March 9, 2005

Mr. Ronald D. Izatt
ISF Facility Manager
Tetra Tech FW Inc.
3200 George Washington Way, Suite G
Richland, WA 99352

SUBJECT: EXEMPTION FROM 10 CFR 72.70(a)(1) FOR SUBMITTAL OF THE FINAL SAFETY ANALYSIS REPORT (TAC NO. L23815)

Dear Mr. Izatt:

By letter dated February 2, 2005, the Foster Wheeler Environmental Corporation (FWENC) submitted a request for exemption to the U.S. Nuclear Regulatory Commission (NRC) related to the Idaho Spent Fuel (ISF) Facility, an independent spent fuel storage installation to be located at the Idaho National Engineering and Environmental Laboratory. The NRC previously granted a license to FWENC for the ISF Facility in accordance with 10 CFR Part 72 on November 30, 2004. In your letter, you requested an exemption from 10 CFR 72.70(a)(1), which requires each specific licensee to submit an original Final Safety Analysis Report (FSAR) to the Commission within 90 days after issuance of the license. The exemption from the provisions of 10 CFR 72.70(a)(1) would allow FWENC to submit an original FSAR for the ISF Facility no later than August 28, 2005, or 30 days prior to the commencement of construction, whichever occurs first.

The NRC evaluated the public health and safety and environmental impacts of the proposed exemption and determined that granting the exemption is authorized by law and will not endanger life or property or the common defense and security, will not result in any impacts on the environment, and is otherwise in the public interest. The NRC hereby grants an exemption to FWENC from the requirements of 10 CFR 72.70(a)(1), with regard to the schedule for submitting the original FSAR for the ISF Facility. This exemption is subject to the following conditions:

1) FWENC shall submit an original FSAR for the ISF Facility no later than August 28, 2005, or 30 days prior to the commencement of construction, whichever occurs first.

2) FWENC shall comply with the 24-month frequency for submitting FSAR updates in accordance with 10 CFR 72.70(c)(6), and file a subsequent update to the ISF Facility FSAR by November 30, 2006.

The staff's safety evaluation for this exemption is enclosed. For this action, an Environmental Assessment and Finding of No Significant Impact has been prepared and published in the Federal Register (70 FR 11715, March 9, 2005). An advance copy of the Federal Register Notice was provided to you by letter dated March 1, 2005.

Please refer to Docket No. 72-25 and TAC No. L23815 in future correspondence related to this action. If you have any comments or questions regarding this matter, please contact Mr. James R. Hall at 301-415-1336.

Sincerely,

/RA/

Brian E. Thomas, Acting Deputy Director
Spent Fuel Project Office
Office of Nuclear Material Safety
and Safeguards

Docket No. 72-25
TAC No. L23815

Enclosure: Safety Evaluation

cc: Mailing List

Please refer to Docket No. 72-25 and TAC No. L23815 in future correspondence related to this action. If you have any comments or questions regarding this matter, please contact Mr. James R. Hall at 301-415-1336.

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SAFETY EVALUATION

Docket No. 72-25
Exemption to 10 CFR 72.70(a)(1) for
Foster Wheeler Environmental Corporation
Submittal of the Final Safety Analysis Report
for the Idaho Spent Fuel Facility

EXEMPTION REQUEST

By letter dated February 2, 2005, and pursuant to the provisions of 10 CFR 72.7, Foster Wheeler Environmental Corporation (FWENC) requested an exemption from the provisions of 10 CFR 72.70(a)(1). These provisions require each specific licensee for an independent spent fuel storage installation (ISFSI) under 10 CFR Part 72 to submit an original Final Safety Analysis Report (FSAR) to the Commission within 90 days after issuance of the license. FWENC is the licensee for the Idaho Spent Fuel (ISF) Facility, an ISFSI to be located at the Idaho National Engineering and Environmental Laboratory. The NRC granted materials license No. SNM-2512 (Docket No. 72-25) to FWENC for the ISF Facility on November 30, 2004.

FWENC requested an exemption from the provisions of 10 CFR 72.70(a)(1) to delay the submittal of an original FSAR for the ISF Facility beyond February 28, 2005, which is 90 days from the date of the issuance of the facility license. The requested exemption would allow FWENC to submit an original FSAR for the ISF Facility no later than August 28, 2005, or 30 days prior to the commencement of construction, whichever occurs first.

