

RAS 4411

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



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April 23, 2002

Michael C. Farrar, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Jerry Kline
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Re: In the Matter of Private Fuel Storage L.L.C. (Independent Spent Fuel Storage
Installation) Docket No. 72-22-ISFSI

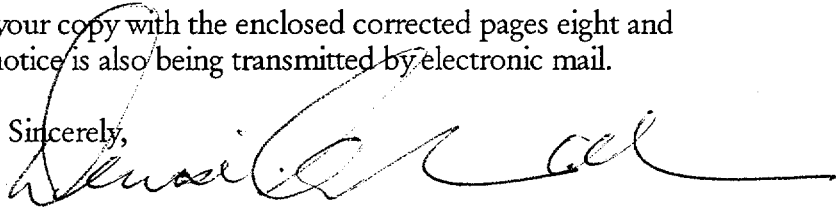
Dear Administrative Judges:

The State of Utah notifies the Board and parties of errata in the State of Utah's Response in Opposition to the NRC Staff's Motion in Limine to Exclude Exhibits and Portions of Prefiled Testimony of Dr. Marvin Resnikoff Concerning Unified Contention Utah L/ QQ (Geotechnical), filed April 22, 2002.

Due to an oversight, a reference to caselaw present in the draft version of the State's response was inadvertently omitted in the final version. On page eight of the State's Response should appear a reference to U.S. v. Cardall, 885 F.2d 656 (10th Cir. 1989) and U.S. v. Peterson, 611 F.2d 1313 (10th Cir. 1979). This omission has been corrected in the attached pages.

Please replace page eight and nine of your copy with the enclosed corrected pages eight and nine. A copy of the enclosed pages and this notice is also being transmitted by electronic mail.

Sincerely,


Denise Chancellor
Assistant Attorney General

Enclosures: as stated
cc: PFS Service List

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testimony. Therefore, it is fitting to allow the State to connect up the evidence of the potential for an initial angular velocity to be greater than zero through those witnesses. *See U.S. v. Cardall*, 885 F.2d 656, 669 (10th Cir. 1989) *quoting* *U.S. v. Peterson*, 611 F.2d 1313, 1330-31 (10th Cir. 1979) (“‘in certain instances where it is ‘not reasonably practicable to require the showing to be made before admitting the evidence, the court may admit the statements subject to being connected up.’”).

Contrary to the Staff’s Motion, Dr. Resnikoff’s testimony in Answer 20 relating to what would happen if the casks tipped over is relevant, material and reliable. Motion at 9. It is offered to counter the anticipated testimony by PFS’s witnesses from the cask manufacturer Holtec International based on ¶ 27 of the Joint Declaration of Krishna P. Singh, Alan I. Soler and Everett L. Redmond II in support of PFS’s Motion of Summary Disposition of Utah L, Part B, dated November 9, 2001, wherein Dr. Redmond discusses the dose rate from a tipped over cask. The declaration is essentially the same as Dr. Redmond’s testimony A23. Singh, Soler & Redmond Tstmy at 8-10. With respect to the Staff’s challenge to the first sentence of Answer 24, the State voluntarily withdraws the first sentence – it is unnecessary to the point that Dr. Resnikoff makes in his response. *See* Motion at 9-10.

Finally, the Staff challenges the relevance of Dr. Resnikoff’s testimony of the burnup rate of the fuel at the TMI-2 ISFSI at INEEL. Motion at 10. Of course this testimony is relevant. The Staff relies, in part, on a grant of an exemption to INEEL for its decision on PFS’s seismic exemption request. *See e.g.*, Final Safety Evaluation Report at 2-42 (September 29, 2000); Consolidated SER (March 2002) at 2-51. The fact that the fuel destined for the

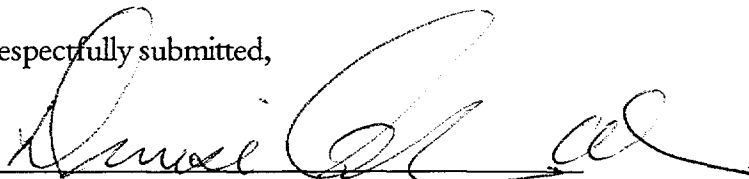
PFS facility is at least 15 times more radioactive than the INEEL fuel is certainly relevant to whether the Staff can rely on the INEEL exemption as "precedent" for the PFS exemption.

CONCLUSION

The State voluntarily withdraws the first sentence of Answer 24 of the Resnikoff testimony. In all other respects, the Staff's motion has no merit and should be denied.

DATED this 22nd day of April, 2002.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Denise Chancellor", is written over a horizontal line.

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