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RELATED CORRESPONDENCE

DOCKETED
May 20, 1999

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

'99 MAY 26 P2:01

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

In the Matter of)	
)	
PRIVATE FUEL STORAGE L.L.C.)	Docket No. 72-22
)	
(Private Fuel Storage Facility))	ASLBP No. 97-732-02-ISFSI

**APPLICANT'S OBJECTIONS AND RESPONSES
TO SUWA'S FIRST REQUESTS FOR DISCOVERY**

Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") files the following objections and responses to "Southern Utah Wilderness Alliance's (SUWA) First Set of Discovery Requests Directed to the Applicant" ("SUWA's First Discovery Requests"), an electronic copy of which was served on the Applicant on Monday, May 10, 1999.

Pursuant to Board Orders,¹ SUWA requested Applicant to answer Interrogatories within 10 days after service of the formal discovery request and produce documents within 15 days after service of the formal discovery request. SUWA's First Discovery Requests at 1.

I. GENERAL OBJECTIONS

These general objections apply to the Applicant's responses to all of SUWA's First Discovery Requests.

¹ See Board Orders dated April 22, 1998, June 29, 1998 and August 20, 1998.

1. The Applicant objects to SUWA's instructions and definitions on the grounds and to the extent that they request or purport to impose upon the Applicant any obligation to respond in manner or scope beyond the requirements set forth in 10 C.F.R. §§ 2.740, 2.741 and 2.742.

2. The Applicant objects to SUWA's Request for Production of Documents to the extent that it requests discovery of information or documents protected under the attorney-client privilege, the attorney work product doctrine, and limitations on discovery of trial preparation materials and experts' knowledge or opinions set forth in 10 C.F.R. § 2.740 or other protection provided by law. The Applicant will provide SUWA with a Privilege Log which identifies documents subject to these privileges and protections, which the Applicant reserves the right to supplement.

3. The Applicant objects to SUWA's interrogatories and document requests to the extent they seek discovery beyond the scope of SUWA Contention B, as admitted by the Board in this proceeding. SUWA is only permitted to obtain discovery on matters that pertain to the subject matter with which SUWA is involved in this proceeding. 10 C.F.R. § 2.740(b). The only SUWA contention admitted by the Board was SUWA B. In admitting the contention, the Board limited the scope of SUWA B to the issue of "alignment alternatives to the proposed placement of the Low Junction rail spur." Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-99-3, 49 NRC slip op. at 21 (1999) (emphasis added). SUWA's discovery requests regarding conditions in the North Cedar Mountains generally and Skull Valley generally, rather than alignment alternatives for the rail line from Low to the Private Fuel Storage Facility ("PFSF"), are

beyond the scope of SUWA B, as admitted by the Board, and therefore are not relevant to the subject matter to which SUWA is a party to this proceeding. PFS objects to any request by SUWA to obtain discovery on matters outside the scope of its contention.

II. INTERROGATORIES

These interrogatories apply to SUWA Contention B, "Failure to Develop and Analyze a Meaningful Range of Alternatives to the Low Rail Spur."

INTERROGATORY NO. 1. Please state the name, business address, and job title of each person who was consulted and/or who supplied information for responding to these interrogatories and requests for the production of documents. Specifically note for which interrogatories and requests for production each such person was consulted and/or supplied information.

If the information or opinions of anyone who was consulted in connection with your response to an interrogatory or request for production of documents differs from your written answer to the discovery request, please describe in detail the differing information or opinions, and indicate why such differing information or opinions are not your official position as expressed in your written answer to the request.

APPLICANT'S RESPONSE: In addition to counsel for PFS, the following persons were consulted and/or supplied information in responding to the OGD's First Discovery Requests:

John Donnell – Interrogatory Nos. 3, 5; Document Request Nos. 1-10.
Project Director
Private Fuel Storage L.L.C.
7677 East Berry Ave
Englewood, CO 80111-2137

Jerry Cooper – Interrogatory No. 4
Project Engineer
Stone & Webster
7677 Berry Avenue
Denver, CO 80111-2137

In response to whether the information or opinions of anyone who was consulted in connection with PFS's response to an interrogatory or request for production of documents differs from the PFS's written answer to the discovery request, PFS is unaware of any such difference among those consulted.

