

June 4, 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
PRIVATE FUEL STORAGE, L.L.C.)	Docket No. 72-22-ISFSI
)	
(Independent Spent Fuel)	
Storage Installation))	

NRC STAFF COMMENTS CONCERNING THE EFFECT OF
THE MAY 19, 1999 LICENSE APPLICATION REVISION ON
APPLICANT'S MOTION FOR SUMMARY DISPOSITION
OF UTAH CONTENTION C (DOSE LIMITS)

INTRODUCTION

On June 2, 1999, the Licensing Board issued its "Memorandum and Order (Providing Opportunity to Address Import of License Application Amendment)" ("Order"), in which it afforded the parties an opportunity to comment on the effect of the May 19, 1999 license application revision on the motion for summary disposition of Utah Contention C that was filed by Private Fuel Storage L.L.C. ("Applicant" or "PFS") on April 21, 1999. In accordance with the Licensing Board's Order, the NRC Staff ("Staff") hereby provides its views with respect to the effect of the license application revision on the Applicant's motion for summary disposition.

For the reasons set forth herein, the Staff submits that the May 19, 1999 license application revision, which incorporates the revised dose analysis presented in the Applicant's February 10, 1999 response to Staff Requests for Additional Information, provides finality to the issues raised by the Applicant's motion for summary disposition of Utah Contention C, and warrants the grant of the Applicant's motion for summary disposition at this time.

DISCUSSION

As admitted by the Licensing Board, Utah Contention C ("Failure to Demonstrate Compliance with NRC Dose Limits") states as follows:

CONTENTION: The Applicant has failed to demonstrate a reasonable assurance that the dose limits specified in 10 CFR § 72.106(b) can and will be complied with in that:

1. License Application makes selective and inappropriate use of data from NUREG-1536 for the fission product release fraction.
2. License Application makes selective and inappropriate use of data from SAND80-2124 for the respirable particulate fraction.
3. The dose analysis in the License Application only considers dose due solely to inhalation of the passing cloud. Direct radiation and ingestion of food and water are not considered in the analysis.¹

Various assertions were made by the State in support of this contention, which alleged that the Applicant's dose analysis in § 8.2.7.2 of its Safety Analysis Report ("SAR"), filed with its application of June 20, 1997, failed to provide an adequate evaluation of the dose consequences of a loss-of-confinement accident at its proposed facility.

On December 10, 1998, the Staff issued its second round of Requests for Additional Information ("RAIs") to the Applicant. Included therein were two requests (RAIs 7-1 and 8-4) concerning the Applicant's accident dose analysis -- which indicated that the Applicant's dose analysis required justification and/or revision with respect to matters raised in Contention C.² On

¹ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142,185-86, 251 (1998).

² See letter from Mark S. Delligatti (NRC) to John D. Parkyn (PFS), dated December 10, 1998 ("Request for Additional Information (TAC No. L22462)"), RAIs 7-1 and 8-4.

February 10, 1999, PFS filed a response to the Staff's RAIs, in which it responded, *inter alia*, to the two RAIs concerning its accident dose analysis.³ Therein, PFS presented the results of a revised accident dose analysis which it indicated had been performed in accordance with Interim Staff Guidance-5 (ISG-5), and indicated that the revised dose analysis eliminated the issues that were identified to be of concern in Utah Contention C. See PFS Response to RAI 7-1 and 8-4.

On April 21, 1999, PFS filed its "Motion for Summary Disposition of Utah Contention C - Failure to Demonstrate Compliance With NRC Dose Limits" ("Motion"). Therein, PFS asserted that its revised dose analysis eliminated any basis for the issues raised in Utah Contention C, and that it was therefore entitled to summary disposition of these issues. Specifically, PFS stated that its revised accident dose analysis (a) no longer uses the fission product release fractions contained in NUREG-1536 or the assumptions in SAND80-2124 about the fraction of particulates or volatile fission products that would be released by the fuel but retained in the canister, (b) no longer uses the respirable particulate fraction contained in SAND80-2124, and (c) takes into account all applicable environmental pathways to which a member of the public may be exposed both during passage of the contaminated plume and following deposition of contaminated material on the ground. See Motion at 17-18.

