

June 18, 2002

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board

June 25, 2002 (1:33PM)

In the Matter of)
)
PRIVATE FUEL STORAGE L.L.C.)
)
(Private Fuel Storage Facility))

Docket No. 72-22

ASLBP No. 97-732-02-ISFSI

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

**JOINT MOTION TO DISMISS
CONTENTION UTAH O - HYDROLOGY**

Applicant Private Fuel Storage, L.L.C. ("Applicant" or "PFS") and the State of Utah ("State") file this joint motion for dismissal with prejudice of "Contention Utah O – Hydrology" ("Utah O"). PFS and the State seek dismissal on the ground that the parties have reached an acceptable resolution of the contention.

On April 22, 1998, the Atomic Safety and Licensing Board ("Board") admitted Utah O for litigation. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 192-93 *aff'd on other grounds*, CLI-98-13, 48 NRC 26 (1998). The contention was later further narrowed in a decision on PFS's Motion for Summary Disposition, such that it now challenges only analyses of the potential environmental impacts of non-radiological contaminants. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-01-40, 54 NRC 526 (2001).

The State and PFS have successfully completed negotiations concerning the settlement of Utah O. PFS has agreed upon a groundwater monitoring program and other activities, including certain upgradient and downgradient monitoring wells at the PFS site on a schedule and in

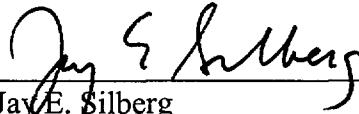
locations mutually agreeable to the parties. Attached as Exhibit 1 to this Motion is a copy of that agreement.

Counsel for Applicant has discussed this motion with counsel for the NRC Staff who does not object to the Board's granting of this joint motion.

Conclusion

For the reasons stated above, the Board should dismiss Utah O, with prejudice, because PFS and the State have agreed upon an acceptable resolution of the matter.

Respectfully submitted,



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Dated this 18th day of June, 2002

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NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
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PRIVATE FUEL STORAGE L.L.C.)	Docket No. 72-22
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Certificate Of Service

I hereby certify that copies of the Joint Motion to Dismiss Contention Utah O - Hydrology 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 18th day of June, 2002.

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Office of the Secretary
U.S. Nuclear Regulatory Commission
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Attention: Rulemakings and Adjudications
Staff
e-mail: hearingdocket@nrc.gov
(Original and two copies)

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1238340

**SETTLEMENT AGREEMENT BETWEEN
UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY AND
PRIVATE FUEL STORAGE, L.L.C.**

AGREEMENT NO. _____

THIS AGREEMENT is made and entered into between the Utah Department of Environmental Quality ("DEQ") and Private Fuel Storage, L.L.C ("PFS").

The State of Utah has intervened in a PFS licensing proceeding before the United States Nuclear Regulatory Commission ("NRC"), In the Matter of Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation), Docket No. 72-22-ISFSI, ASLBP No. 97-732-02-ISFSI. Among the contentions raised by the State of Utah in that proceeding is Contention Utah O challenging, *inter alia*, the analyses done by PFS and the NRC staff regarding groundwater and surface water protection in the area of the proposed facility.

In resolution of Contention Utah O, DEQ and PFS hereto agree as follows:

1. PFS shall install and operate a groundwater monitoring system, and shall implement a groundwater monitoring program that meets the following minimum requirements:
 - a. Upgradient well construction: PFS shall construct one upgradient groundwater monitoring well prior to operation of the first quadrant (SE) of the storage pad area, and a second well prior to operation of the second quadrant (SW). The upgradient wells shall be centered at the southernmost edge of the SE and SW quadrant boundaries, adjusted as necessary based on the determination of actual direction of groundwater flow.
 - b. Upgradient well sampling: PFS shall take and analyze groundwater samples starting prior to first receipt of spent fuel. Initial samples shall be analyzed for:
 - pH, temperature and electroconductivity
 - TDS
 - Antimony, Arsenic, Barium, Beryllium, Cadmium, Copper, Lead, Mercury, Selenium, Silver, Thallium and Zinc.
 - Radium 226 and 228, gross alpha and beta particle radioactivity, Uranium (total), Tritium and Strontium-90.
 - Gamma analysis (to detect most gamma releasing isotopes).
 - Any potential pollutants, to include, total petroleum hydrocarbons (TPH), benzene, ethyl benzene, toluene, xylene and naphthalene (BETXN), and solvents and pesticides, not described above, that are present at the PFS facility in quantities above the minimum threshold for reporting extremely hazardous substances or other hazardous chemicals pursuant to Section 312 of the federal Emergency Planning and Community Right-to-Know Act and as

defined in 40 CFR 370.20.