INTERROGATORY NO. 2. Please give the name, address, profession, employer, area of professional expertise, and educational and scientific experience of each person PFS expects to call as a witness or expert witness and the subject matter about which each witness or expert witness will testify at the hearing with regard to SUWA's admitted contention. For each expert witness, please include a list of all publications she or he authored within the preceding ten years and a list of any other cases in which the witness has testified as an expert at a trial, hearing or by deposition within the preceding four years. Please describe the subject matter on which each of the witnesses is expected to testify at the hearing by detailing the facts and opinions to which each witness is expected to testify, including a summary of the grounds for each opinion, and identifying the documents (including all pertinent pages or parts thereof), data or other information which each witness has reviewed and considered, or is expected to consider or to rely on for her or his testimony.

APPLICANT'S RESPONSE: The Applicant has not selected the witness or witnesses that it expects to call at the hearing regarding SUWA Contention B and will supplement this response in accordance with 10 C.F.R. § 2.740(e).

INTERROGATORY NO. 3. Please explain how and why PFS chose its current transportation alternatives (the Low Rail Spur and the Skull Valley Road Transportation Corridor), including the exact alignment for the Low Rail Spur and explain which transportation alternatives relative to the proposed storage facility were considered and rejected and why.

APPLICANT'S RESPONSE: The present local transportation plan for moving a transportation cask from the mainline railroad to the PFSF site includes two modes of transportation and two distinct routes. The primary mode and route, see SAR § 1.4, is based on direct rail access to the facility from Low, Utah on a new corridor located solely on Bureau of Land Management ("BLM") land. The alternate mode and route utilizes a

heavy-haul transportation and the existing Skull Valley Road corridor from an Intermodal Transfer Point ("ITP") located 1.8 miles east of Timpie, Utah to the facility.

The Skull Valley Road corridor is the only existing transportation route servicing the Skull Valley Indian Reservation. This route was surveyed for technical and environmental viability in February 1997 prior to the submittal of the PFS License Application to the Nuclear Regulatory Commission ("NRC") in June 1997. The survey found that the existing corridor was suitable for use as a heavy-haul route and that rail access could be added as an alternative.

Following the submittal of the PFS License Application to the NRC in June 1997, PFS commissioned, in September 1997, a Transportation Infrastructure Study to further evaluate and assess transportation alternatives for moving shipping casks between the mainline railroad and the PFSF. This study included a review of the entire Skull Valley rather than just the more direct approach of using the existing Skull Valley Road corridor. This study postulated six ITP heavy-haul options and five Direct Rail options for transportation from the railroad mainline to the PFSF as follows:

Direct Rail Options

- Option DR-1 Rail Line from Timpie, Utah
- Option DR-2 Rail Line from West of Timpie, Utah
- Option DR-3 Rail Line and Flyover Bridge East of Timpie, Utah
- Option DR-4 Rail Line from Dolomite, Utah
- Option DR-5 Rail Line from Low, Utah

ITP (Heavy-Haul) Options

- Option IT-1 Intermodal Transfer at Timpie, Utah
- Option IT-2 Intermodal Transfer 0.9-mile West of Timpie, Utah
- Option IT-3 Intermodal Transfer 1.75-miles West of Timpie, Utah
- Option IT-4 Intermodal Transfer at Delle Junction, Utah
- Option IT-5 Intermodal Transfer at Dolomite, Utah
- Option IT-6 Intermodal Transfer at Low, Utah

These options are addressed in the Transportation Study report, which will be included in the documents made available at Parsons, Behle and Latimer in Salt Lake City. See Response to Document Request No. 2. From the above options, the study concluded that the Direct Rail option originating at Low, Utah (DR-5) and the Heavy-Haul option for an ITP 1.75 (1.8) miles west of Timpie, Utah (IT-3) were the recommended routes. PFS then reviewed these suggested routes in a final determination of the preferred mode and route for the transportation casks from the railroad mainline to the PFSF. In June 1998, PFS declared that Direct Rail access (DR-5) to the PFSF from Low, Utah was the preferred mode of transportation and route. Heavy-Haul access (IT-3) utilizing an ITP located 1.75 miles (1.8) west of Timpie, Utah was declared as the alternate mode and route.

