

March 8, 2006

Ms. Denise Chancellor
Assistant Attorney General
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SUBJECT: STATE OF UTAH'S COMMENTS ON DRAFT MATERIALS
LICENSE NO. SNM-2513 FOR THE PRIVATE FUEL STORAGE
FACILITY

Dear Ms. Chancellor:

I am responding to your letter dated February 15, 2006, on behalf of the State of Utah ("State"), in which you provided four comments concerning the draft license for the Private Fuel Storage Facility (PFSF), which the NRC Staff ("Staff") had transmitted to PFS by letter dated February 10, 2006.

As you know, the Nuclear Regulatory Commission issued the license for the PFSF on February 21, 2006. The license, as issued, incorporates two of your four comments; the other two comments were rejected. Our response to each of your comments follows.

A. License Conditions

Condition 8 - In your letter, you noted that Condition 8, as included in the draft of the PFSF license, limited the total amount of uranium permitted to be stored on site at any one time, rather than limit the total amount of uranium permitted over the licensed operating period of the facility. In this regard, you cited page 1-6 of the Final Environmental Impact Statement ("FEIS") for the PFSF which is based on the total amount of storage over the term of the license. The condition contained in the draft of the license was intended to address only the limit for storage at any one time, rather than a lifetime limit, and as such it does not conflict with the FEIS. Nonetheless, to address this comment, Condition 8 was revised, consistent with FEIS section 1.2, to include the following statement after the language contained in the draft license condition:

In addition, the cumulative amount of material received and accepted during the license term of the facility may not exceed 40,000 Metric Tons of Uranium.

Condition 18 - You noted that the draft license "does not include past security orders issued by the Commission to [other] ISFSI licensees," and urged that the NRC should either issue orders to PFS, similar to the orders issued to other facilities dated October 16, 2002, and August 18, 2004, or include the terms of those orders in the PFS license. This issue was previously addressed by the Atomic Safety and Licensing Board ("Licensing Board" or "ASLB"), in response to the State's request for access to the Commission's Order of October 16, 2002, and for time to file new contentions based on that Order. See *Private Fuel Storage, L.L.C.*

(Independent Spent Fuel Storage Installation), LBP-03-05, 57 NRC 233 (2003). As the Licensing Board observed:

By its terms, the October 16 order is limited in scope to "licensees who currently store spent fuel or have identified near term plans to store spent fuel in an ISFSI under the specific license provisions of 10 CFR part 72." 67 Fed. Reg. at 65,152 (emphasis supplied). Obviously, PFS is not a licensee at this juncture; and even assuming it were to be granted a license in relatively short order, there is every indication that the storage of spent nuclear fuel at the PFS facility cannot logistically be a matter of "near term plans." PFS is thus not an entity that would come under any aspect of the October 16 order.

It also is unclear whether the October 16 order would ever apply to PFS even if it were to be granted a license. As the State recognized in its motion (p. 2), nothing in the order indicates that Attachment 2 would then be applied as a condition to any PFS license. In that regard, the October 16 order indicates that the requirements listed in Attachment 2 are "interim requirements" that could be altered if "a significant change in the threat environment has occurred, or the Commission determines that other changes are needed." 67 Fed. Reg. at 65,153. Thus, again assuming PFS is eventually granted a license, there is a considerable degree of uncertainty as to whether, and to what degree, the supplemental safeguards under Attachment 2, rather than some other mandate, would be applicable to the Skull Valley facility.

Id. at 235-36. While a license has now been issued for the PFSF, it is still the case that "the storage of spent nuclear fuel at the PFS facility cannot logistically be a matter of 'near term plans.'" Rather, numerous events still must occur before PFS will be ready to receive spent nuclear fuel ("SNF"),¹ and therefore it would be premature to apply the terms of the Orders of October 16, 2002 and August 18, 2004, to the PFSF at this time; further, the terms of any future orders that might be issued for the PFSF could differ from the terms of the orders that were issued for other facilities.

The NRC will evaluate the need for additional security measures at the PFSF based on the current threat conditions prior to PFS receiving SNF on-site. Should the NRC determine that additional security measures are needed for this facility, such measures will be imposed at that time by NRC order.

¹ For example, as the Licensing Board noted, before PFS could receive SNF, it must receive "authorizations from the Bureau of Indian Affairs and the Bureau of Land Management," fulfill "specific financial assurance license conditions prior to construction," and actually construct the PFSF and related transportation facilities. See LBP-03-5, 57 NRC at 236 n.4

B. Utah Contentions Still Pending Before the Licensing Board

In your letter, you stated your belief that Contention Utah O (Hydrology), Contention Utah DD (Ecology and Species), and Contention Utah TT (HI-STORM Steel Shims) were still pending before the Licensing Board. You recommended that the NRC Staff await the Licensing Board's approval of the settlement agreements and dismissal of Utah's contentions before issuing the license.

Your belief that these issues have not yet been resolved is in error. The Licensing Board has resolved all outstanding matters, and issued its Final Partial Initial Decision on February 24, 2005. Further, the Licensing Board's prior decisions indicate that the contentions referenced in your letter have been resolved, in accordance with settlement agreements reached by the State with other parties.² Therefore, no further action by the Licensing Board with respect to these matters is expected or required. The Commission, in CLI-05-19, 62 NRC 403 (Sept. 9, 2005), recognized that all contested matters have been resolved, and authorized the NRC Staff to issue the PFSF license upon making the requisite findings pursuant to 10 C.F.R. § 72.40. The NRC Staff has made those findings, and has therefore issued the PFSF license.

C. Typographical Error

You identified a typographical error in Technical Specification SR 3.2.2.1, in which the word "dose" was written "does." This typographical error has been corrected in the final license.

Thank you for your comments. If you have any questions regarding this letter please do not hesitate to contact me at (301) 415-8531.

Sincerely,

/RA/

Stewart W. Brown, Senior Project Manager
Licensing Section
Spent Fuel Project Office
Office of Nuclear Material Safety
and Safeguards

Docket No. 72-22

cc: PFS Service Lists

² See, e.g., *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-05-29, 62 NRC 635, 698, 708, 710 n.12 (2005) (Contentions Utah O, DD and TT); *Id.*, LBP-03-4, 57 NRC 69, 81 n.6 (2003) (Contention Utah O); *Id.*, "Memorandum and Order (Summarizing July 15 Prehearing Conference Call)," (unpublished, July 22, 2004), slip op. at 5 (Contention Utah TT); *Id.*, "Prehearing Memorandum and Order," (unpublished, March 22, 2002), slip op. at 8 (Contention Utah DD).

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³ See, e.g., *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-05-29, 62 NRC 635, 698, 708, 710 n.12 (2005) (Contentions Utah O, DD and TT); *Id.*, LBP-03-4, 57 NRC 69, 81 n.6 (2003) (Contention Utah O); *Id.*, "Memorandum and Order (Summarizing July 15 Prehearing Conference Call)," (unpublished, July 22, 2004), slip op. at 5 (Contention Utah TT); *Id.*, "Prehearing Memorandum and Order," (unpublished, March 22, 2002), slip op. at 8 (Contention Utah DD).

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