RAS 7519

STATE OF UTAH

OFFICE OF THE ATTORNEY GENERAL

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OFFICE OF SECRETARY
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March 26, ~~2002~~ 2004 ATB

Emile L. Julian, Assistant for
Rulemakings and Adjudications
Rulemakings and Adjudications Staff
Office of the Secretary
U.S. Nuclear Regulatory Commission
11555 Rockville Pike, One White Flint North
Mail Stop: O16G15
Washington, D.C. 20555

Re: In the Matter of Private Fuel Storage, LLC, Docket No. 72-22

Dear Mr. Julian:

In accordance with the Certificate of Service attached to today's *Joint Motion to Dismiss Contention Utah TT - HI-STORM 100 (Rev 0) Storage Casks with Shims*, enclosed is an original signed Settlement Agreement for filing. The original and two copies of the Motion, and two copies of the Agreement, are being filed with you, via first class U.S. mail, by counsel for the Applicant.

Please contact me at (801) 366-0286 if you have any questions.

Sincerely,

Denise Chancellor
Assistant Attorney General

Enclosures: as stated
cc: PFS Service List

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SECY-02

SETTLEMENT AGREEMENT BETWEEN
STATE OF UTAH, DEPARTMENT OF ENVIRONMENTAL QUALITY
AND
PRIVATE FUEL STORAGE, L.L.C.

AGREEMENT NO. _____

THIS AGREEMENT is made and entered into between the State of Utah, Department of Environmental Quality ("DEQ"), and Private Fuel Storage, L.L.C. ("PFS").

The State of Utah has intervened in a PFS licensing proceeding before the United States Nuclear Regulatory Commission ("NRC"), In the Matter of Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation), Docket No. 72-22-ISFSI, ASLBP No. 97-732-02-ISFSI. Among the contentions raised by the State of Utah in that proceeding is Contention Utah TT challenging, *inter alia*, the feasibility of installing and removing the shimmed lid of the HI-STORM 100 storage cask (Rev. 0).

In resolution of Contention Utah TT, and for other good and valuable consideration, DEQ and PFS hereto agree as follows with respect to the HI-STORM 100 storage casks (Rev. 0), whose design includes lid shims:

1. PFS shall conduct two dry run training exercises in accordance with Revised Technical Specification 5.5.5, *Pre-operational Testing and Training Exercises of HI-STORM 100 Casks (Rev. 0) With Lid Shims*, a copy of which is attached hereto.

2. PFS shall simulate the removal of a stuck lid from a HI-STORM 100 cask, whose design includes lid shims, in accordance with License Condition A-1, a copy of which is attached hereto.

3. PFS shall conduct an operational test on each new or re-used HI-STORM 100 storage cask to assure the fit of the HI-STORM 100 (Rev. 0) cask lids, whose design includes lid shims, in accordance with License Condition A-2, a copy of which is attached hereto.

   a. PFS shall also conduct an operational test to assure the fit of the HI-STORM 100 cask lids, whose design includes lid shims, on any HI-STORM 100 storage cask used in the pre-operational dry runs.

4. PFS shall invite the State of Utah to send a technical representative to witness (under safety conditions as prescribed by the licensee) the operational dry run training exercises described in Revised Technical Specification 5.5.5 and the operational test simulating removal of a stuck lid described in License Condition A-1.

   a. Utah's technical representative shall have the opportunity to examine and to provide comments to PFS on the documented results of each of the dry run training exercises and the operational test of a simulated stuck lid.

   b. PFS shall give the State of Utah 15 days advance notice of the exercises and test relating to Revised Technical Specification 5.5.5 and License Condition A-1.

5. PFS shall also provide a technical representative from the State of Utah the opportunity to examine the documented results of the assurance of fit of the spent fuel storage cask lids with shims (License Condition A-2), including measurements showing that the dimensions of the lid with shims and the overpack (storage cask) as-built meet the applicable clearances between the shims and the overpack inner shell.

a. Examination of the documented results shall take place annually at the facility site at a time mutually agreeable to the State and PFS.

b. The first such examination by the State's representative shall be conducted either at the time of the dry run training exercises and operational test of a simulated stuck lid or else shortly after the commencement of operations at a time mutually agreeable to the State and PFS.

