

July 16, 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'S RESPONSE TO APPLICANT'S MOTION FOR  
SUMMARY DISPOSITION OF CONTENTION UTAH B

INTRODUCTION

Pursuant to 10 C.F.R. §2.749(a), the NRC Staff ("Staff") herewith responds to "Applicant's Motion for Summary Disposition of Contention Utah B" ("Motion"), filed on June 11, 1999, by Private Fuel Storage L.L.C. ("Applicant" or "PFS"). For the reasons set forth below and in the attached Affidavit of Earl P. Easton ("Easton Aff."), the Staff submits that issues pertaining to the need for the Applicant's proposed intermodal transfer facility ("ITF") to be licensed under 10 C.F.R. Part 72 have been resolved, and there no longer exists a genuine dispute of material fact with respect to Contention Utah B. Inasmuch as these issues have been resolved, the Applicant is entitled to a decision in its favor on this issue as a matter of law. The Staff therefore supports the Applicant's Motion and recommends that it be granted.

### BACKGROUND

Contention Utah B ("License Needed For Intermodal Transfer Facility") was filed by the State of Utah on November 23, 1997.<sup>1</sup> As admitted by the Licensing Board on April 22, 1998, the contention states as follows:

CONTENTION: PFS's application should be rejected because it does not seek approval for receipt, transfer, and possession of spent nuclear fuel at the Rowley Junction Intermodal Transfer Point ("ITP"), in violation of 10 C.F.R. § 72.6(c)(1), in that the Rowley Junction operation is not merely part of the transportation operation but a de facto interim spent fuel storage facility at which PFS will receive, handle, and possess spent nuclear fuel. Because the ITP is an interim spent fuel storage facility, it is important to provide the public with the regulatory protections that are afforded by compliance with 10 C.F.R. Part 72, including a security plan, an emergency plan, and radiation dose analyses.<sup>2</sup>

In support of this contention, the State asserted that the Applicant's proposed operation of an ITF at Rowley Junction, at which spent fuel transportation casks would be transferred from rail car to heavy haul truck for transportation approximately 24 miles south along Skull Valley Road to the proposed ISFSI site, requires that the ITF be licensed under 10 C.F.R. Part 72, due to the stationary nature of the ITF and the proposed ownership and operation of ITF equipment by PFS. According to the State, these factors render the ITF a "de facto" interim spent fuel storage facility, for which additional protection of the public health and safety is required. Utah Contentions at 11, 14.

---

<sup>1</sup> "State of Utah's Contentions on the Construction and Operating License Application by Private Fuel Storage, LLC for an Independent Spent Fuel Storage Facility" ("Utah Contentions"), dated November 23, 1997, at 10-15.

<sup>2</sup> *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7 (1998), at 184-85.

In admitting this contention, the Licensing Board accepted two of its four subparts (paragraphs (1) and (4)), which asserted that: "[t]he Rowley Junction operation is not merely part of the transportation operation but a de facto interim spent fuel storage facility at which PFS will receive, handle, and possess spent nuclear fuel for extended periods of time"; and "[b]ecause the ITP is stationary, it is important to provide the public with the regulatory protections that are afforded by compliance with 10 C.F.R. Part 72, including a security plan, an emergency plan, and radiation dose analyses."<sup>3</sup> The Licensing Board explained its decision to admit these portions of the contention as follows:

---

<sup>3</sup> The Board excluded two other subparts of the contention (paragraphs (2) and (3)), which asserted as follows:

2. The anticipated volume and quantity of fuel shipments that will pass through Rowley junction is a large magnitude that is unlike the intermodal transfer operations that previously occurred with respect to shipments of spent nuclear fuel from commercial nuclear power plant sites.

3. The volume of fuel shipments will not be capable of passing directly through Rowley Junction and some type of temporary storage of casks will be necessary at the site of the ITP, thus, making Rowley Junction a spent nuclear fuel storage facility. Further PFS fails to discuss the number of heavy haul trucks that will be available to haul casks, the mechanical reliability of these units, and their performance under all weather conditions which is necessary to analyze the amount of queuing and storage that will occur at Rowley Junction.

