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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket No. 72-22-ISFSI

SERVED February 10, 2004

From: william bill d peterson <paengineers@juno.com>
To: <GPB@nrc.gov>
Date: Tue, Feb 10, 2004 1:49 AM
Subject: Petition Appeal to Commission

NRC Licensing Board,

January 30th 2004, order of the Licensing Board is appealed to the Commission. Copies in WordPerfect and Word of the appeal are attached.
William D. (Bill) Peterson, Feb 9, 2003.

CC: <JRK2@nrc.gov>, <PSL@nrc.gov>, <HEARINGDOCKET@nrc.gov>, <the.secretary@hq.doe.gov>, <margaret.chu@hq.doe.gov>, <elizabeth.connell@hq.doe.gov>, <Forinash.Betsy@EPA.gov>, <michael_zeitler@murkowski.senate.gov>, <pete_lyons@energy.senate.gov>, <dwight.cates@mail.house.gov>, <owalker@gov.state.ut.us>, <camcneill@wyom.net>, <bruce.shirley@anl.w.anl.gov>, <rdickes@xmission.com>, <jerryc@srv.net>, <millielouise@earthlink.net>, <barrowesscb@juno.com>, <henning@hoj-eng.com>, <rstallings@allidaho.com>, <allen@sbt.net>, <layneb8@aol.com>, <IdAcadSci@aol.com>, <pregehr@pblutah.com>, <jmoulder@mcw.edu>, <bkc+@pitt.edu>, <gary_m_sandquist@urscorp.com>, <carbon@engr.wisc.edu>, <wilson@physics.harvard.edu>, <robert.hoffman2@med.va.gov>, <wledwards@netutah.net>, <clm1@nrc.gov>

In the Matter of

PRIVATE FUEL STORAGE, L.L.C.

(Independent Spent Fuel Storage Installation)

February 9, 2004

Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Notice of Appeal From

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

In the accordance with provisions of 10 C.F.R. § 2.714a(a), to the degree the Licensing Board's memorandum and order rules upon an intervention petition, its **action is** appealed to the Commission.

Notice is made to appeal from the Atomic Safety and Licensing Board its MEMORANDUM AND ORDER (Dismissing Petition to License Pigeon Spur Interim Spent Nuclear Fuel Storage Facility), ref William D. Peterson's January 20, 2004, petition - TO:

license [the] Pigeon Spur 300-year intermediate storage [facility]. Or if not now possible, [Peterson] petition[s] that the [Department of Energy (DOE)] provide funds . . . to complete the Pigeon Spur license application, ref NRC Docket No. 72-23.

FIRST, We support the Licensing Board's decision to see our petition with the Private Fuel Storage Docket No. 72-22 license application. We do however object and appeal from the Licensing Board's order to dismiss our petition for now being in the wrong venue, the venue choice of the Board. In selecting sites for nuclear power plants, alternative locations "in a region" are considered (like Davis Canyon v Yucca Mountain). It would certainly be consistent with the Code for the Board to consider alternative locations for storage of spent nuclear fuel (SNF), for its advantages. See in 10CFR:

Consideration of Alternatives

1.40 CFR 1502.14(b). This section provides that the environmental impact statement "[d]evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits."

2. 40 CFR 1502.22(a). This section provides that "[i]f the information relevant to adverse impacts is essential to a **reasoned choice among alternatives and is not known** and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement."

2. Alternative sites. *The Commission uses a two-stage decision standard to assure that adequate consideration has been given to alternative locations for constructing power generation facilities to meet the demonstrated need. The first part of this standard requires that the applicant submit a slate of alternative sites which are "among the best that could reasonably be found" inside a region in which it is reasonable to construct a plant to meet the projected need for power. **The second part of the standard requires that the proposed site be approved only if no obviously superior alternative site has been identified.***

Actually, it can be well argued that our nation and its nuclear industries need both the Pigeon Spur and Private Fuel Storage facilities, ASAP.

SECOND, we maintain that we do have every right and authority to work for a solution for SNF and make this petition for our work.

THIRD, our 300-year disposal solution is until now is a **reasoned choice among alternatives and is not known** which needs to be considered for its value to the better use and lower costs of Yucca Mountain (heat unloading and higher density storage).

