

August 18, 2003

DOCKETED
USNRC

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

August 25, 2003 (8:47AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)
)
PRIVATE FUEL STORAGE L.L.C.)
)
(Private Fuel Storage Facility))

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

**JOINT REQUEST TO MODIFY NONDISCLOSURE AFFIDAVIT RELATING TO
MODIFIED PROTECTIVE ORDER FOR SECURITY PLAN CONTENTIONS AND
AIRCRAFT CRASH CONSEQUENCES SAFEGUARDS PROTECTED INFORMATION**

On June 26, 2003, the Atomic Safety and Licensing Board ("Board") issued a Memorandum and Order (Modified Protective Order for Security Plan Contentions and Aircraft Crash Consequences Safeguards Protected Information), to which was attached a Nondisclosure Affidavit. Pursuant to a joint request from the State, the Staff and the Applicant the Board on July 10, 2003, issued an Order (Regarding Content of Non-Disclosure Affidavit) deleting paragraph 5(e) and renumbering paragraph 5(f) as 5(e). The Applicant, the Staff and the State now request the Board to amend paragraphs 5(a) and 5(c) of the Nondisclosure Affidavit and to make the changes effective retroactive to June 26, 2003.

The requested change to paragraph 5(a) the Nondisclosure Affidavit would allow storage of safeguards information in appropriate security storage containers at locations other than within a controlled access building. The first sentence of paragraph 5(a) currently provides that "[w]hen not under [the affiant's] direct control or the direct control of another individual authorized to have access" to Safeguards Information, all documents containing protected Safeguards Information are to be kept "in a security storage container as defined in 10 C.F.R. 73.2 in a controlled access building that is either attended around the clock or locked at night." Non-Disclosure Affidavit at 2-3. However, as set forth in 10 C.F.R. § 73.2, different

requirements apply as to the type of "Security Storage Container" that may be used, depending upon the type of building involved – *i.e.*, only one of the four categories of storage containers specified in the regulation must be placed in "a building located within a protected or controlled access area." The parties request that paragraph 5(a) be modified to allow the storage of documents containing Safeguards Information in security storage containers not located within a controlled access building, for which different regulatory requirements exist (see 10 C.F.R. §§ 73.21(d)(2); 73.2). Accordingly, the parties request that the first sentence of paragraph 5(a) be modified to read as follows:

When not under my direct control or the direct control of another individual authorized to have access thereto, I will keep and safeguard all documents containing protected information (including, without limitation, any notes that I may take) in a security storage container as defined in 10 C.F.R. 73.2 in a controlled access building that is either attended around the clock or locked at night, or as otherwise specified in 10 C.F.R. § 73.2. ("Security Storage Containers").

(Emphasis added.) A copy of the Nondisclosure Affidavit with the text for the first sentence of paragraph 5(a) modified as proposed above is attached hereto.

The requested change to paragraph 5(c) the Nondisclosure Affidavit would allow electronic transmission of Safeguards Information through the use of an encryption system that the National Institute of Standards and Technology has validated as conforming to either Federal Information Processing Standard 140-1 or Standard 140-2. Currently, paragraph 5(c) provides that Safeguards Information shall not be discussed by telephone or communicated by email or facsimile transmission "unless the protected information is transmitted through the use of an encryption system that the National Institute of Standards and Technology ['NIST'] has validated as conforming to Federal Information Processing Standard 140-1 and 140-2, or as otherwise acceptable to the NRC." Non-Disclosure Affidavit at 3 (emphasis added). Under applicable NRC requirements, however, Safeguards Information may be transmitted electronically as long as the encryption system has been validated by NIST as conforming to

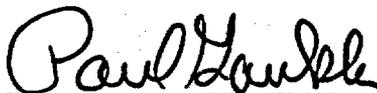
either of these two standards. Accordingly, the parties request that paragraph 5(c) of the Nondisclosure Affidavit be modified to read as follows:

Protected information shall not be discussed by telephone or communicated by email or facsimile transmission unless the protected information is transmitted through the use of an encryption system that the National Institute of Standards and Technology has validated as conforming either to Federal Information Processing Standard 140-1 or to Federal Information Processing Standard 140-2, or as otherwise acceptable to the NRC.

(Emphasis added.) The attached copy of the Nondisclosure Affidavit incorporates the above proposed change to paragraph 5(c) of the Affidavit.

WHEREFORE, the parties request the Board to reissue the Nondisclosure Affidavit modifying paragraphs 5(a) and 5(c) of the Affidavit as set forth above and to issue an order stating that the Nondisclosure Affidavit as revised shall be made retroactive to June 26, 2003 and be made operative with respect to any already executed Nondisclosure Affidavits.