In excluding these issues, the Board stated, "[p]aragraphs two and three of this contention are inadmissible in that they and their supporting bases impermissibly challenge the Commission's regulations or rulemaking-associated generic determinations, including the provisions of 10 C.F.R. Part 71 governing transportation of spent fuel from reactor sites to the PFS facility." LBP-98-7, 47 NRC at 184.

As is relevant here, the Part 71 regulations authorize transportation of spent fuel under a general license for a Commission licensee or "carrier," which is defined as a "common, contract, or private carrier," that complies with the general controls and procedures requirements, quality assurance measures, and other provisions of Subparts A, G, and H of Part 71. 10 C.F.R. §§ 71.0(d), 71.4, 71.12. In this instance, there is a genuine legal/factual issue that merits further inquiry as to whether the PFS scheme for operation of the Rowley Junction ITP will cause the materials delivered there to remain within the possession and control of an entity or entities that comply with the terms of the general license issued under section 71.12 or will be handled in such a way as to require specific licensing under Part 72. See State Contentions at 11 (PFS will be receiving and handling spent fuel at ITP using PFS owned and operated equipment); Tr. at 144-62.

This contention is admitted, albeit limited to paragraphs one and four.<sup>10</sup>

<sup>10</sup> Although PFS suggests the issue of license authority over the Rowley Junction ITP is outside the scope of this proceeding, see PFS Contentions Response at 158-59, this seemingly runs contrary to the staff's apparent belief that it may, in the context of acting on the PFS license, exert regulatory authority relative to PFS activities at Rowley Junction, see Staff Contentions Response at 19 n.29.

LBP-98-7, 47 NRC at 184-85.<sup>4</sup>

In its motion for summary disposition of Contention Utah B, PFS asserts that the issues admitted by the Licensing Board have been resolved, and that there is no longer any basis for

---

<sup>4</sup> Following the Applicant's August 1998 revision of its application to incorporate a proposed rail corridor along the west side of Skull Valley and the relocation of its proposed intermodal transfer point (ITP) to a location 1.8 miles west of Timpie, UT, the Licensing Board accepted an amendment to the bases for this contention, to incorporate "(1) the new location of the proposed Rowley Junction ITP, . . . (2) the assertion about the continuing viability of the ITP proposal pending BLM approval of the right of way for the Low rail spur, . . . and (3) the description of the ITP facility and equipment, per statements in the August 1998 PFS application amendment." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-29, 48 NRC 286, 297 (Nov. 30, 1998). The Board further stated: "In doing so, however, we intend no change in the scope of our original ruling admitting this contention on a limited basis. See LBP-98-7, 47 NRC at 184-85." *Id.*

litigation of the contention. Specifically, PFS responds to the issues identified in the Licensing Board's decision admitting this contention by indicating that materials delivered to the ITP will remain within the possession and control of an entity that will comply with the terms of a general license issued under 10 C.F.R. § 71.12, and materials at the ITP will not be handled in such a way as to require specific licensing under Part 72. PFS states: (1) under the PFS scheme for operation of the ITP, "materials at the ITP will remain in the possession of an entity that will be subject to compliance under [10 C.F.R.] Part 71," and (2) "no activities will occur at the ITP that are outside of the normal scope of transportation activities regulated under Part 71 and, as such, no activities at the ITP will require specific licensing under Part 72" (Motion at 2-3, and 10-15).

