



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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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

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Rules and Directives  
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Re: EPA's Comments on the Final EIS for the  
Construction and Operation of an Independent  
Spent Fuel Storage Installation, Skull Valley Band  
of Goshute Indians, Tooele County, Utah  
CEQ # 020019

Dear Mr. Meyer:

Pursuant to the Environmental Protection Agency's (EPA's) authority under Section 309 of the Clean Air Act, the NEPA Unit of EPA Region 8, with technical assistance from the Radiation Protection Division, Office of Radiation and Indoor Air, in EPA's Washington, D.C. office, has reviewed the Final Environmental Impact Statement (Final EIS) for the Construction and Operation of an Independent Spent Fuel Storage Installation (ISFSI). This Final EIS is for a proposed ISFSI in which Private Fuel Storage, L.L.C. (PFS) would store spent nuclear fuel (SNF) on the Reservation of the Skull Valley Band of Goshute Indians (the Reservation), in Tooele County, Utah. EPA offers the following comments for your consideration.

PFS proposes to receive, possess, store, and transfer spent nuclear fuel from nuclear power reactors at the proposed ISFSI. PFS would also build and operate a new rail line connecting the site with the existing Union Pacific railroad adjacent to Interstate 80. To build and operate the ISFSI and the associated rail line, PFS would need to obtain (1) rail line rights of way from the U.S. Bureau of Land Management (BLM), (2) a rail line license from the Surface Transportation Board, (3) a lease between PFS and the Tribe which the Bureau of Indian Affairs (BIA) would need to approve, and (4) a license pursuant to 10 CFR Part 72 from 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 (such as the proposed site at Yucca Mountain, Nevada, which is scheduled to open by 2010) is available. The site would be capable of storing 40,000

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metric tons of uranium, which could include all of the SNF from PFS' member utilities, as well as some SNF from other non-PFS utilities.

### **EPA's regulatory role**

In addition to its role in reviewing the EIS, EPA administers various other environmental statutes that are pertinent to this proposed facility. These statutes include the Clean Water Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act. For this proposal, EPA would be responsible for (1) issuing or denying all necessary National Pollutant Discharge Elimination System (NPDES) permits to control point sources of pollutants into waters of the United States, including any necessary storm water permits, (2) reviewing a spill prevention and control plan for above-ground diesel fuel tanks required by EPA's Oil Pollution Prevention Regulations at 40 CFR Part 112, (3) taking any appropriate actions under the Safe Drinking Water Act to assure that water in nearby drinking water wells is safe for human consumption, (4) issuing or denying any necessary permit(s) or, if applicable, issuing "authorization by rule" letter(s) for the septic leach field under EPA's Underground Injection Control regulations at 40 CFR Parts 144, 146, and 148, (5) overseeing the facility's compliance with the Resource Conservation and Recovery Act, including verifying whether it qualifies for treatment as a "small quantity generator" subject to the requirements set forth in 40 CFR Section 262.44. The Draft EIS described these components of EPA jurisdiction.

We are concerned with the statement on page 1-27 of the Final EIS that if a discharge is to ephemeral waters, PFS takes the position that no NPDES permit is required. An NPDES permit is required for any person discharging any pollutant from any point source into any water of the United States, "ephemeral" or not. Please also note that because building this facility will disturb more than an acre of land, it will be necessary for PFS to obtain an NPDES storm water permit if there will be a discharge from the site that reaches waters of the United States. For more details on the requirements for storm water permits, please see 40 CFR Section 122.26.

Similarly, we are concerned with the statement in the Final EIS that PFS provided information that there is no reasonable expectation, even in the absence of any oil containment or control equipment, that a discharge of oil from the proposed facility would reach a jurisdictional water of the United States, and thus the operator of the facility would not be required to prepare a Spill Prevention, Control, and Countermeasures (SPCC) plan. We have advised PFS that should the facility experience a discharge in violation of section 311 (b)(3) of the CWA, PFS could be subject to penalties under section 311(b)(6) or (7) of the Clean Water Act. Despite PFS's assertions that these regulations would not apply, we understand that PFS intends to construct secondary containment consistent with the requirements of the Clean Water Act.

The Record of Decision should acknowledge that any discharges to waters of the United States from the proposed facility must comply with all applicable water quality standards, including but not limited to, the protection of downstream beneficial uses. We recommend that the lead agencies contact us during preparation of the Record of Decision (ROD) to clarify the applicability of these CWA requirements for inclusion in the ROD.

In our comment letter on the draft EIS, EPA did not mention its role in establishing radiation protection requirements for transport and storage of SNF. EPA has neither a permitting/licensing nor an enforcement role for this type of storage facility. Because this facility falls under the coverage of the Atomic Energy Act, the Nuclear Regulatory Commission (NRC) will decide upon licensing the facility. However, Subpart A of 40 CFR Part 191, *Environmental Radiation Protection Standards for the Management and Storage of Spent Nuclear Fuel, High-level and Transuranic Radioactive Waste*, does cover the potential Skull Valley ISFSI and will be used by NRC to judge whether to issue a license. NRC must ensure that the general public's dose remains less than 25 mrem/year under these EPA-developed public health criteria.

### **Further financial liability information is needed in the Record of Decision**

As stated in EPA's comments to NRC regarding the Draft EIS, we expected the Final EIS to evaluate mitigation in terms of sufficient financial assurance to protect the environment. The Final EIS should have explored the possibility of establishing a bond or a trust fund to pay for the government to operate the ISFSI facility in case of financial limitations of the applicant. Such a discussion would have disclosed the potential costs for which the government could be responsible.

The lease's 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 limits the PFS's liability to that of any other commercial facility. The lease also does not tie liability directly to the actual amount of potential damage. PFS is, of course, a limited liability company with no assets of its own. Has the NRC investigated whether each member utility company that forms PFS will be individually liable and whether the assets of each member utility will be available to cover any liability? According to the EIS, the 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 a separate Safety Evaluation Report (SER). The information on financial ability from the SER should be included in the Record of Decision. There should be a further evaluation in the ROD on how the Tribe, BIA, and the Department of the Interior could incur financial responsibility if future actions by PFS results in environmental damage. Specifically, we suggest the Tribe and BIA consider holding a bond adequate to close the facility and to restore the environment in the event that PFS lacks the financial ability to do so.

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

There is little information in the Final EIS on emergency response procedures for rail transport of spent nuclear fuel from utilities around the country. As you know, many community planners along the rail shipment routes are likely to have heightened concerns about emergency response, particularly since the 2001 rail tunnel fire near Baltimore, Maryland, and the possibility of terrorism. The Record of Decision should consider the infrastructure costs to communities

along the transportation routes because, in contrast to federally-sponsored shipments of SNF, private shipments of SNF are not required to set aside any funding for assessment of emergency response needs, local emergency response training, equipment for radioactive incidents, or additional training for medical personnel. The ROD should address emergency response plans, including notification of affected states and Tribes along the rail routes.

Thank you for providing an opportunity to participate in the scoping process and to provide comments on the Draft and Final EIS. Please call Weston Wilson of my staff at (303) 312-6562 if you would like further explanations or clarifications of our concerns with the Final EIS.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elyana Sutin', with a long horizontal line extending to the right.

Elyana Sutin, Acting Director  
NEPA Program  
Office of Ecosystems Protection and Remediation

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  
John Donnell, Private Fuel Storage, Greenwood Village, Colorado