



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
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DENVER, CO 80202-2466  
<http://www.epa.gov/region08>

September 21, 2000

Ref: 8EPR-EP

David L. Meyer  
Rules Review and Directives Branch  
Division of Freedom of Information and Publications Services  
Office of Administration, Mailstop T-6D-59  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Re: DEIS Comments on Independent Spent Fuel  
Storage Installation, #000194  
Goshutes Indians, Skull Valley Reservation

Dear Mr. Meyer:

Pursuant to our authority under Section 309 of the Clean Air Act, the Region 8 Office of Environmental Protection Agency (EPA) with technical assistance from the Radiation Protection Division, Office of Radiation and Indoor Air, has reviewed the Draft Environmental Impact Statement (EIS) for the Construction and Operation of an Independent Spent Fuel Storage Installation (ISFSI). This Draft EIS is for the proposed ISFSI that would authorize Private Fuel Storage, L.L.C. (PFS) to store spent nuclear fuel (SNF) on the Reservation of the Skull Valley Band of Goshutes at Skull Valley, Utah. EPA offers the following comments for your consideration.

PFS can legally receive, possess, store, and transfer spent nuclear fuel from nuclear power reactors in the U.S. to the proposed Skull Valley ISFSI provided the following permits and licenses are granted: 1) rail line rights of way are granted by BLM; 2) rail line license granted by the Surface Transportation Board; 3) lease approval is provided by BIA; and, 4) license is issued pursuant to 10 CFR Part 72 by the Nuclear Regulatory Commission (NRC). The purpose of the proposed action is, in large part, to provide interim storage of SNF until a permanent underground repository is available such as the proposed site at Yucca Mountain, Nevada which is scheduled to open by 2010. The proposed action involves the construction and operation of the ISFSI on the Skull Valley Reservation and a new rail line connecting the site with the existing Union Pacific railroad adjacent to Interstate 80. The site would be capable of storing 40,000 metric tons of uranium which may be sufficient to store all of the SNF of both PFS' member utilities and from other non-PFS utilities.

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## **EPA jurisdiction over the proposed ISFSI is limited**

EPA's jurisdiction over the proposed project is limited to several specific requirements which include: 1) storm water controls under the Clean Water Act, 2) a spill prevention and control plan for above-ground diesel fuel tanks under EPA's Oil Pollution Prevention Regulations under the Clean Water Act, 3) assure that the drinking water wells are safe for human consumption under the Safe Drinking Water Act, 4) completion of a form to show that the septic leach field is a Class V injection well under the Safe Drinking Water Act, and 5) qualification as small quantity generator of hazardous waste under the Resource Conservation and Recovery Act. These are routine environmental compliance controls for industrial facilities and EPA will be processing these applications as appropriate. The Draft EIS adequately describes these components of EPA jurisdiction.

Although we do not usually specifically notify the lead agency or other parties of circumstances where EPA lacks authority, it may be important for all parties to understand that EPA has no authority regarding radiation control, release, or design over this proposed ISFSI. This is in contrast to EPA's role, as required by Congress in the Energy Policy Act of 1992, to develop site-specific radiation protection standards for the permanent geologic repository, including SNF, at Yucca Mountain, Nevada. (For further information on EPA's role at Yucca Mountain see: <http://www.epa.gov/radiation/yucca/about.htm>.) At the proposed geologic repository near Yucca Mountain, EPA is obligated to define standards to protect public health and the environment from harmful exposure to the radioactive waste that would be stored and disposed in that facility in perpetuity. Implementing the standards developed by EPA for Yucca Mountain is the responsibility of the Nuclear Regulatory Commission. However, for any facility that provides interim, above-ground storage of SNF, including this proposed ISFSI and all other at-reactor or near-reactor ISFSIs, NRC is the sole agency responsible for site-specific radiation protection standards for SNF including implementation of these criteria at this proposed ISFSI.

