

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of:

)  
) Docket No. 72-22-ISFSI  
)

PRIVATE FUEL STORAGE, LLC )  
(Independent Spent Fuel )  
Storage Installation) )

ASLBP No. 97-732-02-ISFSI

May 11, 1998

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**OHNGO GAUDADEH DEVIA'S [OGD]  
RESPONSE TO APPLICANT'S MOTION FOR RECONSIDERATION  
OF CONTENTIONS**

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Ohngo Gaudadeh Devia [OGD] hereby responds to the Motion for Reconsideration and Clarification filed by Private Fuel Storage, L.L.C. [PFS]. Specifically, OGD urges the Atomic Safety and Licensing Board [Board] to confirm its decision to admit OGD's Contention O, as previously delineate by the Board in its April 22 Order, without modification suggested by PFS.

**I. Background**

OGD filed a petition to intervene in this matter September 12, 1997. On November 24, 1997, OGD filed its Contentions Regarding the Materials License Application of [PFS] in an Independent Spent Fuel Storage Installation [ISFSI].

In a Memorandum and Order dated April 22, 1998 [Order], the Board granted OGD's petition to intervene and accepted OGD's Contention O, subject to the Board's points of clarification. Order at 139-40. In its Motion for Reconsideration and Clarification, PFS requests the Board to delete aspects of Contention O from further inquiry. Because the Board's Order has properly defined the scope of Contention O and PFS's request is not properly founded on the relevant regulations, the Board should dismiss PFS's motion regarding Contention O.

## **II. Argument**

PFS seeks to constrain OGD's Contention O in two ways, suggesting that OGD has failed to provide a sufficient factual basis for aspects of the contention. However, PFS's request is based on an unduly burdensome threshold requirement for admission of contentions which is contrary to the intent of the relevant regulations.

First, PFS asserts that because OGD failed to identify the names of various sites and the hazardous wastes and harmful substances there, the Board should not consider the reasonably foreseeable, disproportionate adverse impacts that these sites and the proposed ISFSI site may have on the area's minority and low income

populations. PFS Motion at 20. However, in making this assertion, PFS misstates the threshold requirements for the admission of contentions. 10 C.F.R. § 2.714 requires only that a contention be founded on a concise statement of the facts which are the basis for the contention “together with references to those specific sources . . . on which the petitioner intends to rely to establish those facts . . . .” 10 C.F.R. § 2.714(b)(2)(ii). Furthermore, this threshold requirement “does not call upon the intervenor to make its case at this stage of the proceedings . . . .” *Comments on Specific Proposals, with Responses, Rules of Practice for Domestic Licensing Proceedings — Procedural Changes in the Hearing Process*, 54 FR 33168 (1989) (codified at 10 C.F.R. § 2.714)

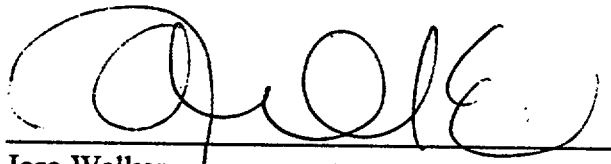
By providing a map establishing that there are, within Tooele County, nine Toxic Release Inventory (TRI) sites, six Comprehensive Environmental Response, Compensation, and Liability (CERCLA) sites, two National Pollutant Discharge Elimination System (NPDES) sites, and 40 Resource Conservation Recovery Act (RCRA) sites, OGD has met its threshold burden of identifying the sources upon which it plans to rely in presenting its environmental justice claim. The submitted map, prepared by the Environmental Protection Agency, whose duty it is to catalogue and regulate such sites, is sufficient to “supply information showing the existence of a genuine dispute,” *Id.*, and to require the agency to

assess the disproportionate socioeconomic impacts of the proposed ISFSI site on minorities and low income populations. Louisiana Energy Services, 1998 WL 191134 at 15 (NRC) (April 3, 1998) ("The NRC's goal is to identify and adequately weigh, or mitigate, effects on low income and minority communities that become apparent only by considering factors peculiar to those communities").

Second, PFS argues that OGD must identify hazardous waste or other harmful substances located at the North and South Utah Test and Training Ranges. However, as the Nuclear Regulatory Commission recently stated, the focus of the environmental justice inquiry is disparate socioeconomic impacts on minority and low income populations. Id. This inquiry includes impacts to human health and safety and to the environment and encompasses such diverse issues as the devaluation of property values and the ease of travel between communities. Id. At 20. Under this inquiry, the probability of adverse socioeconomic and health impacts from the nearby testing ranges establishes the basis for further investigation — the potential for reasonably foreseeable disparate impacts that may result from the construction and operation of the ISFSI facility. Id. ("[A]dverse impacts that fall heavily on minority and impoverished citizens call for particularly close scrutiny").

In sum, as previously determined by the Board, in stating Contention O and its bases, modified according to the Order, OGD has met the burden of establishing a sufficient factual basis for a genuine dispute, adequate to warrant further investigation. Therefore, for the reasons stated above, OGD asks the Board to reject PFS's request otherwise and confirm its admission of OGD's Contention O for further inquiry.

DATED this 11th day of May, 1998.

A handwritten signature in black ink, appearing to read 'J. Walker', written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that copies of OHNGO GAUDADEH DEVIA'S  
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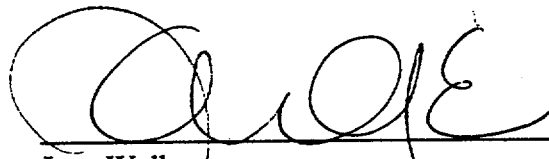
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A handwritten signature in black ink, appearing to read 'Joro Walker', written over a horizontal line.

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