and Licensing Board ("Licensing Board" or "Board") issued a Partial Initial Decision on Contention Utah K in which it found that the probability of an F-16 aircraft crash into the proposed Private Fuel Storage Facility ("PFSF") was higher than the Commission's criterion for credible accidents and thus the facility could not be licensed until the aircraft crash hazard is addressed.[1] Applicant Private Fuel Storage, L.L.C. ("Applicant" or "PFS") requests reconsideration of that decision on the grounds that, based on the record before the Board, the Board could and should have ruled that the facility be licensed subject to a condition that the size of the facility is limited such that the aircraft crash hazard would remain below the Commission's safety criterion. This motion is independent of PFS's appeal of the Partial Initial Decision[2] and PFS's election to pursue the "consequences" proceeding.[3]

I. BACKGROUND

The Board's Partial Initial Decision concerned the hazards posed to the PFSF by military aviation operations in the vicinity of Skull Valley, Utah. LBP-03-04, slip op. at

[1] Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-03-04, 57 NRC __, slip op. at 1-2 (2003).

[2] Applicant's Petition for Review of LBP-03-04 (Mar. 31, 2003).

[3] Joint Report on "Consequences" Proceedings (Mar. 31, 2003).

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1. The Board found that the likelihood that an F-16 transiting Skull Valley en route from Hill Air Force Base ("AFB") to the Utah Test and Training Range ("UTTR") would crash into the PFSF was sufficiently high that such an accident must be deemed credible and, based on this finding, held that the PFSF could not be licensed without addressing such an accident (e.g., showing that the consequences of the accident would be below applicable NRC limits). Id. at 2; see id. at 80-81. The Board found the probability of an F-16 crash to be 4.29 E-6 per year, exceeding the Commission's standard for credible accidents at ISFSIs of 1 E-6 per year. Id. at 60, 76-79. The Board also found that the probability that ordnance jettisoned from an F-16 would impact the PFSF and the probability that an F-16 flying on the Moser Recovery Route would crash into the facility would add somewhat, but not significantly, to the cumulative hazard. Id. at 75.

In its Decision, the Board suggested two ways that its concern over possible aircraft or ordnance impacts might be alleviated: 1) convince the Air Force to reduce the number and/or alter the route of F-16 flights over the facility site, or 2) show that an F-16 crash at the site would have no appreciable health and safety consequences. Id. at 2-3. There is, however, a third option, and one which the Board did not consider: a license condition reducing the number of casks to be stored at the facility so that the probability of an impact would be less than 1 E-6.

In assessing the crash impact probabilities for the PFSF that formed the basis for its decision, the Board assumed that the PFSF would be at its full design capacity of 4,000 spent fuel storage casks. See id. at 57-58; see also id. at 15 (formula for calculating crash impact probability). As PFS pointed out very clearly in the record, the size of the facility depends on the number of casks stored there and therefore, the crash impact probability is lower with fewer casks on site.[4] PFS requests reconsideration of the Partial Ini-

[4] Aircraft Crash Impact Hazard at the Private Fuel Storage Facility (as Amended Per Licensing Board Orders – PFS Hearing Exhibit N), August 10, 2000 (Rev. 4) ("Aircraft Report") at 25-27 (admitted into evidence Tr. at 3080). Because casks will arrive at the facility gradually over the first half of its lifetime and

tial Decision on the grounds that, based on the record already before the Board, if the number of spent fuel storage casks at the facility were sufficiently limited, the effective area of the facility would be reduced such that the cumulative aircraft crash and jettisoned ordnance impact probability and the cumulative probability for all impacts would remain below 1 E-6 per year. Thus, the Board should rule that the PFSF be licensed subject to a license condition that would appropriately limit the number of casks that could be stored at the facility pending the outcome of the appeal of the Partial Initial Decision and the "consequences" proceeding.