The selection of Direct Rail over Heavy-Haul access to the PFS is based on the elimination of a cask handling operation at the ITP if direct rail access is provided. In turn, this eliminates the need for an additional gantry crane and weather enclosure necessitated by intermodal transfer.

For Direct Rail access, the Low Corridor was selected based on four principal characteristics:

- 1 - a location away from other established ranches and vehicular traffic associated with the existing Skull Valley Road corridor.
- 2 - access to the mainline rail south of Interstate 80.
- 3 - a location on land controlled by a single owner (BLM) as opposed to other direct rail options using the Skull Valley Road corridor to PFS where mixed private and BLM land ownership issues exist.
- 4 - fewer environmental impacts relative to other mainline access options local to the Timpie, Utah area.

The Low Corridor alignment is principally located on a north-south line at the foot of the Cedar Mountains and away from the more environmentally sensitive mid-valley areas. The PFS Environmental Report, Figures 3.2-2, sheets 1 through 4 identify the location of the alignment.

The selection of the IT-3 as the location for the ITP was based on three principle characteristics:

- 1 - a location away from the Skull Valley Road / Interstate 80 interchange.
- 2 - a location on land controlled by a single owner (BLM) as opposed to other Heavy Haul access options encumbered with mixed land ownership.
- 3 - fewer environmental impacts relative to other Intermodal Transfer options local to the Timpie, Utah area.

Neither of the selected options for Direct Rail (DR-5) or Intermodal Transfer (IT-3) was the least expensive. In aggregate, IT-3 was the fourth least expensive and DR-5 was ninth least expensive out of a total of eleven options considered.

INTERROGATORY NO. 4. Please explain whether, to what extent and in what manner PFS examined the wilderness and/or roadless and/or primitive character of the North Cedar Mountains roadless area, as depicted by exhibit 2 attached to SUWA's Request for Hearing and Petition to Intervene (November 18, 1998) (the "North Cedar Mountains roadless area"), when it determined the current alignment of the Low Rail Spur and/or alternatives to that alignment or means of transporting casks to the proposed storage site.

APPLICANT'S RESPONSE: PFS objects to this interrogatory in that it is vague and ambiguous as to what it means by "wilderness[,] roadless[,] or primitive character." PFS did evaluate the environmental resources on the site and surrounding area of the Low Corridor rail line, including that section that crosses SUWA's self-described "North Cedar Mountains roadless area." The findings of the environmental resources evaluation for the Low Corridor rail line, including that section that crosses SUWA's self-described "roadless area," are presented in Chapter 2 of the PFSF Environmental Report. Environmental resource issues evaluated include: geography; land use and demography; ecology; climatology and meteorology; hydrology; geology and seismology; socioeconomics; noise and traffic; and regional historic, scenic, cultural, and natural features.

Ecological resources were specifically evaluated and described for a 0.5-mile zone along both sides of the entire Low Corridor rail line. See ER, § 2.3. Ecological resources evaluated include: vegetation; wildlife; aquatic resources; threatened and endangered species; animals; and notable ecological communities. The effects of construction and

operation of the Low Corridor rail line on the surrounding environment were also evaluated and are presented in PFSF Environmental Report. See ER, § 4.4.

Any areas of the SUWA's self-described "North Cedar Mountains roadless area" that are within the 0.5-mile zone along both sides of the Low Corridor rail line were examined as discussed above.