On May 11, 1999, the State of Utah filed its response to the Applicant's Motion.⁴ Therein, the State asserted, *inter alia*, that the Applicant's response to the Staff's RAIs did not

³ See letter from John D. Parkyn (PFS) to Director, Office of Nuclear Material Safety and Safeguards (NRC), dated February 10, 1999, Attachment ("Safety RAI No. 2 Responses").

⁴ See State of Utah's Opposition to Applicant's Motion for Summary Disposition of Contention C ("Utah Response"), dated May 11, 1999.

include an amendment to the SAR and, therefore, that the revised dose analysis did not moot the contention's assertion that the license application and SAR are deficient. Utah Response at 5-11.⁵

Also on May 11, 1999, the Staff filed its response to the Applicant's Motion,⁶ in which the Staff presented its view that each of the issues raised by Utah Contention C have been resolved, and that the Applicant is entitled to summary disposition of the contention as a matter of law. Specifically, the Staff stated as follows:

[T]he Staff has reviewed the revised dose calculation which PFS submitted to the NRC in its February 1999 response to the Staff's RAIs. On the basis of this review, the Staff has determined that the Applicant's revised dose analysis satisfactorily addresses each of the concerns raised by this contention, that it appropriately follows the guidance in ISG-5, and that its resulting dose estimates satisfy the regulatory requirements set forth in 10 C.F.R. Part 72. Accordingly, the Staff has concluded that upon revision of the SAR to reflect the Applicant's revised dose analysis, the license application will satisfy the Commission's regulatory requirements pertaining to the analysis of offsite dose consequences of a loss-of-confinement accident. . . .

⁷ The Applicant has indicated that it intends to revise its SAR to incorporate its revised dose analysis. See "Applicant's Response . . .," dated May 7, 1999, at 6 n.12 ("PFS intends to file a license amendment on or about May 14, 1999 which will formally incorporate into the License Application the various analyses and commitments that it has made in its RAI responses filed in February . . ."). The Staff understands that this submittal may be delayed for several days, to on or about May 19, 1999.

⁵ The State also contested the adequacy of the Applicant's revised dose analysis, raised certain concerns that it had not identified previously in the contention or basis statements therefor, and argued that the motion for summary disposition was premature since discovery on the contention had not yet closed. *Id.* at 11-15.

⁶ See "NRC Staff's Response to Applicant's Motion for Summary Disposition of Utah Contention C (Dose Limits)" ("Staff Response"), dated May 11, 1999.

Staff Response at 9. After setting forth a detailed evaluation of the Applicant's revised dose analysis, the Staff further stated as follows:

Based upon the above considerations, the Staff has concluded that upon revision of the SAR to reflect the Applicant's revised dose analysis, which the Applicant indicates will be submitted later this month, the license application will satisfy the Commission's regulatory requirements pertaining to the analysis of offsite dose consequences of a loss-of-confinement accident. Further, upon revision of the SAR to reflect the Applicant's revised dose analysis, there is no basis for Utah Contention C. . . .

Id. at 15.

On May 19, 1999, the Applicant submitted its anticipated revision to the license application, in which it, *inter alia*, incorporated its revised dose analysis. As indicated in the Staff's response to Applicant's motion for summary disposition, PFS had previously indicated (in a response to an earlier motion to compel filed by the State of Utah) that this revision would be submitted in May 1999. Moreover, as the State, itself, has noted (*see* State's Response at 10), the Applicant has previously submitted updates to its license application to reflect revisions to its licensing basis. Thus, the Applicant's May 19, 1999 revision of its application to incorporate its revised dose analysis was both expected and predictable.