II. DISCUSSION

A. Standard for Reconsideration

In filing a motion for reconsideration, "the movant must identify errors or deficiencies in the presiding officer's determination indicating the questioned ruling overlooked or misapprehended (1) some legal principle or decision that should have controlling effect; or (2) some critical factual information." Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-00-31, 52 NRC 340, 342 (2000) (internal citations omitted) (quoting Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-17, 48 NRC 69, 73-74 (1998)).

B. Reconsideration of the Decision that the PFSF Cannot Be Licensed

PFS requests that the Board reconsider its decision that the PFSF cannot be licensed because the probability of an aircraft crash or jettisoned ordnance impact at the PFSF exceeds the Commission's 1 E-6 per year standard. PFS submits that the Board overlooked critical factual information in the record that shows (as set forth below) that if the number of storage casks at the facility were sufficiently limited, the effective area of

depart gradually over the second half, the effective area of the PFSF will only be at its maximum (i.e., with 4,000 casks on site) for a short period of time. Id.

the facility would be small enough that the cumulative hazard from aircraft crashes and ordnance impacts would remain below the Commission's standard. Thus, with a license condition appropriately limiting the number of casks at PFSF, the facility could and should be licensed.

1. The Hazard to a Smaller Facility Would Be Below the Commission Standard

PFS shows below that, based on the uncontested record before the Board, if the PFSF were limited to possessing no more than 336 spent fuel storage casks, the cumulative hazard to the facility from aircraft crashes and ordnance impacts would remain below 1 E-6 per year. Thus, a facility of that size can and should be licensed.

As previously decided by the Licensing Board, the cumulative hazard to the PFSF in Skull Valley would arise from the following aviation activities: (1) F-16 fighter aircraft transiting Skull Valley from Hill AFB to the UTTR South Area; (2) military aircraft conducting training exercises on the UTTR; (3) F-16s from Hill returning from the UTTR South Area to the base via the Moser Recovery Route; (4) military aircraft, comprised mainly of large transport aircraft, flying on military airway IR-420; (5) ordnance potentially jettisoned from a crashing F-16 in Skull Valley; (6) civilian aircraft flying on Federal Airways J-56 and V-257; and (7) possibly minimal general aviation activity. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-01-19, 53 NRC 416, 432, aff'd in part, CLI-01-22, 54 NRC 255 (2001).

The Board determined the hazard to the PFSF from civilian aviation activities (activities 6 and 7) in ruling on a PFS summary disposition motion in 2001. See LBP-01-19, 53 NRC at 451-52; see also Tr. at 3013-14 (Farrar). The Board determined the hazard to the PFSF from military activities (activities 1-5) in the Partial Initial Decision of which PFS requests reconsideration here. See LBP-03-04, slip op. at 60, 65-67, 74-75. The crash impact probabilities determined by the Board are set forth below:

Board Determined Aircraft Crash Impact Probabilities	
Aircraft	**Annual Probability**
F-16s Transiting Skull Valley[5]	4.29 E-6
Aircraft on the UTTR[6]	< 1 E-8
F-16s Using the Moser Recovery[7]	1.6 E-7
Aircraft on Airway IR-420[8]	3.0 E-9
Jettisoned Military Ordnance[9]	2.11 E-7
Aircraft on Airways J-56 and V-257[10]	3.1 E-8
General Aviation Aircraft[11]	< 1 E-8
Cumulative Probability	< 4.714 E-6

The Board calculated the crash impact probabilities, *P*, for F-16s transiting Skull Valley and using the Moser Recovery Route using the following "four-factor" formula from NUREG-0800:[12]

$$P = N \times C \times A / w,$$

where, for each hazard, *N* is the number of aircraft flying through a corridor over the PFSF, *C* is the crash rate in crashes per mile of flight, *A* is the effective area of the facility (in square miles) from the perspective of a crashing aircraft, and *w* is the effective width of the corridor (in miles). See LBP-03-04, slip op. at 15, 47.