INTERROGATORY NO. 5. You state that "[I]t is anticipated that the low [sic] corridor rail spur will be utilized by others in the Skull Valley and will not be dismantled and removed." ER at 4.6.4. Please explain the basis for this statement and discuss your assessment of the future uses of the rail spur and provide your opinion of the likelihood that these uses will indeed occur.

APPLICANT'S RESPONSE: PFS does not have an agreement with any other party for "other" uses of the Low Corridor rail line during operation of the PFSF or future use of the rail line after the PFS's license from the NRC expires. The Low Corridor rail line, as defined in the PFS License Application, is a single purpose transportation corridor for the sole benefit of PFS. The statement in Environmental Report Section 4.6.4, referenced by SUWA, was an acknowledgment that the possibility exists in the future that others could find a use for the rail corridor unrelated to PFSF. Any such use, whatever that might be, would be defined, implemented and licensed, as necessary, by others. PFS has no plan or intent to develop any other use.

III. DOCUMENT REQUESTS

SUWA requests the Applicant to produce the following documents directly or indirectly within its possession, custody, and/or control:

REQUEST NO. 1. All documents that are identified, referred to or used in any way in responding to any of the above interrogatories.

APPLICANT'S RESPONSE: Relevant documents used in responding to the above interrogatories will be provided in accordance with Applicant's Response to Request No. 2.

REQUEST NO. 2. All documents pertaining to SUWA's admitted contention.

APPLICANT'S RESPONSE: The documents requested will be provided during the week of May 24, 1999 to PFS's document repository at Parsons, Behle and Latimer in Salt Lake City.

REQUEST NO. 3. All documents (including experts' opinions, workpapers, affidavits, and other materials used to render such opinion) supporting or otherwise relating to testimony or evidence that you intend to use or rely upon at the hearing on SUWA's admitted contention.

APPLICANT'S RESPONSE: Applicant objects to this Request as being overly broad, vague, unduly burdensome and seeking privileged material. Applicant will provide documents with respect to its witnesses as agreed to with respect to other parties. See Applicant's Objections and Non-Proprietary Responses to State's First Requests for Discovery, Response to General Interrogatory No. 5 (Apr. 21, 1999); see also Response to Interrogatory No. 2.

REQUEST NO. 4. All documents pertaining to and/or that were relied upon to prepare Chapter 4, section 4 (4.4) and section 5 (4.5) of the PFS Environmental Report, including documents that substantiate the following claims made in that document: 1) there are no known wetlands or other environmentally sensitive areas along the 32 mile rail spur (4.4.1); 2) there are no unique vegetation habitat features in areas proposed for vegetation removal (4.4.2); 3) that a survey for wildlife within 0.5 mile of the rail spur is sufficient to protect relevant wildlife (4.4.2); 4) the impact to the local population of large animal species from construction and operation of the Low Rail Spur is expected to be minimal (4.4.2); and, 5) that there is a low level of recreational use of the area around the proposed Low Rail Spur (4.4.8).

APPLICANT'S RESPONSE: Applicant objects to this Request as it is overly broad and requests information that is beyond the scope of SUWA Contention B as admitted by the Board. See General Objection 3. Without waiving this objection, the documents requested will be provided during the week of May 24, 1999 to PFS's document repository at Parsons, Behle and Latimer in Salt Lake City.

REQUEST NO. 5. All documents pertaining to the need for, impacts of and potential success of the 40 ft wide rail spur corridor, to be constructed around the Low Rail Spur and cleared of vegetation for the purposes of preventing fires.

APPLICANT'S RESPONSE: Applicant objects to this Request as it is overly broad and requests information that is beyond the scope of SUWA Contention B as admitted by the Board. See General Objection 3. Without waiving this objection, the documents requested will be provided during the week of May 24, 1999 to PFS's document repository at Parsons, Behle and Latimer in Salt Lake City.