Temperature, pH, electroconductivity and TDS shall be sampled at least quarterly. Metals (Antimony, etc.) shall be sampled for 8 quarters and need not be sampled thereafter. Radiation and radionuclides shall be sampled for 8 quarters and annually thereafter. Other specified parameters may be eliminated from future sampling if not detected after sampling for 8 quarters; if any of these parameters is detected, that parameter shall be monitored annually after the completion of the 8 quarters sampling.

c. Downgradient well construction: PFS shall construct three downgradient groundwater monitoring wells on the downgradient perimeter of the first quadrant of the storage pad (SE), with one of these wells centered on the pad area with the second and third wells approximately 250 feet on either side of the center well. The location of these wells along the downgradient side will be adjusted as necessary based on the determination of actual direction of groundwater flow. Prior to first placement of spent fuel in the second quadrant of the storage pad area (SW), PFS shall place three wells along the downgradient side similarly spaced. Prior to first placement of spent fuel in the third (NE) and fourth (NW) quadrants, PFS shall place three wells along the downgradient side of each quadrant similarly spaced. Wells on the downgradient side shall be located outside the security road and within 50 feet of the security fence.

d. Downgradient well sampling: PFS shall take and analyze groundwater samples at least quarterly, provided that sampling wells installed for the SW and SE quadrants of the storage pad area shall be on an annual basis once the security fence has been extended to incorporate the NE and NW quadrants. All samples shall be analyzed for

- pH, temperature and electroconductivity
- TDS
- Radium 226 and 228, gross alpha and beta particle radioactivity, Uranium [total]
- Gamma analysis (to detect most gamma releasing isotopes)
- Any potential pollutants, to include total petroleum hydrocarbons (TPH), benzene, ethyl benzene toluene, xylene, and naphthalene (BETXN), and solvents and pesticides, not described above, that are present at the PFS facility in quantities above the minimum threshold for reporting extremely hazardous substances or other hazardous chemicals pursuant to Section 312 of the Emergency Planning and Community Right-to-Know Act as defined in 40 CFR 370.20.

e. All monitoring well construction shall conform to the standards specified in "A Guide to the Selection of Materials for Monitoring Well Construction and Ground Water Sampling," (1983) and the RCRA Ground Water Monitoring Technical Enforcement Guidance Manual (1986), and the 1992 addendum to that

manual. Monitoring wells shall be screened across the uppermost 10 feet of the aquifer.

f. All taking of samples and sample analyses shall conform with the most appropriate methods specified in the following references:

1. Standard Methods for the Examination of Water and Wastewater, eighteenth edition, 1992; Library of Congress catalogue number: ISBN:0-87553- 207-1;
2. E.P.A. Methods, Methods for Chemical Analysis of Water and Wastes, 1983; Stock Number EPA-600/4-79-020;
3. Techniques of Water Resource Investigation of the U.S. Geological Survey, (1982); Book 5, Chapter A3;
4. Monitoring requirements in 40 CFR parts 141 and 142, 1991 ed., Primary Drinking Water Regulations and 40 CFR parts 264 and 270, 1991 ed.; and
5. National Handbook of Recommended Methods for Water-Data Acquisition, GSA-GS edition; Book 85 AD-2777, U.S. Government Printing Office Stock Number 024-001-03489-1.

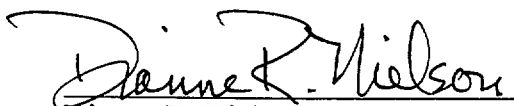
- g. The actual direction of groundwater flow at the site will be determined to locate upgradient and downgradient wells.
2. If radionuclides or other sampling parameters as required by this agreement are detected in a downgradient well at levels greater than the mean background concentration by more than two standard deviations over baseline (referred to as "elevated levels"), PFS will upon receipt of that information analyze a second ground water sample. If results of a second sample indicate that any sampling parameter is present at elevated levels, PFS shall prepare a source identification and assessment report and take appropriate actions.
 3. In each calendar year, PFS shall take and analyze a Detention Basin sample the first time a storm results in water accumulating in the basin for greater than 24 hours and in each subsequent time during that calendar year that a storm results in water accumulating in the basin for greater than 48 hours. All samples shall be analyzed for those parameters specified in 1.d. above. Surface water sampling methods shall conform to the standards specified in 40 CFR 136. If sample analyses detect the presence of total petroleum hydrocarbons greater than 10 mg/L, or any exceedances of primary drinking water standards for those identified sampling parameters with maximum contaminant levels in Utah Admin. Rules R309-103-2, the basin water will be removed for treatment and /or disposal. Treated effluent may be discharged or reused onsite; the concentrate shall be disposed of offsite.
 4. PFS shall construct the Detention Basin using soils which will be scarified and compacted to a permeability of .09 in/day and shall place a three foot soil cover over the compacted layer to protect against frost heave, dessication cracks, and root penetration.

