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February 15, 2006

Stewart W. Brown, Senior Project Manager
Licensing Section
Spent Fuel Project Office
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Draft Private Fuel Storage, LLC ISFSI License No. SNM-2513

Dear Mr. Brown:

On February 10, 2006 you sent a draft ISFSI license and proposed Technical Specifications (Tech. Specs.) to Private Fuel Storage, LLC (PFS) and requested comments from PFS within seven days from the date of your letter.

The State of Utah wishes to put the NRC on notice that it has identified the following shortcomings in the draft license and supporting documents. To the extent possible, the State proposes how its concerns could be resolved.

A. License Conditions.

The condition is quoted from the draft license, followed by the State's comments.

Condition 8. Maximum Amount That Licensee May Possess at Any One Time Under This License

A. 40,000 Metric Tons of Uranium in the form of intact spent fuel assemblies, damaged fuel assemblies, and fuel debris.

Condition 8 allows PFS to store up to 40,000 MTU at any one time. The EIS does not support this condition because the analysis in the EIS relies on a maximum lifetime limit of 40,000 MTU. For example, the EIS at 1-6 states:

The maximum amount of SNF that the applicant could accept at the proposed PFSF over the term of the license is 40,000 MTU (44,000 tons). Once the applicant has accepted 40,000 MTU of SNF, it may not accept any additional SNF shipments, even if it has begun to ship SNF off site. The NRC license would not allow the applicant to accept more than 40,000 MTU of SNF over the life of the license, unless PFS requests a license amendment to increase the maximum storage capacity and the request is granted (after notice to the public and opportunity for a hearing).

See also EIS at 2-6, 8-6, and Table 8.2. Consequently, License Condition 8 is in conflict with the EIS. The conflict between license condition 8 and the EIS also invalidates Commission finding 1.P that "issuance of this license is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied."

Resolution: Modify the language in Condition 8 such that there is a lifetime or through-put limit of 40,000 MTU. This could be done by deleting "at Any One Time" from the standard language and replacing it with "over the lifetime of the facility" or adding Condition 8.B that would modify the introduction to Condition 8 by stating that the possessory limit is based on through-put.

Condition 18. The licensee shall:

- (1) follow the "Physical Protection Plan, Private Fuel Storage Facility, Revision 2 dated June 8, 1999, as it may be further amended under the provisions of 10 CFR 72.44(e) and 72.186;
- (2) follow the "Safeguards Contingency Plan, Private Fuel Storage Facility," Revision 1 dated June 8, 1999, as it may be further amended under the provisions of 10 CFR 72.44(e) and 72.186; and
- (3) follow the "Security Training and Qualification Plan, Private Fuel Storage Facility," Revision 1 dated June 8, 1999, as it may be further amended under the provisions of 10 CFR 72.44(e) and 72.186.

The license does not include past security orders issued by the Commission to ISFSI licensees. In particular, the Commission has issued the following security orders that should be applied to ISFSI licensee, Private Fuel Storage.

By order dated October 16, 2002 the Commission lifted the ISFSI exemption in 10 CFR § 73.1(a)(1), which did not require ISFSIs to protect against design basis threats (DBT) from land vehicle bombs, and required ISFSIs to protect against those threats. *See* Design Basis Threat Proposed Rulemaking, 70 Fed. Reg. 67380, 67382 (November 7, 2005). The proposed DBT rule is still open for public comment and it may be some time before it becomes a final rule. Therefore, unlike the rest of the ISFSI community, if the October 16, 2002 Order is not imposed on PFS, it will be exempt from protecting against DBTs from land vehicle bombs.

Further, the Commission's October 16, 2002 Order imposed certain interim safeguard and security measures requiring ISFSI licensees to implement compensatory measures "to address the current threat environment in a consistent manner throughout the nuclear ISFSI community." 67 Fed. Reg. 65152-53 (October 23, 2002). *See also* LBP-03-05, 57 NRC 233 (2003) denying the State access to the safeguards portion of the order as premature, noting "if Attachment 2 (or something like it) is eventually applied to the PFS facility, any adversely affected person would, as the October 16 [2002] order noted, have the opportunity to request a hearing." *Id.*, 57 NRC at 236.

By order dated August 18, 2004 the Commission supplemented existing security regulatory requirements by imposing certain additional security measures, which will remain in effect until the Commission determines otherwise. 69 Fed. Reg. 52314 (August 25, 2004).

Resolution: Issue orders dated October 16, 2002 and August 18, 2004 to licensee, PFS. Alternatively, incorporate the orders, or otherwise impose the requirements contained in those orders, as part of PFS's ISFSI license.

B. Utah Contentions Still Pending Before the Licensing Board

Pending before the Licensing Board are at least three Utah contentions that have not been dismissed. Those contentions have been settled and the settlement agreements and joint motions to dismiss the contentions have been submitted to the Board. However, the Board has yet to take formal action on those matters. Details are as follows:

Contention Utah O, Hydrology. Pursuant to the settlement agreement, PFS has agreed to implement a groundwater monitoring program and other activities, including certain upgradient and downgradient monitoring wells at the PFS site on a schedule and in locations mutually agreeable to the parties, Utah Department of Environmental Quality and PFS. The settlement agreement and a joint motion to dismiss were filed with the Board on June 18, 2002.

Contention Utah DD, Ecology and Species. Pursuant to the settlement agreement, PFS agreed to fund a peregrine falcon study; the study has been completed. The settlement agreement and a joint motion to dismiss were filed with the Board on March 15, 2002.

Contention Utah TT, HI-STORM 100 Steel Shims – Feasibility and Safety. Pursuant to the settlement agreement, certain license conditions and changes to Tech. Spec. 5.5.5 would be added to the license, and the State of Utah would be invited to send a technical representative to witness certain operational dry run testing exercises and examine documented results of certain tests. The license conditions and changes to Tech. Spec. 5.5.5 have been incorporated into the license, but because there has been no Board action on the settlement agreement, other aspects of the settlement have not been formally approved and the contention has not been officially resolved. The settlement agreement and a joint motion to dismiss were filed with the Board on March 26, 2004.


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Resolution: Await the Board's approval of the settlement agreements and dismissal of Utah's contentions before issuing the license.

Finally, Tech. Spec. at 21, SR 3.2.2.1, refers to "Does rates" instead of "Dose rates."

If you have any questions, please contact me at 801-366-0286.

Sincerely,

A handwritten signature in black ink, appearing to read "Denise Chancellor", with a long horizontal flourish extending to the right.

Denise Chancellor
Assistant Attorney General

cc: PFS Service List

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