REQUEST NO. 6. All documents pertaining to the condition or health of the public land within Skull Valley generally and over which the Low Rail Spur will traverse specifically, particularly with regard to the impacts of grazing on this land and any cumulative impacts of the PFS proposal on wildlife.

APPLICANT'S RESPONSE: Applicant objects to this Request as it is overly broad and requests information that is beyond the scope of SUWA Contention B as admitted by the Board. See General Objection 3. Without waiving this objection, the documents requested will be provided during the week of May 24, 1999 to PFS's document repository at Parsons, Behle and Latimer in Salt Lake City.

REQUEST NO. 7. Any documents pertaining to the vegetative composition of the land within Skull Valley generally and the land over which the Low Rail Spur will traverse.

APPLICANT'S RESPONSE: Applicant objects to this Request as it is overly broad and requests information that is beyond the scope of SUWA Contention B as admitted by the Board. See General Objection 3. Without waiving this objection, the documents requested will be provided during the week of May 24, 1999 to PFS's document repository at Parsons, Behle and Latimer in Salt Lake City.

REQUEST NO. 8. Any documents pertaining to any mitigation measures which will be implemented if and when kit fox, burrowing owl, northern harrier or ferruginous hawk nests or dens are discovered within the construction zone of the rail spur and the likelihood of success of these mitigation measures.

APPLICANT'S RESPONSE: Applicant objects to this Request as it is overly broad and requests information that is beyond the scope of SUWA Contention B as admitted by the Board. See General Objection 3. Without waiving this objection, the documents requested will be provided during the week of May 24, 1999 to PFS's document repository at Parsons, Behle and Latimer in Salt Lake City.

REQUEST NO. 9. Any documents pertaining to the impact of fugitive dust emissions during construction on visibility, wildlife, recreation, plant life and wildlife habitat.

APPLICANT'S RESPONSE: Applicant objects to this Request as it is overly broad and requests information that is beyond the scope of SUWA Contention B as admitted by the Board. See General Objection 3. Without waiving this objection, the documents requested will be provided during the week of May 24, 1999 to PFS's document repository at Parsons, Behle and Latimer in Salt Lake City.

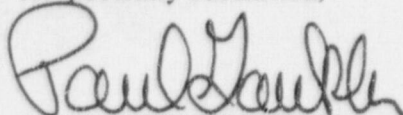
REQUEST NO. 10. Any documents pertaining to fugitive dust emissions from the construction and operation of the fire buffer zone to be maintained in conjunction with the Low Rail Spur.

APPLICANT'S RESPONSE: Applicant objects to this Request as it is overly broad and requests information that is beyond the scope of SUWA Contention B as admitted by the Board. See General Objection 3. Without waiving this objection, the documents requested will be provided during the week of May 24, 1999 to PFS's document repository at Parsons, Behle and Latimer in Salt Lake City.

REQUEST NO. 11. Any documents pertaining to the impact of noise from operation and construction of the Low Rail Spur on wildlife and humans within the North Cedar Mountains roadless area.

APPLICANT'S RESPONSE: The documents requested will be provided during the week of May 24, 1999 to PFS's document repository at Parsons, Behle and Latimer in Salt Lake City.

Respectfully submitted,



Jay E. Silberg
Ernest L. Blake, Jr.
Paul A. Gaukler
SHAW, PITTMAN, POTTS &
TROWBRIDGE
2300 N Street, N.W.
Washington, DC 20037
(202) 663-8000

Dated: May 20, 1999

Counsel for Private Fuel Storage L.L.C.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
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DOCKETED
USNRC

'99 MAY 26 P2:01

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

CERTIFICATE OF SERVICE

I hereby certify that copies of the Applicant's Objections and Responses to SUWA's First Requests For Discovery and the Affidavits of Paul A. Gaukler, John Donnell, and Jerry Cooper were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 20th day of May 1999.