Respectfully submitted,



Jay E. Silberg
Paul A. Gaukler
D. Sean Barnett
SHAW PITTMAN, LLP
2300 N Street, N.W.
Washington, DC 20037
(202) 663-8000

Dated: August 18, 2003

Counsel for Private Fuel Storage L.L.C.

August 18, 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
)	
(Private Fuel Storage Facility))	ASLBP No. 97-732-02-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the Joint Request To Modify Nondisclosure Affidavit Relating To Modified Protective Order For Security Plan Contentions And Aircraft Crash Consequences Safeguards Protected Information 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 18th day of August, 2003.

Michael C. Farrar, Esq.,
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: MCF@nrc.gov

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: JRK2@nrc.gov; kjerry@verizon.net

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: PSL@nrc.gov

*Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

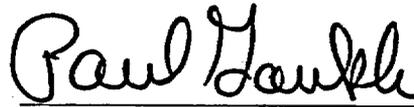
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemakings and Adjudications
Staff
e-mail: hearingdocket@nrc.gov
(Original and two copies)

* Adjudicatory File
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Catherine L. Marco, Esq.
Sherwin E. Turk, Esq.
Office of the General Counsel
Mail Stop O-15 B18
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
e-mail: pfscase@nrc.gov

Denise Chancellor, Esq.
Assistant Attorney General
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, Utah 84114-0873
e-mail: dchancellor@utah.gov

* By U.S. mail only



Paul A. Gaukler

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)

PRIVATE FUEL STORAGE L.L.C.)

(Private Fuel Storage Facility))

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

NONDISCLOSURE AFFIDAVIT

I, _____, being duly sworn, state:

1. As used in this nondisclosure affidavit,

(a) "Protected information" is (i) any form of the security plan, including the safeguards contingency plan, and any amendments thereto (Security Plan), or portions thereof, for the Private Fuel Storage Facility proposed by Private Fuel Storage L.L.C. (Applicant), or (ii) any information obtained by virtue of these proceedings which is not otherwise a matter of public record and which deals with or describes details of the Security Plan, or (iii) any portion of the Applicant's aircraft crash consequences reports, including information obtained by virtue of these proceedings which deals with or describes details of the Applicant's aircraft crash consequences reports, unless otherwise determined by the NRC not to contain Safeguards Information.

(b) An "authorized person" is (i) an employee, consultant or contractor of the U.S. Nuclear Regulatory Commission (NRC or Commission) entitled to access to protected information; (ii) a person who has executed a copy of this affidavit, which has been transmitted to the Atomic Safety and Licensing Board (Licensing Board); or (iii) a

person employed by or on behalf of the Applicant and authorized by it in accordance with 10 C.F.R. § 73.21(c)(1) to have access to protected information.

(c) A "document" means any audio or video tape recording or written matter of any kind, whether produced, reproduced, or stored on paper, cards, tapes, ribbons, disks, belts, charts, film, computer files, computer disks or diskettes, computer storage devices or any other medium, and includes, without limitation, books, reports, studies, statements, speeches, notebooks, calendars, working papers, manuals, memoranda, notes, instructions, directions, records, correspondence, diaries, diagrams, drawings, lists, telephone logs, minutes, and photographs, and also includes, without limitation, originals, copies (with or without notes or changes thereon), and drafts.

2. I have read the June 26, 2003 Licensing Board memorandum and order issued in this proceeding and will comply in all respects with its terms and conditions regarding the protected information produced in connection therewith. I will safeguard protected information in accordance with the terms of this affidavit.

3. I will not disclose protected information to anyone except an authorized person, unless that information has previously been disclosed in the public record of this proceeding. I will safeguard documents containing protected information in written or recorded form (including any portions of transcripts of in camera hearings, filed testimony or any other documents that contain such information), so that the protected information contained therein remains at all times under the control of an authorized person and is not disclosed to anyone else.

4. I will not reproduce or copy any protected information by any means except to the minimum extent necessary consistent with need in accordance with 10 C.F.R. § 73.21(f)(1). I will only destroy protected information by methods that assure complete destruction of the

protected information in accordance with 10 C.F.R. § 73.21(f)(2). I understand that I may take notes concerning such protected information, subject, however, to the terms of this affidavit and the Licensing Board's June 26, 2003 memorandum and order. So long as I possess protected information, I will continue to take these precautions until further order of the Licensing Board or the Commission.

5. I will safeguard and hold in confidence any data, notes, or copies of protected information and all other papers that contain any protected information in accordance with 10 C.F.R. Part 73.