In calculating the impact probability for jettisoned ordnance, the Board used a modified version of the NUREG-0800 four-factor formula:

$$P = N \times C \times e \times A / w,$$

[5] LBP-03-04, slip op. at 60.

[6] Id. at 67.

[7] Id. at 64.

[8] Id. at 66.

[9] Id. at 74. The potential hazard from ordnance impacting nearby and exploding was determined by the Board to be 1 E-10 per year, id at 75, and will not be considered further.

[10] LBP-01-19, 53 NRC at 450-51.

[11] Id. at 451-52.

[12] PFS focuses on the hazard posed by F-16 flights and jettisoned ordnance because the Board calculated those hazards in its decision and those hazards have the highest calculated probability of the aviation activities considered by the Board..

where e is the fraction of accidents that would leave the pilot in control of the aircraft and thus able to jettison ordnance, A is the effective area of the facility defined as the sum of the areas (length times width) of the canister transfer building ("CTB") and the cask storage area ("CSA"), and the other variables are defined as before. LBP-03-04, slip op. at 68, 211.

Thus, the hazard to the PFSF from military aircraft crashes and impacts of jettisoned ordnance is directly proportional to the effective area of the facility. The effective area of the facility consists of the effective area of the CSA plus the effective area of the CTB, as calculated for each hazard (e.g., F-16s, ordnance). Aircraft Report, supra, note 4, at 13-14. The effective area of the CTB is fixed. However, if a license condition were to limit the number of casks stored in the CSA, the effective area of the CSA would be reduced. Therefore, if the size of the CSA is reduced enough—i.e., the number of casks is sufficiently limited—the hazard to the PFSF would be reduced below 1 E-6, even if all other factors used to calculate the hazard remain the same. Hence, with a condition limiting the number of casks, the facility can be licensed.

As shown below, the effective area of the PFSF will be small enough that the hazard from aircraft crashes and jettisoned ordnance will be below 1 E-6 per year if the maximum number of spent fuel storage casks at the facility is limited to 336. As set forth in the Aircraft Report at 14b-15, the formula used to calculate the effective area of the CSA and the CTB from the perspective of a crashing aircraft is:

$$A = (W_s + R)\, H\, Cot\varnothing + 2\, L\, W\, W_s/R + L\, W + S(W_s + R),$$

where W_s is the wingspan of the aircraft, R is the length of the diagonal of the CSA or CTB, H is the height of the CSA or CTB, $Cot\varnothing$ is the cotangent of the impact angle of the aircraft, L is the length of the CSA or CTB, W is the width of the CSA or CTB, and S is the "skid distance" for the crashing aircraft. Id. The effective area from the perspec-

tive of jettisoned ordnance is simply the product of the length and width of the CSA or CTB, i.e., L x W. LBP-03-04, slip op. at 211.

At the PFSF, the spent fuel casks will be stored on concrete pads, with eight casks per pad. See Aircraft Report, Tab R. Each pad will be 30 ft. wide and 67 ft. long. Private Fuel Storage Facility Safety Analysis Report, Fig. 1.2-1 (PFS Exh. 84, admitted Tr. at 5532).[13] The pads will be arranged in a grid in the CSA, with 35 ft. between each column of pads and 5 ft. between each row of pads. Id. Thus, a facility with 336 casks would need 42 pads (336/8). Forty-two pads would be arranged as seven columns and six rows.[14] Thus, the width of such a facility would be 420 ft. and the length would be 427 ft.[15] Hence the length of the diagonal, R, would be 599 ft.[16] The value of all other variables in the effective area equation are in the evidentiary record as used in the calculation of the area for the facility at full capacity. See Aircraft Report at 15.[17]