In sum, the Staff submits that the Applicant's May 1999 revision of its license application provides the administrative change needed for the application to incorporate the revised dose analysis, and thus resolves any outstanding issue concerning Utah Contention C. Moreover, the Staff submits that even if the license application had not yet been submitted, the Applicant's submission of its revised dose analysis as part of its response to Staff RAIs would have supported summary disposition of this contention (subject, perhaps, to a condition that the application be

amended to incorporate the revised dose analysis), in that the Applicant's response to Staff RAIs constitutes an implicit revision to the licensing basis, upon which the Commission may reasonably have relied in deciding whether to issue the requested license. Thus, contrary to the State's view (State Response at 9), the Staff submits that a written response by an applicant to a Staff RAI constitutes part of the formal licensing basis for a facility, and constitutes more than "mere correspondence" between an applicant and the Staff.⁷

Finally, the Staff notes that in the State's response to the Applicant's motion for summary disposition, the State asserted that "if and when" the application is revised to incorporate the revised dose analysis, the State will decide whether to file an amended contention concerning these matters. *Id.* at 11. The Staff submits that if and when the State submits a new contention concerning the revised dose analysis, the timeliness of that contention should be assessed based upon a determination as to when the State received specific, reliable information of the Applicant's revised dose analysis -- even if notice of that revision was provided in some document other than the license application itself. *See, e.g., Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 48 NRC ____ (April 15, 1999); *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1045, 1048 (1983).⁸

⁷ In the same manner, if the State had submitted a new contention prior to the Applicant's revision of its application, based on the Applicant's description of its revised dose analysis in its February 1999 response to the Staff's RAIs, an argument that the contention was premature would have been difficult to sustain.

⁸ In contrast, if the Applicant had indicated that it was "considering" a revision to its accident analysis, or if the only available information was contained in a draft document, the State might have argued that an admissible contention could not yet be formulated. *See, e.g., Kerr-McGee Chemical Corp.* (West Chicago Rare Earths Facility), LBP-89-16, 29 NRC 508, 514 (1989).

CONCLUSION

For the reasons set forth above, the Staff submits that the Applicant's May 19, 1999 revision of its license application, in which it incorporated its revised accident dose analysis, eliminates any outstanding issue concerning the adequacy of its dose analysis as stated in Utah Contention C, and that summary disposition of that contention is now appropriate.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sherwin E. Turk".

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 4th day of June 1999

June 4, 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

PRIVATE FUEL STORAGE, L.L.C.

(Independent Spent Fuel
Storage Installation)


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Docket No. 72-22-ISFSI

NRC STAFF'S RESPONSE TO OHNGO GAUDADEH DEVIA'S
MOTION TO EXTEND THE DISCOVERY PERIOD

On May 28, 1999, Intervenor Ohngo Gaudadeh Devia (OGD) filed a motion seeking to extend the time for discovery to permit it to take the deposition of Chairman Leon Bear, which OGD has noticed for June 16, 1999.¹ While the Staff has generally declined to respond to motions concerning discovery between other parties in this proceeding, the Staff submits that OGD's Motion should be denied. In this regard, the Staff submits that OGD has failed to demonstrate good cause as to why it could not have sought this discovery earlier, during the three-month period of discovery that was afforded by the Licensing Board's established schedule for litigation in this proceeding.

Respectfully submitted,



Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 4th day of June 1999

¹ "Intervenor Ohngo Gaudadeh Devia's Motion to Extend the Discovery Period" (Motion"), dated May 28, 1999.

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In the Matter of)	
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PRIVATE FUEL STORAGE L.L.C.)	Docket No. 72-22-ISFSI
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(Independent Spent)	
Fuel Storage Installation))	

CERTIFICATE OF SERVICE

I hereby certify that copies of (1) "NRC STAFF COMMENTS CONCERNING THE EFFECT OF THE MAY 19, 1999 LICENSE APPLICATION REVISION ON APPLICANT'S MOTION FOR SUMMARY DISPOSITION OF UTAH CONTENTION C (DOSE LIMITS)," and (2) "NRC STAFF'S RESPONSE TO INTERVENOR OHNGO GAUDADEH DEVIA'S MOTION TO EXTEND THE DISCOVERY PERIOD" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the United States mail, first class, as indicated by an asterisk, with copies by electronic mail as indicated, this 4th day of June, 1999:

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