## **EPA comments on the Draft EIS**

### **1) There may be substantial radiological doses to workers at the site**

Tables ES.2 and 9.1 of the Draft EIS describe the radiological doses to workers as "small" even though the estimated doses are at 90% of the NRC's regulatory limit of 5 rem/yr. It is not readily apparent from these tables or the discussion in section 4.7.2.2 (Estimated Dose to Occupational Personnel) the extent to which the radiation protection concept of "As Low As Reasonably Achievable" (ALARA) has been considered in minimizing the estimated occupational doses. These doses also appear excessive when compared to the estimates of occupational radiological exposures of workers at the proposed Yucca Mountain repository for the storage and disposal of SNF and high-level radioactive waste. The workers at Yucca Mountain will be handling, maintaining and monitoring SNF received in transportation casks nearly identical to the work to be performed at this proposed ISFSI. The Yucca Mountain Draft EIS (DOE/EIS-0250D, July 1999) reports worker doses that average less than 1 rem/yr. (See Table 8-18 of the Yucca Mountain Draft EIS and associated discussion.) The Final EIS for this proposed ISFSI

should evaluate the application of ALARA towards maintaining worker doses as far below the applicable limits as practicable.

## **2) Further financial liability information is needed**

As stated in EPA's scoping comments to NRC, we expected the Draft EIS to evaluate mitigation in the terms of sufficient financial assurance to protect the environment. The establishment of bonding or a trust fund adequate for the government to operate the ISFSI facility in case of financial limitations of the applicant should have been explored in the Draft EIS in order to provide full disclosure of potential costs for which the government could be responsible. Lease requirements for liability insurance do not yet assure that PFS will be held liable for potential environmental and human health impacts. Unless there is neglect or misconduct on the part of PFS, the lease agreement limits the applicants' liability to one similar to any commercial facility, and is not directly tied to the actual amount of potential damage. PFS is, of course, a limited liability company with no assets of its own. Thus each member utility company that forms PFS will not be individually liable, and thus member utility's assets will not likely be available in case of liabilities. According to the Draft EIS, NRC intends to require that PFS will demonstrate that it will be able to obtain sufficient funds to build, operate, and close the proposed facility, but NRC proposes to evaluate PFS's financial ability in the separate Safety Evaluation Report (SER). The information on financial ability from the SER should be included in the Final EIS. There should be a further evaluation in the Final EIS of how the Tribe, BIA, and Interior may incur financial responsibility if future actions by PFS results in excess liability or damage to Tribal lands. Specifically we suggest the Tribe and BIA to consider holding an adequate bond to close the facility and restore the lands in the event that PFS lacks the financial ability at that time.

## **3) Emergency response procedures for rail transport should be addressed**

There is little information in the Draft EIS on emergency response procedures for the rail transport from utilities around the country. We do note that the applicant is proposing to "unitize" the shipment rather than mixing the transport with other freight. Will such unitized shipments include crews specifically trained in emergency response in addition to their security duties? The Final EIS could consider the infrastructure costs to communities along the transportation routes since, in contrast to federally-sponsored shipments of SNF, private shipments of SNF do not require any funding for assessment of emergency response needs, local emergency response training, equipment for radioactive incidents, or additional training for medical personnel. The Final EIS should address emergency response plans, including notification of affected states and Tribes along the rail routes.

## **4) Further information is needed on downstream compliance with water quality standards**

It is unclear if water quality-related impacts from the proposal may adversely affect surface water quality off the Reservation of the Skull Valley Band of Goshute Indians. To the

extent that proposed activities may affect water quality and protected beneficial uses off the tribal lands, NRC's Final EIS should acknowledge that any discharges to waters of the United States from the proposal (i.e., off the Reservation) must comply with applicable Water Quality Standards as approved by EPA, including the protection of beneficial uses, to the extent that such discharges may affect downstream water quality and/or impair beneficial uses.

Thank you for providing an opportunity to participate in the scoping process and to provide comments on the Draft EIS. Based on the procedures EPA uses to evaluate the potential effects of proposed actions and the adequacy of the information in the document, the Draft EIS for the proposed ISFSI on the Reservation of the Skull Valley Band of Goshute Indians will be listed in the Federal Register in the category EC-2. This means that the review has identified environmental impacts that should be avoided in order to fully protect the environment, and the DEIS does not contain sufficient information to thoroughly assess environmental impacts. Enclosed is a summary of EPA's rating definitions. Please call Weston Wilson of my staff at (303) 312-6562 if we can further explain our concerns with the Draft EIS.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cynthia Cody', with a stylized flourish at the end.

Cynthia Cody, Chief  
NEPA Team  
Ecosystems Protection Office

cc: Chairman Bear, Skull Valley Band of Goshutes, Skull Valley, Utah  
Dianne Neilson, Department of Environmental Quality, SLC, Utah  
David Allison, Bureau of Indian Affairs, Ft. Duchesne, Utah  
Wayne Nordwall, Bureau of Indian Affairs, Phoenix, Arizona