Using the effective area equation set forth in the Aircraft Report ($A = (W_s + R)\, H\, Cot\varnothing + 2\, L\, W\, W_s/R + L\, W + S(W_s + R)$), the calculation of the effective area for the CSA with 336 casks for the F-16 hazard is thus (dimensions in feet): $A = (32.7 + 599)\ (19.6)\ (8.4) + 2\ (427)\ (420)\ (32.7)/(599) + (427)\ (420) + 246\ (32.7 + 599) = 458{,}193$ sq. ft. = 0.01644 sq. mi. All of the inputs to this equation are set forth in the evidentiary record. See notes 15 and 17, supra. The calculation of the effective area for the CSA for the ordnance hazard (where $A = L$ x W) is: $A = (427)(420) = 179{,}340$ sq. ft. = 0.00643 sq. mi.

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[13] The length of the pads and the spacing between rows and columns of pads, shown in the current version of Fig. 1.2-1 of the SAR and used here, are slightly larger than those depicted in Tab R of the Aircraft Report (which contains a copy of the former Fig. 1.2-1). However, the external dimensions of the CSA for the full-sized facility, which are shown in Tab R and which were used in calculating the aircraft crash and ordnance impact probabilities in the Report, are the same as those in the current Fig. 1.2-1 of the SAR.

[14] The configuration of the pads that produces the smallest effective area is approximately a square.

[15] The width is the distance from the outside edge of the column of pads on the left side of the CSA to the outside edge of the column of pads on the right side, thus $W = 6(30 + 35) + 30 = 420$ ft. The length is the distance from the outside edge of the row of pads on the top side of the CSA to the outside edge of the row of pads on the bottom, thus $L = 5(67 + 5) + 67 = 427$ ft. See SAR Fig. 1.2-1 for layout.

[16] $R = (L^2 + W^2)^{1/2}$ as shown in Aircraft Report at 14a.

[17] For the F-16 and the CSA, $W_s = 32.7$ ft, $H = 19.6$ ft., $Cot\varnothing = 8.4$, $S = 246$ ft. Id.

The table below shows the effective areas for the CSA for the small facility for F-16s transiting Skull Valley, for F-16s using the Moser Recovery, and for jettisoned ordnance. It shows the corresponding effective areas for the CTB (which are the same for both the full-sized and small facilities). And it shows the corresponding total effective areas for the small facility for each of those hazards:

Small Facility Effective Areas (sq. mi.)			
Hazard	**CSA Area**	**CTB Area**	**Facility Area**
Skull Valley and Moser Recovery F-16s	0.01644	0.01156[18]	0.02800
Jettisoned Ordnance	0.00643	0.00093[19]	0.00737

Having calculated the effective area of the PFSF with 336 casks for the hazards from F-16s transiting Skull Valley, F-16s using the Moser Recovery, and jettisoned ordnance, the impact probabilities for them may be recalculated using the NUREG-0800 four factor formula and the same values for the other variables in the formula that the Board used in its decision. Because the impact probability is directly proportional to the effective area of the facility for each recalculated hazard, see LBP-03-04, slip op. at 15, 68, the impact probabilities for the small facility for each hazard, *P*, are simply equal to the probabilities the Board calculated for the full-scale facility multiplied by the ratio of the small facility effective area for the hazard in question to the full-sized effective area for the same hazard. The effective area for the full-sized facility from the perspective of a crashing F-16 is 0.1337 sq. mi. Id. at 58. The effective area for the full-sized facility from the perspective of jettisoned ordnance is 0.08763 sq. mi. Id. at 69. Thus, for F-16s transiting Skull Valley, the crash impact probability for the small facility is: $P = 4.29$ E-6 x 0.0280/0.1337 = 8.98 E-7; for F-16s using the Moser Recovery, the crash impact probability for the small facility is: $P = 1.6$ E-7 x 0.0280/0.1337 = 3.35 E-8; and for jetti-

[18] Aircraft Report at 16.

[19] See id. at 82. (A=260 ft.x100 ft./(5280 ft.)^2)

soned ordnance, the impact probability for the small facility is: $P = 2.11$ E-7 x 0.00737/0.08763 = 1.77 E-8.

