

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**RAS 9661**

**DOCKETED 03/30/05**

ATOMIC SAFETY AND LICENSING BOARD  
Before Administrative Judges:

**SERVED 03/30/05**

Michael C. Farrar, Chairman  
Dr. Peter S. Lam  
Dr. Paul B. Abramson

In the Matter of

PRIVATE FUEL STORAGE, LLC

(Independent Spent Fuel Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

March 30, 2005

FURTHER MEMORANDUM REGARDING ORAL ARGUMENT

This Licensing Board has issued a series of rulings (dated March 11, March 16, March 22 and March 29) since receiving the State of Utah's March 7 Motion for Reconsideration of our February 24 Partial Initial Decision on "F-16 Aircraft Accident Consequences." Those rulings (1) set the time frame for obtaining additional written briefs from both sides; (2) scheduled oral argument of counsel on the pending motion to begin at 1:00 PM EDT (and to last as long as three hours) in our Rockville, Maryland hearing room at NRC Headquarters; and (3) opened that oral argument of counsel to public observation -- notwithstanding that the underlying technical evidence includes "Safeguards Information" that is not to be publicly disclosed -- by directing counsel to structure their presentations so as to refer obliquely rather than explicitly to such information.<sup>1</sup>

In the course of issuing those earlier rulings, we indicated that we would also be advising the parties as to whether there were any specific areas upon which their oral presentations should particularly focus. We now provide that advice, as set out below.

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<sup>1</sup> With respect to the open session, we did indicate that "if it turns out that any matters cannot be fairly presented without explicit reference to Safeguards Information," those matters would be held until the end of the argument, at which point the hearing room would be cleared "of those not entitled to be present for Safeguards-related discussions" so that the argument could be "concluded under Safeguards procedures." March 29 Memorandum Regarding Oral Argument, p. 2.

1. As to the key matter raised by Part I of the State's Motion, regarding potential loss of "overpack" shielding, counsel should be prepared to discuss with specificity:

- The existence and import of any instances during the second phase of the aircraft proceeding where the issue was raised as to radiation dose limits being exceeded as a result of a reduction of the shielding provided by the overpack (rather than by way of breach of the internal canister and release of radioactive materials) (see March 22 Scheduling Memorandum and Order, pp. 1-2).
- The existence of any evidence in the hearing record (aircraft or seismic) that would allow at least a rough calculation, or a worst case analysis, of the radiation dose that might result from loss of part of the overpack shielding.
- The nature of any procedural approach the Board should employ if we find the radiation dose matter not to have been properly addressed (see id., p. 2).

2. With respect to the proper approach to canister failure analysis, as set out in Part II of the State's Motion, counsel should be prepared to refer to the record to:

- Demonstrate the intended use of the "DOE Standard" and argue the inferences, if any, that should be drawn from the State's failure to call as witnesses any of its authors.
- Present, in the context of the DOE Standard (see State Motion, fn. 5), a non-technical overview of the engineering principles underlying the "ductility ratio" concept, so as to establish the basis for (with examples of) the employment of that concept as the appropriate analytical approach for determining generally when metal could be expected to fail to serve its intended function, then explain how those principles are specifically applicable to the potential rupture of the stainless steel container at issue here.

3. With respect to Part II, § 2 of the State's Motion and the relevant historical F-16 accidents, counsel should draw upon the record to:

- Discuss the relationship to "Skull-Valley-type flights" of the accident-initiating events that led to the seven F-16 crashes whose inclusion in the analytical database has been questioned, and the precise nature of any prior party "concessions" concerning the exclusion of those crashes.

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The above are the matters upon counsel should particularly focus, although they are welcome -- as time permits -- to address any other matters raised by the State's Motion. They will recall, however, that we earlier indicated they should not address further the question of certain cask design changes that became the subject of the hearing (see State Motion, Part IV, § 1). As we explained then, our eventual decision on the pending Motion will address that matter in a manner that incorporates what now seem to be the consistent views of the parties.

In terms of the order of proceeding, the Board wishes to segment the argument in line with the three categories of issues set out above. That is, the Board will hear from all counsel on one set of issues before turning to the next set. The State being the moving party, it will have the right to open and to rebut on each set of issues.

Although the Board is willing to adjust the time allotments as the arguments unfold, its current view is that the first set of issues should be allocated a maximum of 75 minutes, the second 60 minutes, and the third 30 minutes. Because the Applicant PFS and the NRC Staff have similar positions (both opposed to the State), and the State is the moving party, the State will have half of the time and the other two parties will share the other half. The Applicant and the Staff are encouraged to structure their presentations to avoid duplication and may divide their common time as to each set of issues in any proportion to which they may agree.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD

*/RA/*

Michael C. Farrar, Chairman  
ADMINISTRATIVE JUDGE

*/RA/*

Peter S. Lam  
ADMINISTRATIVE JUDGE

*/RA/*

Paul B. Abramson  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
**March 30, 2005**

Copies of this Further Memorandum Regarding Oral Argument were sent this date by Internet e-mail transmission to counsel for Applicant PFS, Intervenor State of Utah, and the NRC Staff.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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PRIVATE FUEL STORAGE, L.L.C. ) Docket No. 72-22-ISFSI  
)  
(Independent Spent Fuel Storage )  
Installation) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB FURTHER MEMORANDUM REGARDING ORAL ARGUMENT have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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LB FURTHER MEMORANDUM  
REGARDING ORAL ARGUMENT

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[Original signed by Adria T. Byrdsong]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 30<sup>th</sup> day of March 2005