In further support of its Motion, PFS describes the ITP's location, equipment, and planned operations (Motion at 3-4), supported by the Affidavits of John A. Vincent and John Donnell. PFS then describes the established regulatory scheme for the use of approved transportation casks and the transportation of spent fuel under 10 C.F.R. Part 71 and various regulations issued by the U.S. Department of Transportation (DOT) (*Id.* at 4-5); states that under its current plans, PFS (or some other entity to be selected by PFS) will operate the ITP, and possess spent fuel at the ITP as a carrier, subject to the requirements of 10 C.F.R. Part 71 and DOT regulations (*Id.* at 5-6); describes the applicability of NRC physical protection requirements to carriers, under 10 C.F.R. §§ 70.20a and 73.37 (*Id.* at 6-7); indicates that DOT regulations pertain to the intermodal transfer of spent fuel casks, including "storage incidental" to such transportation (*Id.* at 7-8); and states that NRC and Federal caselaw recognize that spent fuel transportation, including the intermodal transfer of such materials, is subject to 10 C.F.R. Part 71 and DOT regulations (*Id.* at 8-10).

With respect to the specific issues identified by the Licensing Board, PFS states that "materials at the ITP will remain within the possession and control of an entity or entities subject to the general license issued under section 71.12" (*Id.* at 10; capitalization deleted). PFS then describes its plan of operations, under which the shipper (*i.e.*, the originating reactor) delivers spent fuel to a carrier for transport pursuant to 10 C.F.R. § 71.12; and PFS, operating as a carrier, would transport the spent fuel to its site (with possible transfer of the transportation casks to heavy haul trucks at the ITP) (*Id.* at 10-11). PFS states that there is "no physical or legal impediment" to its qualifying and operating as a carrier (*Id.* at 11); that it would file appropriate applications to qualify as a motor common or contract carrier with the Federal Highway Administration (FHWA) (*Id.* at 11-12), that it would comply with applicable FHWA and DOT regulations (*Id.* at 12); and that it would comply with NRC physical protection requirements which are applicable to carriers under 10 C.F.R. §§ 70.20a and 73.37.<sup>5</sup> PFS further asserts that since it will operate the equipment at the ITP as a carrier, its operation of the ITP does not remove these activities from the transportation regulatory regime (*Id.* at 13).

Finally, PFS responds to the second issue identified by the Board by stating that "materials delivered to the ITP will not be handled in such a way as to require specific licensing under Part 72" (*Id.* at 13; capitalization deleted). PFS states that its operations at the ITP will be conducted in accordance with the transportation casks' certificate of compliance and applicable NRC and DOT regulations (*Id.* at 14); that "the PFS plan for operation of the ITP contemplates

---

<sup>5</sup> PFS correctly notes that, apart from its responsibility as a carrier for physical protection of the spent fuel casks in transportation, the shipper remains responsible for compliance with various other NRC requirements. *See* Motion at 12 n.20.

nothing different than that which is normally regulated under the transportation regulations in Part 71" (*Id.*); that neither the frequency of intermodal transfers nor the fact that "some incidental storage of transportation casks may occur during intermodal transfer operations" does not affect which regulations apply" (*Id.*); and it asserts that a requirement to license the ITP under 10 C.F.R. Part 72 would "violate" the Federal regulatory scheme for the transportation of radioactive materials and would be inconsistent with NRC, DOT and Federal caselaw precedent (*Id.* at 14-15). Accordingly, PFS concludes that summary disposition on Contention Utah B should be entered in its favor.

For the reasons set forth below and in the attached Affidavit of Earl P. Easton, the Staff supports the Applicant's Motion and recommends that it be granted.

#### DISCUSSION

##### A. Legal Standards Governing Motions for Summary Disposition.

Pursuant to 10 C.F.R. §2.749(a), "[a]ny party to a proceeding may move, with or without supporting affidavits, for a decision by the presiding officer in that party's favor as to all or any part of the matters involved in the proceeding. The moving party shall annex to the motion a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard." In accordance with 10 C.F.R. §2.749(b), when a properly supported motion for summary disposition is made, "a party opposing the motion may not rest upon the mere allegations or denials of his answer; his answer by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine

issue of fact."<sup>6</sup> In addition, an opposing party must annex to its answer a short and concise statement of material facts as to which it contends there exists a genuine issue to be heard. 10 C.F.R. § 2.749(a). All material facts set forth in the moving party's statement will be deemed to be admitted unless controverted in the opposing party's statement. *Id.* Pursuant to 10 C.F.R. § 2.749(d), "[t]he presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavit, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law."<sup>7</sup>