G. Paul Bollwerk III, Esq., Chairman
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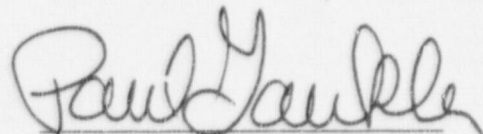
Adjudicatory File
Atomic Safety and Licensing Board Panel
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* By U.S. mail only


Paul A. Gaukler

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

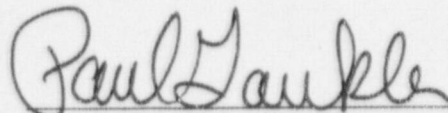
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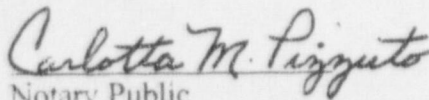
AFFIDAVIT OF PAUL A. GAUKLER

I, Paul A. Gaukler, being duly sworn, state as follows:

1. I am counsel with Shaw Pittman Potts & Trowbridge in Washington, D.C.
2. I am duly authorized to verify Private Fuel Storage's Responses to SUWA's First Requests for Discovery to Applicant Private Fuel Storage; specifically, those responses to Interrogatory Nos. 1 and 2.
3. I certify that the statements in such responses are true and correct to the best of my personal knowledge and belief.


Paul A. Gaukler

Sworn to and subscribed
before me this 20th day
of May, 1999.


Notary Public

My commission expires:

8-14-2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

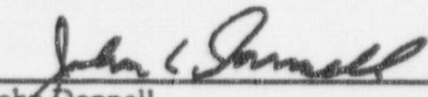
In the Matter of)	
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PRIVATE FUEL STORAGE L.L.C.)	Docket No. 72-22
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(Private Fuel Storage Facility))	

AFFIDAVIT OF JOHN DONNELL

CITY OF ENGLEWOOD)	
)	SS:
STATE OF COLORADO)	

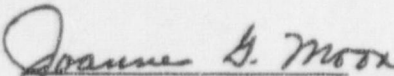
I, John Donnell, being duly sworn, states as follows:

I am Project Director for Private Fuel Storage, L.L.C. ("PFS"). I report directly to John Parkyn, the Chairman of the Board of PFS. In my capacity as Project Director, I am responsible for the execution and integration of the legal and technical activities of the Private Fuel Storage Facility ("PFSF") project. I have read the responses to Interrogatory Nos. 3 and 5 of the Responses to SUW's First Requests for Discovery to Applicant PFS and certify that the statements in such responses are true and correct to the best of my personal knowledge and belief.



John Donnell

Sworn to and subscribed
before me this 20th day
of MAY, 1999.



Notary Public

My commission expires: 04-21-2003

JOANNE G. MOON
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires 04/21/2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

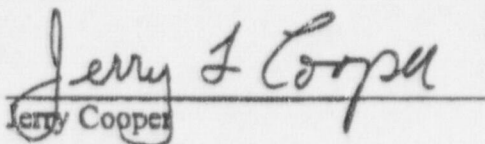
In the Matter of)
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)
(Private Fuel Storage Facility))

AFFIDAVIT OF JERRY COOPER

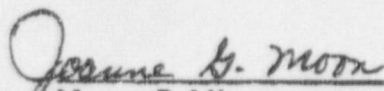
CITY OF ENGLEWOOD)
) SS:
STATE OF COLORADO)

I, Jerry Cooper, being duly sworn, states as follows:

I am the Project Engineer with Stone & Webster Engineering Corporation (Stone & Webster) for the Private Fuel Storage Facility ("PFSF") project. Stone & Webster is the architect-engineer for the PFSF. I report to John Donnell, the Project Director for Private Fuel Storage, L.L.C ("PFS"). As Project Engineer for the PFSF, I am responsible for the execution and integration of the technical activities for the project. I have read the response to Interrogatory No. 4 of the Responses to SUWA's First Requests for Discovery to Applicant PFS and certify that the statements in such response are true and correct to the best of my personal knowledge and belief.


Jerry Cooper

Sworn to and subscribed
before me this 20th day
of May, 1999.


Notary Public

