

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

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SUBJECT: Opposition to the NRC's granting of a license to Private Fuel Storage

ACTION: Signature of Secretary
DISTRIBUTION: RF, OCA to Ack

LETTER DATE: 03/17/2005
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NOTES: Treat as Ex parte communication to be served on parties to PFS proceeding ...
FILE LOCATION: ADAMS
DATE DUE: 04/11/2005 DATE SIGNED:

Congress of the United States

Washington, DC 20510

March 17, 2005

The Honorable Nils J. Diaz
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Diaz:

We are writing to register our strong opposition to the Nuclear Regulatory Commission's (Commission) granting of a license to Private Fuel Storage, LLC (PFS). Due to the possibility of an accidental or deliberate aircraft crash, concerns over the safety of the waste during transportation and storage, and uncertainty regarding liability, the Utah congressional delegation (Delegation) strongly opposes the granting of this license. The proposed PFS facility creates a unique situation that demands unique consideration by the Commission.

The proposed site for the PFS facility is located directly under the flight path of combat aircraft, many carrying live ordnance, entering the Utah Test and Training Range. The Delegation is deeply concerned by the possibility of an aircraft accident at the proposed storage site. However, we are even more disturbed by the poor data and selective scientific approach used by PFS in claiming that such an accident would not pose a significant risk to the site. Judge Peter S. Lam's dissent to the Atomic Safety and Licensing Board decision regarding F-16 Aircraft Accident Consequences highlights the dangers associated with the proposed location of the PFS facility and the inadequacy the data used by PFS in its license application:

... the proposed PFS facility does not currently have a demonstrated adequate safety margin against accidental aircraft crashes. . . This lack of adequate safety margin is a direct manifestation of the fundamentally difficult situation of the proposed PFS site: 4,000 spent fuel storage casks sitting in the flight corridor of some 7,000 F-16 flights a year. The Applicant's current analyses, which are fundamentally undermined by large inherent uncertainties and narrow safety margins, should not be relied upon to demonstrate the safety of the proposed site (D-6).

Despite the astuteness of Judge Law's opinion, he does not mention the new threats facing our nation. With new forms of terrorism threatening our national security, we find it inconceivable that a government entity would consider giving its endorsement of the PFS plan without thoroughly taking into account this added terrorist threat. We believe the Commission should require that the Environmental Impact Statement be reopened to address the heightened security risk associated with these new threats. The Commission's consideration for such a license should reflect the threats to a consolidated nuclear waste storage facility in a post-September 11th security environment.

Moreover, security for transportation and storage of nuclear waste to the PFS facility will not be handled by the federal government. Rather, private entities will be responsible for this task. Should an accident occur during shipping or storage, clearly the government would be held responsible for its endorsement of the site and Congressional oversight would ensue. Accordingly, the Delegation requests to be informed in writing as to which government entity will certify that private security for the transportation and storage of nuclear waste sent to the proposed PFS site will meet the stringent requirements of a nation fighting the War on Terrorism.

Furthermore, the consolidation of nearly all of the nation's private spent nuclear fuel rods in one above ground location creates an enormous financial liability in the event of an accident during transportation or storage. It is our understanding that, once the waste has arrived at the proposed facility, PFS will not be protected from financial liability under the auspices of the Price-Anderson Act in the event of an accident or deliberate attack. Consequently, the Delegation requests a written acknowledgement of liability from the federal entity that will take on this burden in the event of an accident.

In addition, a very relevant aspect of the PFS proposal is the policy of the U.S. Department of Energy (DOE) not to accept storage containers at the PFS site for ultimate repose. To our knowledge, the Commission has not received a written commitment from DOE creating an obligation to arrange for the shipment of spent fuel from the PFS site to any permanent repository.

Therefore, we expect the Commission to review the administrative record diligently prior to making a final decision on issuing a license to PFS and accordingly reject it. As PFS has made a number of assurances regarding the design and composition of the casks that would be used at the proposed storage facility, the Commission should require that PFS's assurances are met before any further consideration of this license.

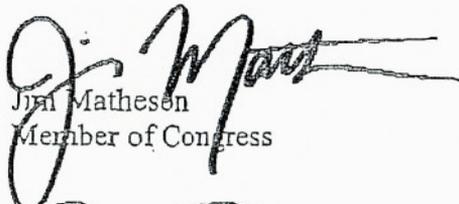
Sincerely,



Robert F. Bennett
United States Senator



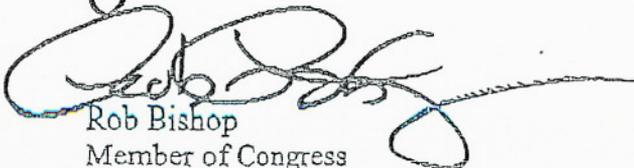
Orrin G. Hatch
United States Senator



Jim Matheson
Member of Congress



Chris Cannon
Member of Congress



Rob Bishop
Member of Congress