The Commission has encouraged the parties in its adjudicatory proceedings to utilize its summary disposition procedures "on issues where there is no genuine issue of material fact so that evidentiary hearing time is not unnecessarily devoted to such issues." Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981).<sup>8</sup> Further, the Appeal

---

<sup>6</sup> *Accord, Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units I and 2), ALAB-841, 24 NRC 64, 93 (1986). General denials and bare assertions are not sufficient to preclude summary disposition when the proponent of the motion has met its burden. *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102 (1993). Although the opposing party does not need to demonstrate that it will succeed on the issues, it must at least demonstrate that a genuine issue of fact exists to be tried. *Id.*; *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-92-8, 35 NRC 145, 154 (1992) (to avoid summary disposition, the opposing party had to present contrary evidence that was so significantly probative as to create a material issue of fact).

<sup>7</sup> Pursuant to 10 C.F.R. § 2.749(c), if a party opposing the motion demonstrates in its affidavits that valid reasons exist why it cannot provide facts essential to oppose the motion, the presiding officer may deny the motion, order a continuance to permit affidavits to be obtained, or take such other action as may be appropriate.

<sup>8</sup> The Commission recently endorsed its earlier policy statement, but indicated that "Boards should forego the use of motions for summary disposition except upon a written finding that such  
(continued...)



Board has recognized that summary disposition provides "an efficacious means of avoiding unnecessary and possibly time-consuming hearings on demonstrably insubstantial issues." *Wisconsin Electric Power Co.* (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1263 (1982); *Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550 (1980).<sup>9</sup>

The Commission's summary disposition procedures have been analogized to Rule 56 of the Federal Rules of Civil Procedure. *See, e.g., Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753-54 (1977). The Commission, when considering motions for summary disposition filed pursuant to 10 C.F.R. § 2.749, generally applies the same standards that the Federal courts use in determining motions for summary judgment under Rule 56 of the Federal Rules. *Advanced Medical Systems*, 38 NRC at 102 (1993). Decisions arising under Rule 56 of the Federal Rules may thus serve as guidelines to the Commission's adjudicatory boards in applying 10 C.F.R. §2.749. *Perry*, 6 NRC at 754.

Under Rule 56 of the Federal Rules, the party seeking summary judgment has the burden of proving the absence of genuine issues of material fact. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Advanced Medical Systems*, 38 NRC at 102. In addition, the record is viewed

---

<sup>8</sup>(...continued)

a motion will likely substantially reduce the number of issues to be decided, or otherwise expedite the proceeding." *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 20-21 (1998). The Staff submits that partial summary disposition of this contention will reduce the multiplicity of issues that require hearings in this proceeding, and will otherwise serve to expedite the proceeding.

<sup>9</sup> It is well settled that an agency may ordinarily dispense with an evidentiary hearing where no genuine issue of material fact exists. *Veg-Mix, Inc. v. U.S. Dep't of Agriculture*, 832 F.2d 601, 607-08 (D.C. Cir. 1987).

in the light most favorable to the party opposing the motion. *Poller v. CBS, Inc.*, 368 U.S. 464, 473 (1962); *Kerr-McGee Chemical Corp.* (West Chicago Rare Earths Facility), ALAB-944, 33 NRC 81, 144 (1991). However, if the moving party makes a proper showing for summary disposition and the opposing party fails to show that there is a genuine issue of material fact, the District Court (or Licensing Board) may summarily dispose of all of the matters before it on the basis of the filings in the proceeding, the statements of the parties, and affidavits. Rule 56(e), Fed. R. Civ. P. *Accord, Advanced Medical Systems*, 38 NRC at 102; 10 C.F.R. § 2.749(d).