(a) When not under my direct control or the direct control of another individual authorized to have access thereto, I will keep and safeguard all documents containing protected information (including, without limitation, any notes that I may take) in a security storage container as defined in 10 C.F.R. 73.2 in a controlled access building that is either attended around the clock or locked at night, or as otherwise specified in 10 C.F.R. § 73.2. ("Security Storage Containers"). Access to the security storage container will be positively controlled by use of keys or other comparable means. Keys and/or knowledge of lock combinations protecting safeguards information shall be limited to authorized persons.

(b) Any secretarial or administrative work performed at my request or under my supervision will be performed only by personnel who have executed a nondisclosure affidavit pursuant to the Licensing Board's June 26, 2003 memorandum and order.

(c) Protected information shall not be discussed by telephone or communicated by email or facsimile transmission unless the protected information is transmitted through the use of an encryption system that the National Institute of

Standards and Technology has validated as conforming either to Federal Information Processing Standard 140-1 or to Federal Information Processing Standard 140-2, or as otherwise acceptable to the NRC.

(d) If protected information is processed on or with automated data processing, computerized word processing equipment, or a personal or laptop computer, access to such equipment shall require the use of an entry code for access to stored protected information. If use of an entry code is not feasible, protected information may be processed on, but shall not be stored in, such equipment. Additionally, any such word processing equipment, data processing equipment, or computer that is used to process or store protected information shall be operated as stand-alone or free-standing equipment, not connected to any other such equipment by means of a Local Area Network (LAN) or Wide Area Network (WAN) or other data-sharing system in accordance with 10 C.F.R. § 73.21(h). Further, if any protected information is backed up or stored on a computer hard drive or other device, that drive or device shall be capable of being removed and shall be stored in the security storage container referred to in paragraph 5(b) above, when not in use.

(e) Each document that has been determined by the NRC to contain Safeguards Information, as defined in 10 C.F.R. § 73.2, shall be marked "Safeguards Information" in a conspicuous manner to indicate the presence of protected information, as set forth in 10 C.F.R. § 73.21(e). Documents, or portions thereof, originally determined by NRC to contain Safeguards Information but later determined by the NRC not to contain Safeguards Information shall no longer be subject to the Licensing Board's June 26, 2003 memorandum and order or this non-disclosure affidavit.

6. If I prepare documents containing protected information to participate in further proceedings in this case, I will assure that any secretary or other individual who must receive protected information to help me prepare those documents has executed an affidavit like this one and has agreed to abide by its terms. Copies of any such affidavit will be filed with the Licensing Board promptly upon execution.

7. I shall use protected information only for the purpose of preparation for any proceedings in this case dealing with Security Plan issues or aircraft crash consequences, and for no other purpose.

8. I shall keep a record of all documents containing protected information in my possession, including any copies of those documents or portions thereof made by me or on my behalf. At the conclusion of this proceeding, I shall account to the Licensing Board or the Commission, or to a Commission employee designated by the Board or the Commission, for all the documents or other materials containing protected information in my possession and deliver them as provided herein. When I have finished using the protected information they contain, but in no event later than the conclusion of this proceeding (including any related Commission or judicial appears), I shall deliver those documents and materials for disposal or safekeeping, as may be determined to be appropriate by the Licensing Board or the Commission, to the Licensing Board or the Commission, to a Commission employee designated by the Board or the Commission, or to a person authorized to receive protected information on behalf of the Applicant.

9. I make this agreement with the following understandings:

(a) I do not waive any objections that any other person may have to executing an affidavit such as this one;

(b) I do not waive any objections that I may have or raise at a subsequent time in this proceeding, concerning an expert's qualifications to testify concerning Security Plan issues or aircraft crash consequences issues; and

(c) I will not publicly discuss or disclose any protected information that I receive by virtue of this proceeding, and will not corroborate the accuracy or inaccuracy of information obtained outside this proceeding by using protected information, or my knowledge thereof, gained through the hearing process.

10. I acknowledge that any violation of the terms of this affidavit or the Licensing Board's June 26, 2003 memorandum and order, which incorporates the terms of this affidavit, may result in the imposition of sanctions as the Licensing Board or the Commission may deem to be appropriate, including, but not limited to, referral of the violation to appropriate disciplinary authorities. I further acknowledge that any unauthorized disclosure of protected information or breach of the protective order issued in this proceeding may be grounds for the imposition of civil and/or criminal penalties, as set forth in 10 C.F.R. § 2.744(e) and sections 223 and 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2273, 2282.

WHEREFORE,

I do solemnly agree to safeguard such protected information as may be disclosed to me in this proceeding, in accordance with the terms of this affidavit.

(Name)

Subscribed to and sworn before me
this ____ day of _____, 2003

Notary Public
My commission expires: _____