

RAS 6272

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 04/04/03

SERVED 04/04/03

Before Administrative Judges:
Michael C. Farrar, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

In the Matter of

Private Fuel Storage, L.L.C.

(Independent Spent Fuel
Storage Installation)

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

April 4, 2003

MEMORANDUM AND ORDER
(Reconsideration Motion)

The Applicant PFS filed with us on March 31, 2003, a Motion for Reconsideration of an aspect of our March 10, 2003 Partial Initial Decision (LBP-03-04) regarding the intervenor State of Utah's "Credible Accidents" contention. Specifically, the Applicant asked that we authorize the grant of a license "subject to a condition that the size of the facility is limited such that the aircraft crash hazard would remain below the Commission's safety criterion" (Motion, p. 1). As the Applicant envisions that downsized facility, storage would be at least temporarily limited, pending the outcome of other aspects of the proceeding (Motion, p. 3),¹ to 336 casks rather than the 4000 contemplated by the application (Motion, p. 9).

¹ At the same time it filed the Motion for Reconsideration with us, the Applicant filed two other pleadings which bear on the ultimate resolution of its original application. The *first* was a Petition for Review with the Commission, seeking reversal of our ruling in LBP-03-04 that the 4000-cask facility cannot now be licensed because the probability of an accidental F-16 crash exceeds the applicable risk criterion. (Although the Applicant disagrees with that ruling, its existence provided the trigger for the present Motion for Reconsideration.) The *second* was a Report to this Board indicating that the Applicant does wish to proceed to attempt to prove, in a further evidentiary hearing before us, that even if an F-16 crash into the facility took place, there would be no appreciable radiation dose consequences. As the Applicant has framed the case, if *either* of those two pleadings (the appeal to the Commission or the hearing before us) ultimately proves successful, it would then be entitled to a license for the proposed 4000-cask facility (subject also to a favorable outcome on the several non-aircraft issues -- dealing with seismic, rail-line and financial matters -- now awaiting decision).

In order to aid our consideration of the Applicant's Motion, the State and the NRC Staff are requested to address in their answers thereto (due on April 21, 2003), in addition to any other subjects they plan to cover, the following questions:

1. Procedural. The Applicant's Motion (p. 1) asserts that this Board "could and should have ruled" in our Partial Initial Decision that the license condition now presented be adopted. Does the record reflect a previous request or suggestion for such a ruling? If not, does the Applicant's current request meet the criteria for reconsideration?
2. Evidentiary. In both the aircraft and the seismic portions of the hearing, as we recall them, the evidence presented as to the layout and the size of the proposed facility was essentially uncontested (see particularly LBP-03-04, pp. 47, fn. 73; 57-58; and 194-95), as was the appropriateness of the NUREG-0800 factors and the straightforwardness of the formulaic calculation thereunder (*id.* at 47 and 49, fn. 76). Could we therefore proceed to decide the calculational matters raised by the Applicant's Motion simply on the reconsideration pleadings, without providing an opportunity for the submission of factual affidavits (in a fashion akin to summary disposition practice) or an evidentiary mini-hearing?
3. Collateral. Quite apart from the NUREG-0800 formulaic probability calculation, to what extent, if any, does the downsized facility contemplated by the now-proposed license condition implicate or call into question any other safety, environmental, or financial issues or findings? (See Applicant Motion, pp. 10-12.)

Replies by a moving party are ordinarily not permitted by our Rules of Practice (10 CFR § 2.730(c)). In order to provide the Applicant also the opportunity to address the above

matters, however, it may have until Friday, May 2, 2003 to respond to the other parties' views as to those matters only.

The Board believes that the resolution of the pending Motion may well benefit from oral argument by counsel (see 10 CFR § 2.730(d)) . For planning purposes, the parties are hereby advised that such an argument, if held, may be conducted in Salt Lake City during the latter part of the week that begins on May 12, 2003. The parties will be given definite notice of the scheduling of oral argument no later than the week that begins on April 21, 2003.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael C. Farrar, Chairman
ADMINISTRATIVE JUDGE

/RA/

Jerry R. Kline
ADMINISTRATIVE JUDGE

/RA/

Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 4, 2003

Copies of this Memorandum and Order were sent this date by Internet e-mail transmission to counsel for (1) Applicant PFS; (2) intervenors Skull Valley Band of Goshute Indians, Ohngo Gaudadeh Devia, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State of Utah; and (3) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
PRIVATE FUEL STORAGE, L.L.C.)	Docket No. 72-22-ISFSI
)	
(Independent Spent Fuel Storage)	
Installation))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RECONSIDERATION MOTION) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Michael C. Farrar, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Jerry R. Kline
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Peter S. Lam
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Sherwin E. Turk, Esquire
Catherine L. Marco, Esquire
Office of the General Counsel
Mail Stop - 0-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Diane Curran, Esquire
Harmon, Curran, Spielberg
& Eisenberg, L.L.P.
1726 M Street, NW, Suite 600
Washington, DC 20036

Joro Walker, Esquire
Director, Utah Office
Land and Water Fund of the Rockies
1473 South 1100 East, Suite F
Salt Lake City, UT 84105

Martin S. Kaufman, Esquire
Atlantic Legal Foundation
205 E. 42nd St.
New York, NY 10017

Docket No. 72-22-ISFSI
LB MEMORANDUM AND ORDER
(RECONSIDERATION MOTION)

Denise Chancellor, Esquire
Assistant Attorney General
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, UT 84114

John Paul Kennedy, Sr., Esquire
David W. Tufts, Esquire
Confederated Tribes of the Goshute
Reservation and David Pete
Durham Jones & Pinegar
111 East Broadway, Suite 900
Salt Lake City, UT 84105

Tim Vollmann, Esquire
3301-R Coors Road N.W., #302
Albuquerque, NM 87120

Marlinda Moon, Chairman
Sammy Blackbear, Sr., Vice-Chairman
Miranda Wash, Secretary
Skull Valley Band of Goshute Indians
P.O. Box 511132
Salt Lake City, UT 84151-1132

Jay E. Silberg, Esquire
D. Sean Barnett, Esquire
Shaw Pittman
2300 N Street, NW
Washington, DC 20037-1128

Richard Wilson
Department of Physics
Harvard University
Cambridge, MA 02138

Paul C. EchoHawk, Esquire
ECHOHAWK LAW OFFICES
151 North 4th Avenue, Suite A
P.O. Box 6119
Pocatello, ID 83205-6119

Philip N. Hogen, Esquire
Associate Solicitor for Indian Affairs
Stephen L. Simpson, Esquire
Office of the Solicitor
Department of the Interior
Division of Indian Affairs
1849 C Street, NW, Mailstop 6456-MIB
Washington, DC 20240

[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 4th day of April 2003