The Licensing Board in this proceeding has recently had occasion to rule upon a motion for summary disposition filed by PFS. See "Memorandum and Order (Granting Motion for Summary Disposition Regarding Contention Utah C), LBP-99-23, 49 NRC \_\_\_\_ (June 17, 1999). Therein, the Licensing Board succinctly summarized the standards governing the granting of summary disposition, as follows:

Under 10 C.F.R. § 2.749(a), (d), summary disposition may be entered with respect to any matter (or all of the matters) in a proceeding if the motion, along with any appropriate supporting material, shows that there is "no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law." The movant bears the initial burden of making the requisite showing that there is no genuine issue as to any material fact, which it attempts to do by means of a required statement of material facts not at issue and any supporting materials (including affidavits, discovery responses, and documents) that accompany its dispositive motion. An opposing party must counter each adequately supported material fact with its own statement of material facts in dispute and supporting materials, or the movant's facts will be deemed admitted. See Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102-03 (1993).

LBP-99-23, slip op. at 10.

As more fully set forth below, the Staff submits that summary disposition of this contention is appropriate in accordance with these established standards.

**B. No Factual Issue Remains to Be Resolved Concerning Contention Utah B.**

As discussed above, in admitting this contention, the Licensing Board observed that "there is a genuine legal/factual issue that merits further inquiry as to whether the PFS scheme for operation of the Rowley Junction ITP will cause the materials delivered there to remain within the possession and control of an entity or entities that comply with the terms of the general license issued under section 71.12 or will be handled in such a way as to require specific licensing under Part 72. . . . (PFS will be receiving and handling spent fuel at ITP using PFS owned and operated equipment)" LBP-98-7, 47 NRC at 185.

The factual elements of this issue have now been resolved. PFS initially identified its planned construction and operation of the ITP in its license application (LA) and Safety Analysis Report (SAR), filed in June 1997 (see LA § 1.1; SAR §§ 1.4, 4.5.4.1, 5.1.3). On December 10, 1998, the Staff transmitted a second round of Requests for Additional Information" (RAIs) to PFS, in which it specifically requested detailed information from PFS as to "how shipments of spent fuel would be completed from the time they arrive at the intermodal transfer point (ITP) until they are received at [the] ISFSI site."<sup>10</sup> Included within this request were seven specific questions, pertaining to such matters as PFS' role in completing the shipments; the actions required for PFS to take to comply with DOT regulations applicable to carriers; the respective responsibilities of PFS' shippers and carriers to provide physical protection; the responsibilities of PFS (if any), its

---

<sup>10</sup> See Letter from Mark S. Delligatti (NRC) to John D. Parkyn (PFS), dated December 10, 1998 (Attachment, Section 4 "License Application - Intermodal Transfer Point").

shippers and carriers, in preparing casks for shipment; the ownership of ITP facilities and equipment; and the role of PFS, its shippers and carriers in providing emergency response at the ITP.<sup>11</sup> On February 10, 1999, PFS responded to the Staff's RAIs, in which it provided detailed information in response to the Staff's questions (Motion, Vincent Affidavit Exh. 1).<sup>12</sup> The Applicant's responses to the Staff's RAIs describe the nature of PFS' planned operation of the ITP, and establish that its operation of that facility will be conducted in accordance with applicable NRC and DOT regulations governing the transportation of radioactive materials. Further, the Applicant's RAI responses establish that under PFS' plan for operation of the ITP, materials delivered to the ITP will remain within the possession and control of an entity that will comply with the general license established for carriers, and will not be handled in a manner that requires licensing under 10 C.F.R. Part 72 -- notwithstanding the fact that PFS will handle the spent fuel transportation casks using PFS owned and operated equipment. Accordingly, no factual issue remains to be resolved pertaining to this contention.