SAFETY EVALUATION

In support of its exemption request, FWENC indicated that it has held recent discussions with DOE to determine whether the FSAR and related documents contain sensitive information that should be withheld from public disclosure. These discussions were prompted in part by recent NRC actions to reassess its policy and practices on release of sensitive information; however, the NRC has not yet provided any new direction to licensees on this subject. FWENC has not yet made its determination, but it may need to expend more resources and/or time to prepare the FSAR and associated justifications if it determines that parts of the document should be withheld. In order to allow it more time to identify what parts of the FSAR, if any, are to be withheld, to prepare the necessary justifications, and to revise the document accordingly, the licensee has requested the subject exemption. FWENC further indicated that commencement of construction of the ISF Facility is not anticipated for some time.

The staff reviewed the proposed exemption. The staff found that the proposed exemption to delay submittal of the original ISF Facility FSAR by up to six months does not pose any increased risk to public health and safety. The exemption request does not impact safety because it is administrative in nature and solely relates to document filing requirements. Construction of the facility will not begin prior to the submittal of the FSAR, according to the proposed conditions of the exemption. This is a more restrictive requirement than the regulation itself, which allows commencement of construction upon license issuance, with

FSAR submittal up to 90 days later. The exemption does not change the design-basis or safety aspects of the ISF Facility, nor will it affect the ability to satisfy the applicable requirements of 10 CFR Part 72.

The staff found the conditions of approval of the exemption, as proposed by FWENC, to be acceptable, with an additional clarification. The requested exemption only addressed the initial submittal of an original FSAR, as required by 10 CFR 72.70(a)(1). The requirement for submittal of periodic updates to the FSAR in 10 CFR 72.70(c)(6) specifies that such updates shall be filed every 24 months from the date of issuance of the license. As FWENC did not request an exemption from that requirement, it remains in effect, as specified in the Conditions of Approval below.

CONDITIONS OF APPROVAL

The staff finds the exemption to 10 CFR 72.70(a)(1) for the ISF Facility FSAR to be acceptable, with the following conditions:

1) FWENC shall submit an original FSAR for the ISF Facility no later than August 28, 2005, or 30 days prior to the commencement of construction, whichever occurs first.

2) FWENC shall comply with the 24-month frequency for submitting FSAR updates in accordance with 10 CFR 72.70(c)(6), and file a subsequent update to the ISF Facility FSAR by November 30, 2006.

CONCLUSION

Based on the foregoing considerations, the Commission has determined that granting the proposed exemption from the provisions of 10 CFR 72.70(a)(1), with the conditions discussed above, is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest.

Idaho Spent Fuel Facility
Docket No. 72-25

cc:
Mr. Ronald D. Izatt
ISF Facility Manager
Tetra Tech FW, Inc.
3200 George Washington Way, Suite G
Richland, WA 99352

Mr. Jan Hagers
TMI/FSV Licensing Project Manager
U.S. Department of Energy
Idaho Operations Office
1955 Fremont Avenue, MS-1221
Idaho Falls, ID 83401-1221

Mr. Doug Walker
Senior Health Physicist/NRC Liaison
State of Idaho INEEL Oversight Program
900 N. Skyline Drive, Suite C
Idaho Falls, ID 83402

Mr. Wayne Pierre
Federal Facility Section
U.S. Environmental Protection Agency
(M/S HW-124)
Seattle, WA 98101

Ms. Gail Willmore
INEEL Technical Library
1776 Science Center Drive
Idaho Falls, ID 83402

Ms. Kathleen E. Trever
Coordinator-Manager
INEEL Oversight Program
1410 North Hilton
Boise, ID 83706

Mr. James C. Saldarini
Licensing Manager
Tetra Tech FW, Inc.
1000 The American Road
Morris Plains, NJ 07950

Mr. Eric C. Leuschner
Executive Director, ISF Project
Foster Wheeler Environmental Corporation
Perryville Corporate Park
Clinton, NJ 08809-4000

Mr. George Freund
Coalition 21
P.O. Box 51232
Idaho Falls, ID 83405

Mr. Steve Laflin, Chairman
INEEL Committee
Idaho Falls Chamber of Commerce
P.O. Box 50498
Idaho Falls, ID 83405-0498

Mr. Chuck Broscious
Environmental Defense Institute
P.O. Box 504
Troy, ID 83843

Mr. Stanley Hobson
Chairman, INEEL EM Site Specific
Advisory Board
c/o Jason Associates Corp.
477 Shoup, Suite 201
Idaho Falls, ID 83402

Chairman, Tribal Business Council
The Shoshone-Bannock Tribes
P. O. Box 306
Fort Hall, ID 83203

Snake River Alliance
310 E. Center, Room 205
Pocatello, ID 83201

Mr. Thomas C. Poindexter, Esq.
Winston & Strawn
1400 L Street, N.W.
Washington, DC 20005-3502

Regional Administrator, Region IV
U.S. Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 1000
Arlington, TX 76011