5. For the purpose of protecting groundwater from contamination, construction of the 99 acre storage pad area will include a three foot layer of materials that shall be no greater in permeability than .09 in/day.
6. PFS has represented that it will be constructing two individual wastewater disposal systems each having a capacity of less than 5000 gallons per day.
 - a. PFS shall perform appropriate characterization, in conformance with the standards specified in Utah Admin. Rules R317-4, in the areas of the proposed leach fields. Characterization shall include at least soil exploration down to 10 feet, and two percolation tests, in the area of each proposed drainfield at the approximate depth of the proposed drainfield trenches.
 - b. The results of PFS' characterization shall be evaluated using the standards specified in Utah Admin. Rules R317-4 to determine whether a leach field is an effective means of disposal of sanitary sewage in the proposed area, and to determine any conditions of that effectiveness, e.g., appropriate size.
 - c. If the characterization and evaluation described in paragraphs 6.a. and 6.b indicate a leach field will be effective, PFS will construct the leach field in compliance with any indicated conditions.
 - d. If the characterization and evaluation described in paragraphs 6.a. and 6.b indicate a leach field will not be effective or the leach field fails, PFS will employ another suitable method for containment and disposal of its sanitary sewage.
 - e. PFS shall sample sludge when removed from the septic tanks (expected to be necessary only every 3-5 years) for radionuclides identified in 1.d. and shall conduct a toxicity characteristic leaching procedure ("TCLP") test to evaluate the characteristics of the sludge. If radionuclides identified in 1.d. are detected, PFS shall provide for the treatment and/or disposal of the sludge in accordance with applicable Nuclear Regulatory Commission regulations and take other appropriate actions. If the sample fails the TCLP test, PFS shall provide for treatment and/or disposal of the sludge in accordance with applicable Environmental Protection Agency regulations and take other appropriate actions.
7. PFS shall provide the following through the Skull Valley Band of Goshutes to the State of Utah's contact within 20 working days of receipt or creation by PFS:
 - a. Copies of all raw and final analytical results under paragraphs 1 and 3 above and information on assessments and actions taken under paragraph 2 above;
 - b. PFS's characterization of the drain field area under paragraph 6.a. above, its evaluation under paragraph 6.b. above, and sampling results and a report of any actions taken under paragraphs 6d and 6e above, and,
 - c. An engineering report documenting that the requirements of paragraphs 4 and 5 have been met.

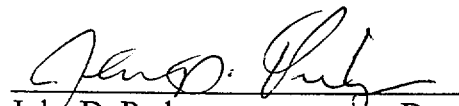
8. Utah's contact is the Director, Utah Division of Water Quality, 288 North 1460 West, Box 144870, Salt Lake City, Utah 84114-4870.
9. This agreement constitutes a contract between PFS and the State and does not modify the status of PFS, or the jurisdiction of the Skull Valley Band of Goshutes or the State and any remedies, claims, or defenses shall be determined under existing applicable laws.
10. This settlement agreement is subject to PFS providing evidence to DEQ within 30 days of signature of this agreement that the Skull Valley Band of Goshutes agrees to the provisions of paragraph 7 above.
11. DEQ shall, within 10 days of receipt of the evidence required by paragraph 10 above, dismiss with prejudice, Contention Utah O, in the PFS licensing proceeding before the United States Nuclear Regulatory Commission ("NRC"), In the Matter of Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation), Docket No. 72-22-ISFSI, ASLBP No. 97-732-02-ISFSI.
12. This agreement shall expire upon completion of the decommissioning of the proposed facility as determined by the Nuclear Regulatory Commission.

It is mutually agreed and understood by and between DEQ and PFS that modifications of this agreement shall be made by mutual consent of both parties, by issuance of a written modification, signed and dated by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the last date written below.

 6/17/02

Dianne R. Nielson Date
Executive Director
Utah Department of Environmental Quality

 6/14/02

John D. Parkyn Date
Chairman, Board of Managers
Private Fuel Storage, L.L.C.