---

<sup>11</sup> In admitting this contention, the Board cited "the staff's apparent belief that it may, in the context of acting on the PFS license, exert regulatory authority relative to PFS activities at Rowley Junction, see Staff Contentions Response at 19 n.29." LBP-98-7, 47 NRC at 185 n.10. In the referenced footnote, the Staff observed that "it intends to review the Applicant's discussion of the equipment and transfer operations to be located at the Rowley Junction ITP, and may seek further information regarding those matters from the Applicant." The Staff's RAIs of December 10, 1998, elicited that further information. Following the Staff's evaluation of the information submitted by PFS, the Staff "determined that additional regulation of the ITP under 10 C.F.R. Part 72 is not required under the Commission's regulations." *See* "NRC Staff's Statement of Its Position Concerning Group I Contentions" ("Statement of Position"), dated June 15, 1999, at 4.

<sup>12</sup> *See* Letter from John D. Parkyn (PFS) to Director, Office of Nuclear Material Safety and Safeguards (NRC), dated February 10, 1999.

C. As A Matter of Law, Contention Utah B Should Be Resolved in PFS' Favor at This Time.

The Licensing Board, itself, has observed that "the Part 71 regulations authorize transportation of spent fuel under a general license for a Commission licensee or 'carrier,' . . . that complies with the general controls and procedures requirements, quality assurance measures, and other provisions of Subparts A, G, and H of Part 71." LBP-98-7, 47 NRC at 184. Further, the Board has rejected portions of this contention which impermissibly challenged the Commission's regulations in 10 C.F.R. Part 71 governing the transportation of spent fuel from reactor sites to the PFS facility. *Id.*

For its part, the Staff has previously set forth its views, in its initial response to this contention, that PFS' planned operation of the ITF is subject to an established regulatory regime governing the transportation of spent fuel -- which specifically includes the storage of such materials at intermodal transfer points incident to transportation.<sup>13</sup> The Staff has further expressed its views concerning this matter in its Statement of Position concerning Contention Utah B, filed on June 15, 1999 -- which has been adopted (with one correction) in the attached Affidavit of Earl P. Easton.<sup>14</sup>

In sum, it is the Staff's position that PFS may lawfully transport spent fuel as a carrier in accordance with a general license issued under 10 C.F.R. § 70.20a(a), and is required to comply

---

<sup>13</sup> See "NRC Staff's Response to Contentions Filed by (1) the State of Utah, (2) the Skull Valley Band of Goshute Indians, (3) Ohngo Gaudadeh Devia, (4), Castle Rock Land and Livestock, et al., and (5) the Confederated Tribes of the Goshute Reservation and David Pete," dated December 24, 1997, at 15-19. That discussion is incorporated by reference herein.

<sup>14</sup> As set forth in the attached Affidavit, line 26 on page 2 of the Staff's Statement of Position should be revised to read as follows: "the spent fuel at the ITP as a Part 72 licensee but rather as a carrier in transportation under a 10 C.F.R. § 70.20a(a) general license), . . . " Easton Aff. at 2.

with the physical protection requirements in 10 C.F.R. § 73.37 and various DOT regulations governing the transportation of radioactive materials; in addition, the shippers (*i.e.*, originating reactors, licensed under 10 C.F.R. Part 50) may deliver spent fuel to a carrier for transport pursuant to 10 C.F.R. § 71.12, and must comply with various NRC and DOT regulations.<sup>15</sup>

In sum, the Staff submits that any outstanding legal issue concerning this contention should be resolved at this time. The Staff submits that there no longer exists any genuine issue of material fact or law with respect to this issue, and the Applicant is entitled to a decision in its favor on this contention.

