

~~RETAINED~~ CORRESPONDENCEDOCKETED  
USNRC

February 16, 2001

01 FEB 21 A11:26

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSIONOFFICE OF SECRETARY  
REGULINGS AND  
ADJUDICATIONS STAFFBefore the Atomic Safety and Licensing Board

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 SECOND SET OF FORMAL DISCOVERY REQUESTS  
TO INTERVENOR OGD

Applicant Private Fuel Storage L.L.C. ("Applicant" or "PFS") hereby makes the following formal discovery requests of OGD. Note that the numbering of the interrogatories for the contention (OGD O) begins after the highest numbered interrogatory filed on the contention in PFS's previous discovery requests.<sup>1</sup>

General Definitions and Instructions

1. The term "document" means the complete original or a true, correct, and complete copy and any non-identical copies, whether different by reason of any notation or otherwise, of any written or graphic matter of any kind, no matter how produced,

---

<sup>1</sup> PFS also requests that OGD update its responses to PFS's earlier discovery requests under 10 C.F.R. § 2.740(e)(2). OGD had stated that it had not yet finished its analyses related to cumulative impacts under Contention OGD O. Ohngo Gaudadeh Devia's (OGD) Responses to Applicant's First Set of Discovery Requests (May 28, 1999), Interrogatory No. 6; see also Letter from Paul Gaukler, Counsel for PFS, to Joro Walker, Counsel for OGD (Nov. 1, 2000) (requesting the same). PFS requests that OGD produce what it has completed at this time.

recorded, stored, or reproduced (including electronic, mechanical or electrical records or representation of any kind) including, but not limited to, any writing, letter, telegram, meeting minute or note, memorandum, statement, book, record, survey, map, study, handwritten note, working paper, chart, tabulation, graph, tape, data sheet, data processing card, printout, microfilm or microfiche, index, diary entry, note of interview, e-mail or communication, or any data compilation including all drafts of all such documents. The phrase "data compilation" includes, but is not limited to, any material stored on or accessible through a computer or other information storage or retrieval system, including videotapes and tape recordings.

2. "OGD" means Ohngo Gaudadeh Devia, any of its officials, directors, agents, employees, representatives, and its attorneys.

3. "Consultant" means any person who provides professional or technical input, advice and/or opinion to OGD whether that person is employed specifically for this case or is a regular OGD employee or official.

4. "Draft Environmental Impact Statement" and "DEIS" means Draft Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, Utah, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, NUREG-1714 (June 2000).

5. "Skull Valley Band," or "Band" means Skull Valley Band of Goshute Indians.

6. "Reservation" means the Skull Valley Band of Goshute Indian Reservation.

## **I. BOARD CONTENTION 25 (OGD O) ENVIRONMENTAL JUSTICE**

### **A. Requests for Admission – OGD O**

1. Do you admit that the only pathway by which emissions from the PFS facility would be cumulative with emissions from the neighboring facilities enumerated in OGD O is air transport?
2. Do you admit that the prevailing wind patterns in the Skull Valley are either north to south or south to north?
3. Do you admit that in order to contribute to a cumulative impact, a facility must have some impact in the first place?

### **B. Interrogatories – OGD O**

With respect to the claims raised in OGD O:

8. In OGD's comments on the DEIS,<sup>2</sup> OGD asserts that a majority of the Band does not support the PFS ISFSI. If OGD contends that its assertion falls within the scope of Contention OGD O, specifically identify the bases for the assertion; in any event specify the reason(s) for disagreeing with the DEIS conclusion that the PFS project would result in a net increase in Band members living on the Reservation (*see, e.g.*, page 9-36 of the DEIS).
9. Identify and fully explain each specific respect in which OGD claims that the Draft Environmental Impact Statement does not adequately consider any of

---

<sup>2</sup> Comments of Ohngo Gaudadeh Devia, Southern Utah Wilderness Alliance, and Margene Bullcreek on the Private Fuel Storage Draft Environmental Impact Statement—Docket 72-22 (Sept. 21, 2000).

the environmental justice claims previously raised by OGD in Contention OGD O as admitted by the Board.