6. The contact for the State of Utah is:

Executive Director, Utah Department of Environmental Quality
168 North 1950 West, Salt Lake City, Utah 84116
Current Telephone Number: (801) 536-4401.

7. This agreement constitutes a contract between PFS and the State and does not modify the status of PFS, or the jurisdiction of the Skull Valley Band of Goshute Indians or the State, and any remedies, claims, or defenses shall be determined under existing applicable laws.

8. This agreement shall expire upon completion of the decommissioning of the proposed facility as determined by the Nuclear Regulatory Commission.

It is mutually agreed and understood by and between DEQ and PFS that modifications of this agreement shall be made by mutual consent of both parties, by issuance of a written modification, signed and dated by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the last date written below.

Dianne R. Nielson 3/23/04

Dianne R. Nielson Date
Executive Director
Utah Department of Environmental Quality

3/20/04

John D. Parkyn Date
Chairman, Board of Managers
Private Fuel Storage, L.L.C.

Attachment to Settlement Agreement
Between
State of Utah, Department of Environmental Quality
and
Private Fuel Storage, L.L.C.

Revised Technical Specification.

5.5.5. Pre-operational Testing and Training Exercises of HI-STORM 100 Casks (Rev. 0) With Lid Shims

Before the initial receipt of spent nuclear fuel at the facility, the licensee shall conduct dry run operational training exercises of the transfer and handling of the HI-STORM 100 CANISTER and STORAGE CASK (Rev. 0) using the cranes and casks described in licensee's SAR and such other necessary or appropriate ancillary equipment. The operational dry run training exercises may be performed in an alternate step sequence from the actual procedures, but all steps must be performed. The operational dry run training exercises shall include, but are not limited to, the following:

a. Transfer of the CANISTER from the HI-STAR 100 Shipping Cask to the HI-STORM 100 STORAGE CASK.

b. Movement of the HI-STORM 100 STORAGE CASK from the CANISTER TRANSFER BUILDING out to a Storage Pad, and placement of the STORAGE CASK onto a Storage Pad.

c. Reverse transfer operations of taking the HI-STORM 100 Storage Cask from the Storage Pad into the Canister Transfer Building and transferring the CANISTER from the HI-STORM 100 Storage Cask into the HI-STAR 100 Shipping Cask.

The dry run training exercises specified in a, b, and c above shall be conducted by the licensee two times.

License Condition No. A *(to be renumbered when placed in PFS's ISFSI License).*

1. Simulated Stuck Lid Removal of HI-STORM 100 (Rev. 0) Cask Lids With Shims

Before the initial receipt of spent nuclear fuel at the facility, the licensee shall perform an operational test using the cranes specified in the licensee's SAR, and such other necessary or appropriate ancillary equipment, to demonstrate that it is capable of removing the HI-STORM 100 storage cask lid under conditions which simulate resistance to movement between the cask lid shims and the overpack inner shell. The licensee shall provide notice to the NRC staff 15 days prior to the conduct of this test, and the results of the test shall be documented and available for inspection by the NRC staff.

2. Assurance of Fit of HI-STORM 100 (Rev. 0) Cask Lids With Shims

Prior to inserting a multipurpose canister (MPC) containing spent fuel into each new or re-used HI-STORM 100 storage cask at the facility, the licensee shall conduct a test (although not necessarily in the Canister Transfer Building) of each such new or re-used cask to assure the fit of the spent fuel storage cask lid with shims. The licensee shall fully insert the concrete and steel storage cask lid into the particular concrete and steel storage cask intended to be used with each such lid, in the configuration in which the lid and cask will be used to store spent fuel, release the lifting mechanism of the crane, re-attach it, and then remove the lid from the cask. The capacity of the crane used to insert and remove the cask lid shall not exceed that of the cranes located in the Canister Transfer Building used to perform lid placement or removal. The results of each such test shall be documented and available for inspection by the NRC staff.