---

<sup>15</sup> The Applicant states that spent fuel casks at the ITP "will be in the possession and control of an entity subject to the terms and conditions of the general license of 10 C.F.R. § 71.12, namely a carrier authorized to possess the spent fuel being shipped under 10 C.F.R. § 70.20a" (Motion at 11). The Staff agrees that 10 C.F.R. § 71.12 applies at all times during transportation. The shipment will either be in the possession of the shipper under 10 C.F.R. § 71.12, or delivered to a carrier acting on the shipper's behalf, under § 71.12. The carrier would have a general license to possess the material under 10 C.F.R. § 70.20a(a) (which applies the physical protection requirements of 10 C.F.R. § 73.37), and is required to comply with applicable DOT regulations. However, the shipper remains responsible for compliance with Part 71 and other applicable DOT requirements at all times during transportation, until the shipment is received at its final destination (*i.e.*, the ISFSI site). *See, e.g.*, 10 C.F.R. § 71.5. As noted by PFS, "most requirements of the [NRC] transportation general license are on the shipper" (Motion at 12 n.20). This is consistent with the Commission's regulatory scheme governing the transportation of spent fuel.

CONCLUSION

For the reasons set forth above and in the attached Affidavit, the Staff supports the Applicant's motion for summary disposition of Contention Utah B, and recommends that it be granted.

Respectfully submitted,



Sherwin E. Turk  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 16th day of July 1999

July 16, 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)	)	

AFFIDAVIT OF EARL P. EASTON  
CONCERNING CONTENTION UTAH B

I, Earl P. Easton, having first been duly sworn, do hereby state as follows:

1. I am employed as Section Chief, Technical Review Section A in the Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission ("NRC"), in Washington, D.C. A statement of my professional qualifications is attached hereto.

2. This Affidavit is prepared in response to the "Applicant's Motion for Summary Disposition of Contention Utah B" ("Motion"), filed on June 11, 1999, by Private Fuel Storage L.L.C. ("Applicant" or "PFS"), and the "Statement of Material Facts on Which No Genuine Dispute Exists" ("Statement of Material Facts") attached thereto.

3. As part of my official responsibilities, I reviewed the Applicant's description of its planned operation of the Intermodal Transfer Facility ("ITF") located near Timpie, Utah, as set forth in its application for an Independent Spent Fuel Storage Installation ("ISFSI") license, as revised on June 8, 1999, and in its February 10, 1999 response to the NRC Staff's Request for Additional Information dated December 10, 1998. In addition, I participated in preparing the




"NRC Staff Position" on Contention Utah B, as set forth in the "NRC Staff's Statement of Its Position Concerning Group I Contentions," dated June 15, 1999 (at 1-4). The NRC Staff Position accurately represents my views concerning this contention, with one correction -- the 26th line on page 2 should be revised to incorporate the following underlined language, to read as follows:

the spent fuel at the ITP as a Part 72 licensee but rather as a carrier in transportation under a 10 C.F.R. § 70.20a(a) general license),  
the responsibility for marking and labeling of casks, accuracy of shipping . . .

4. Also as part of my official responsibilities, I have reviewed the Applicant's Motion and the attachments thereto, in which PFS seeks summary disposition of Contention Utah B. On the basis of my review of the Applicant's description of the proposed ITF, and the documents attached to the Applicant's Motion, I am satisfied that the Statement of Material Facts attached to the Applicant's Motion is correct.

5. I hereby certify that the foregoing is true and correct to the best of my knowledge, information and belief.

  
Earl P. Easton

Sworn to before me this  
16th day of July 1999

  
Notary Public

My commission expires: \_\_\_\_\_  
EIVA BOWDEN BERRY  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires December 1, 1999

**Earl P. Easton**  
**Section Chief, Technical Section A**  
**Spent Fuel Project Office**  
**U.S. Nuclear Regulatory Commission**

Education: B.S. Chemical Engineering, University of Maryland, 1974

Experience:

1999-Present Section Chief, Technical Review Section A

Manages technical review section for certification of spent fuel transportation and storage packages, and spent fuel storage facilities. Assures that the technical reviews of transportation and storage casks are adequate to demonstrate that casks meet the applicable safety requirements of NRC's regulations in 10 C.F.R. Parts 71 and 72. Responsible for resolving technical issues for spent fuel storage and transportation.