The above recalculated impact probabilities for the small facility and the impact probabilities for the other hazards to the PFSF (which are not recalculated[20]) are shown below along with the probabilities determined by the Board for the full-sized facility:

Aircraft Crash Impact Probabilities for Full-Sized and Small Facilities		
Aircraft	**Full-Sized Facility**	**Small Facility**
F-16s Transiting Skull Valley	4.29 E-6	8.98 E-7
Aircraft on the UTTR	< 1 E-8	< 1 E-8
F-16s Using the Moser Recovery	1.6 E-7	3.35 E-8
Aircraft on Airway IR-420	3.0 E-9	3.0 E-9
Jettisoned Military Ordnance	2.11 E-7	1.77 E-8
Aircraft on Airways J-56 and V-257	3.1 E-8	3.1 E-8
General Aviation Aircraft	< 1 E-8	< 1 E-8
Cumulative Probability	< 4.714 E-6	< 1.00 E-6

The cumulative probability for the small facility with 336 casks is less than 1.00 E-6 per year. Thus a facility of that size can be licensed in accordance with the Board's Partial Initial Decision.

PFS proposes the following license condition to limit the PFSF to a maximum of 336 storage casks and to keep the CSA within the dimensions used in the calculations above:

> **Proposed License Condition:** The number of spent fuel storage casks stored at the PFSF shall be limited to a maximum of 336. The casks shall be arrayed at the facility within a cask storage area with a rectangular shape, with one side no more than 420 ft. long and the side adjacent to it no more than 427 ft. long.

[20] In fact, the impact probabilities from the other hazards (which sum to approximately 5.4 E-8 as assessed by the Board) would be similarly reduced (i.e., roughly by a factor of 4.7, which would further reduce the cumulative probability by roughly 4 E-8) for a smaller facility. However, as noted, supra note 12, PFS has only recalculated the probabilities for F-16s transiting Skull Valley, F-16s using the Moser Recovery, and jettisoned ordnance.

2. Other Licensing Requirements Have Been Satisfied

Pending the resolution of the remaining outstanding contentions in PFS's favor, a favorable decision on this credible accident contention, based on the reduction of the size of the facility as described above, is sufficient to enable the PFSF to be licensed. The reduction of the number of casks allowed to be stored at the facility does not invalidate any of the Board's earlier decisions with respect to safety or environmental issues.

First, reducing the number of casks stored at the facility would have no adverse effect on the safety of the PFSF. Reducing the number of casks would have no other effect on the facility whatsoever. If the smaller facility were built, PFS would merely construct fewer pads and store fewer casks than it would if it were to build the full-sized facility. Indeed, it has always been envisioned that the number of casks at the facility would start at zero and increase slowly, at the rate of approximately 200 per year, until the facility reached its full capacity of 4,000 casks, approximately in its 20th year of operation. See Aircraft Report at 25-26. Thus, a license condition limiting the number of casks at the PFSF would simply require PFS to stop bringing casks to the facility earlier than it would with a full-sized facility.

Second, reducing the number of casks stored at the PFSF would not adversely affect PFS's financial assurance. PFS's financial assurance is provided by license conditions that require PFS to obtain committed funding adequate to construct a facility of a capacity specified to the NRC[21] before beginning construction and to obtain long-term service agreements covering the term of the license with prices sufficient to cover the operating, maintenance, and decommissioning costs of the PFSF prior to beginning operation. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-00-

[21] The actual capacity is proprietary information, but in any event PFS's decision to store fewer casks on site would not affect the level of the funding commitment PFS would have to obtain before beginning construction.

13, 52 NRC 23, 27, 32 (2000); see also id. at 36.[22] PFS will meet those conditions regardless of the number of casks it stores on site.