**C. Document Requests – OGD O**

The Applicant requests the OGD to produce the following documents directly or indirectly within its possession, custody or control to the extent not previously produced during informal or formal discovery:

1. Any documents prepared by OGD or its consultants to educate tribal members or the public in general about interim storage of spent fuel in general or the PFS ISFSI in particular.
2. All documents prepared in response to an OGD flyer, entitled *Opposition to High Level Waste Storage at Skull Valley Goshute Reservation*, which identifies seven activities recommended for those that support OGD's cause. The flyer was produced in response to the last PFS document request as part of the documents supplied to Utah by OGD. (pages UT-23905 to UT-23908).
3. Any document that relates to the Skull Valley Band or PFS ISFSI the conclusions expressed in previously provided documents (*State of Nevada Socioeconomic Studies, Biannual Report 1993-1995*, pages 91-103 and 108-115 [UT 13958-13970 and 13975-13982]) regarding stigma or impacts on Indian Tribes in the area around the proposed Yucca Mountain geologic nuclear waste repository.
4. In its comments on the DEIS, supra note 2, OGD alleges instances of improper treatment of Band members by the Skull Valley Band government related to the lease with PFS and related to the transfer of lease funds. If OGD claims that its allegations fall within the scope of OGD O, provide all documents related to the allegations, including but not limited to threats to withhold tribal membership and other tribal benefits, the actual withholding of funds, attempts to interfere with the attorney-client relationship, and attempts to interfere with tribal members ability to participate in tribal government.
5. In its comments on the DEIS, supra note 2, OGD claims that the Band government does not have, or has coerced, the support of Band members for the PFS ISFSI. If OGD asserts that its claim falls within the scope of OGD O, provide all documents which support or are related to the claim.

6. All documents related to the differences among and differing impacts on those Band members living on the Reservation and those living off the Reservation, including but not limited to differing world views and differing attitudes toward and support for the PFS ISFSI.
7. All documents relating to OGD's claim that emissions from neighboring facilities will be cumulative with emissions from PFS during construction or operation to the extent asserted in this contention as admitted by the Board.
8. All documents, data or other information related to the claims made by OGD within the scope of OGD O that environmental justice has been inadequately addressed in the PFS Environmental Report or the DEIS.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Sean Barnett", with a stylized flourish at the end.

Jay E. Silberg

Ernest L. Blake, Jr.

Paul A. Gaukler

D. Sean Barnett

SHAW PITTMAN

2300 N Street, N.W.

Washington, DC 20037

(202) 663-8000

Counsel for Private Fuel Storage L.L.C.

Dated: February 16, 2001

**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
	)	
(Private Fuel Storage Facility)	)	ASLBP No. 97-732-02-ISFSI

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the "Applicant's Second Set of Formal Discovery Requests to Intervenor OGD" 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 16<sup>th</sup> day of February 2001.

G. Paul Bollwerk III, Esq., Chairman  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
e-mail: [GPB@nrc.gov](mailto:GPB@nrc.gov)

Dr. Jerry R. Kline  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
e-mail: [JRK2@nrc.gov](mailto:JRK2@nrc.gov); [kjerry@erols.com](mailto:kjerry@erols.com)

Dr. Peter S. Lam  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
e-mail: [PSL@nrc.gov](mailto:PSL@nrc.gov)

\* Susan F. Shankman  
Deputy Director, Licensing & Inspection  
Directorate, Spent Fuel Project Office  
Office of Nuclear Material Safety &  
Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
Attention: Rulemakings and Adjudications  
Staff  
e-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)  
(Original and two copies)

\* Adjudicatory File  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Catherine L. Marco, Esq.  
Sherwin E. Turk, Esq.  
Office of the General Counsel  
Mail Stop O-15 B18  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
e-mail: [pfscase@nrc.gov](mailto:pfscase@nrc.gov)

Denise Chancellor, Esq.  
Assistant Attorney General  
Utah Attorney General's Office  
160 East 300 South, 5<sup>th</sup> Floor  
P.O. Box 140873  
Salt Lake City, Utah 84114-0873  
e-mail: [dchancel@state.UT.US](mailto:dchancel@state.UT.US)

John Paul Kennedy, Sr., Esq.  
Confederated Tribes of the Goshute  
Reservation and David Pete  
1385 Yale Avenue  
Salt Lake City, Utah 84105  
e-mail: [john@kennedys.org](mailto: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: [joro61@inconnect.com](mailto:joro61@inconnect.com)

Diane Curran, Esq.  
Harmon, Curran, Spielberg &  
Eisenberg, L.L.P.  
1726 M Street, N.W., Suite 600  
Washington, D.C. 20036  
e-mail: [DCurran.HCSE@zzapp.org](mailto:DCurran.HCSE@zzapp.org)

Danny Quintana, Esq.  
Skull Valley Band of Goshute Indians  
Danny Quintana & Associates, P.C.  
68 South Main Street, Suite 600  
Salt Lake City, Utah 84101  
e-mail: [quintana@xmission.com](mailto:quintana@xmission.com)

\*Richard E. Condit, Esq.  
Land and Water Fund of the Rockies  
2260 Baseline Road, Suite 200  
Boulder, CO 80302

\*By U.S. mail only

  
D. Sean Barnett