1990-1999 Section Chief, Transportation and Storage Safety Section

Responsible for conducting risk studies of spent fuel storage facilities and transportation, of radioactive materials, rulemaking for 10 C.F.R. Parts 71 and 72, and incident response. Served as chief NRC liaison to U.S. Department of Transportation. Represented the United States as a Delegate at International Atomic Energy Agency (IAEA) technical committee meetings in the development of international transport regulations.

1982-1990 Senior Technical Reviewer, Transportation Package Certification Branch

Senior technical reviewer and project manager for NRC review and approval of spent fuel transportation casks. Responsible as project manager for assuring that spent fuel casks met NRC's regulations under 10 C.F.R. Part 71. Conducted thermal and containment reviews.

1980-1981 Chemical Engineer, U.S. Department of Energy, Synthetic Fuels Program

Project manager for coal gasification and liquefaction pilot plants. Responsible for overseeing research and development of coal conversion technologies.

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) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO APPLICANT'S MOTION FOR SUMMARY DISPOSITION OF CONTENTION UTAH B" 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 16th day of July, 1999:

G. Paul Bollwerk, III, Chairman  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
(E-mail copy to GPB@NRC.GOV)

Dr. Jerry R. Kline  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
(E-mail copy to JRK2@NRC.GOV)

Dr. Peter S. Lam  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
(E-mail copy to PSL@NRC.GOV)

Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Office of the Secretary  
ATTN: Rulemakings and Adjudications Staff  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
(E-mail copy to:  
HEARINGDOCKET@NRC.GOV)

Office of the Commission Appellate  
Adjudication  
Mail Stop: 16-C-1 OWFN  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

James M. Cutchin, V  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
(by E-mail to JMC3@NRC.GOV)

Danny Quintana, Esq.\*  
Danny Quintana & Associates, P.C.  
68 South Main Street, Suite 600  
Salt Lake City, UT 84101  
(E-mail copy to quintana@Xmission.com)

Jay E. Silberg, Esq.\*  
Ernest Blake, Esq.\*  
Paul A. Gaukler, Esq.\*  
SHAW, PITTMAN, POTTS &  
TROWBRIDGE  
2300 N Street, N.W.  
Washington, DC 20037-8007  
(E-mail copies to jay\_silberg,  
paul\_gaukler, and ernest\_blake  
@shawpittman.com)

Denise Chancellor, Esq.\*  
Fred G. Nelson, Esq.  
Utah Attorney General's Office  
160 East 300 South, 5th Floor  
P.O. Box 140873  
Salt Lake City, UT 84114-0873  
(E-mail copy to dchancel@State.UT.US)

Connie Nakahara, Esq.\*  
Utah Dept. of Environmental Quality  
168 North 1950 West  
P. O. Box 144810  
Salt Lake City, UT 84114-4810  
(E-mail copy to cnakahar@state.UT.US)

Diane Curran, Esq.\*  
Harmon, Curran, Spielberg  
& Eisenberg, L.L. P.  
1726 M. Street N.W., Suite 600  
Washington, D.C. 20036  
(E-mail copy to  
dcurran@harmoncurran.com)

John Paul Kennedy, Sr., Esq.\*  
1385 Yale Ave.  
Salt Lake City, UT 84105  
(E-mail copy to john@kennedys.org)

Joro Walker, Esq.\*  
Land and Water Fund of the Rockies  
2056 East 3300 South, Suite 1  
Salt Lake City, UT 84109  
(E-mail copy to joro61@inconnect.com)

Richard E. Condit, Esq.\*  
Land and Water Fund of the Rockies  
2260 Baseline Road, Suite 200  
Boulder, CO 80302  
(E-mail copy to rcondit@lawfund.org)



---

Sherwin E. Turk  
Counsel for NRC Staff