Finally, the environmental impacts of the PFSF with a smaller number of casks would remain bounded by the NRC Staff's environmental impact statement ("EIS") and any Board findings made in this proceeding.[23] Building fewer pads and storing fewer casks at the site would simply reduce the environmental impacts below those documented in the EIS and discussed in the record. There is no need for a supplement to an EIS when the changes in the proposed action which would be evaluated in such a supplement mitigate the environmental impacts. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), CLI-78-1, 7 NRC 1, 28-29 (1978); see Hodges v. Abraham, 300 F.3d 432, 447 (4th Cir. 2002) (where impacts of proposed action are bounded by prior NEPA documentation, agency has taken requisite "hard look" at environmental impacts), cert. denied, 123 S.Ct. 871 (2003).

Furthermore, licensing a smaller facility on the basis of the Board's Partial Initial Decision on aircraft crash hazards prior to any potential proceedings on the consequences of an aircraft crash that could enable the NRC to license a full-sized facility, see LBP-03-04, slip op. at 88, or any change to the Partial Initial Decision resulting from a petition for review to the Commission, would be analogous to issuing a low-power license to a nuclear reactor on the basis of an EIS for the reactor that assumes operation at full power. Like a low-power license, a small PFS facility would simply be an interim step en route to a full-capacity facility. NRC case law holds that an adequate final EIS for a nuclear facility "necessarily includes the lesser impacts attendant to low power testing [of the fa-

[22] The adequacy of PFS's Model Service Agreement is one of the issues remaining to be decided by the Board. Changing the number of casks to be stored at the PFSF, however, would not change the terms of the agreement.

[23] The EIS is deemed modified by any hearing findings on environmental issues that differ from those in the document. Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit 3), CLI-01-3, 53 NRC 22, 53 (2001).

cility] and removes the need for a separate [EIS] focusing on questions such as the costs and benefits of low power testing." Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 795 (1983), review denied, CLI-83-32, 18 NRC 1309 (1983). This principle holds true even if it is uncertain whether a license applicant will ever obtain a full power license for the reactor. Long Island Lighting Co. (Shoreham Nuclear Power Station), CLI-85-12, 21 NRC 1587, 1589 (1985).

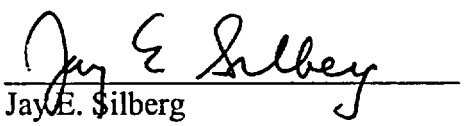
With respect to the PFSF, as noted above, it has always been envisioned that the number of casks at the facility would start at zero and increase at the rate of approximately 200 per year. See Aircraft Report at 25-26. Thus, the PFSF EIS is explicitly based on the delivery and presence of only a small number of casks early in the facility's lifetime. If PFS were to obtain a license with a condition limiting it to 336 casks on site, it would simply stop receiving casks once it had received 336 of them. Therefore, even more than a reactor EIS addresses the effects attendant to low power testing, the PFSF EIS addresses the effects attendant to the operation of the facility early in its lifetime with a small number of casks on site. Furthermore, as with a reactor undergoing low power testing, any uncertainty regarding PFS ultimately obtaining a license for the full scale operation of the PFSF should not render the PFSF EIS invalid. Therefore, licensing a small facility should require no further environmental analysis or documentation.

III. CONCLUSION

PFS requests reconsideration of the Board's decision on the grounds that, based on the record before the Board, the PFSF should be licensed with a condition limiting the number of spent fuel casks stored on site. Such a condition would enable the PFSF to satisfy the Commission's credible accident standard for ISFSIs in accordance with the Board's Partial Initial Decision and would not require any further safety or environmental

review notwithstanding the eventual outcome of the "consequences" proceeding or the petition for review of the Partial Initial Decision.

Respectfully submitted,



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March 31, 2003

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
	)	
(Private Fuel Storage Facility)	)	ASLBP No. 97-732-02-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the Applicant's Motion for Reconsideration of Partial Initial Decision Regarding Credible Accidents 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 31st day of March, 2003.

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