NUCLEAR INDUSTRY BACKGROUND

The United States of America needs to expand nuclear electric generation. Five Hundred new plants are needed to make electricity for electrolysis of water to make hydrogen to replace the declining oil industry. Four Hundred more nuclear plants are needed to make electricity to replace existing fossil fuel power generation. This is ten times the number of nuclear plants now operating, which will make ten times the amount of spent nuclear fuel (SNF). So before large (ten fold) new nuclear power generation will begin our nation will require large new solutions for SNF.

Four solutions for SNF have been worked on. DOE's 1980s Davis Canyon project in southern Utah is now at Yucca Mountain (YM). Private Fuel SNF MRS 20-20 year storage project which originated with the Nuclear Waste Negotiators for the Congress under the Presidents has moved from the Mascelro Apache Indians in New Mexico to the Skull Valley Goshute Indian Reservation in Tooele County, Utah, ref NRC Docket No. 72-22. Peterson's Pigeon Spur Project in Box Elder County also originating for the Nuclear Negotiators has advanced its 20-20 year intermediate storage site to 300 years of intermediate storage for eventual conversion to low-level Class C, which combined with five nines separation of transuranics will eventually be total disposal of SNF with using the SNF transuranics as well as the uranium to make new fuel. Back thirty years ago, three facilities were being built in the U.S. for processing SNF as is being done in other countries using nuclear power. President Jimmy Carter stopped SNF processing.

PFS's 20-20 year SNF storage and even YM's 10,000 year SNF storage are intermediate remedies, not terminal solutions. Only Peterson's proposed 300-year storage with five nines processing is a permanent disposal solution for SNF. YM and PFS were designed for closing

down the 103 plant nuclear industry. Only Peterson's Pigeon Spur is designed to support all 1,000 nuclear power plants and the future developments that will continue with our society's switch from fossil fuel to operating with nuclear energy.

A LARGER SPENT NUCLEAR FUEL SOLUTION IS NEEDED THAN YUCCA MOUNTAIN AND PRIVATE FUEL STORAGE

California and its Senator Feinstein are rightly saying that YM and PFS will not serve to enable the nuclear power industry to develop because their capacity was designed for only the existing needs of the 103 existing power plants, not 900 new plants. America needs a big permanent solution for SNF that today only Pigeon Spur offers. In the past, during YM construction, the government sought for an MRS for temporary storage until YM storage is available. Pigeon Spur was first offered for this. But now the Pigeon Spur offer is different. It offers 300-year intermediate storage which combines with five nines processing to make a permanent solution. But first, the first Pigeon Spur facility as proposed in Box Elder County, Utah, will need to be licensed, built and functioning to support YM by doing SNF's convection air heat unloading, in improved secure hardened storage, and then serving for staging, which will then enable higher density storage at YM.

THE PETITION TO NRC FOR PIGEON SPUR

We agree with the Licensing Board's observations that the Pigeon Spur license application in Docket No. 72-23 became stalled without funding to polish the application and pay the costs for NRC to see the matter. The attached memorandum explains that with years of effort PECO energy was the only source of funds offering to do the Pigeon license, which funding became foiled when the federal government contracted with PECO for more on sitestorage at Peach Bottom. As the memorandum explains, our government changed its commitments and foiled long term planning and development for Pigeon Spur. Laws were made but then the government faulted. New power is needed to jump-start the American manufacturing economy. But no one will gamble again making

investments in nuclear plants, SNF processing, and SNF disposal solutions. So now to advance nuclear power ongoing commitments from our government will have to include government funding to make SNF solutions, build power plants, and operate SNF processing facilities.

The utilities of the nation need the Pigeon Spur intermediate SNF storage solution. The Pigeon Spur site has advantages over the PFS / Goshute site. Advantages include seismic zone 2 v 3, away from Hill AFB flight training, hardened from missile attack and aircraft impact, on an existing railroad line, and more remote from metropolitan population. In PFS - NRC licensing hearings, the Petitioner has suggested the Pigeon Spur improvements to accomplish PFS's SNF storage needs. With this petition, the petitioner engineer formalizes his suggestions.

On making the immediate petition the petitioner did not move to enter either the NRC 72-22 or 72-23 matter. Actually, the proposed 300-year intermediate storage facility is different from the previously proposed 72-23 and also the PFS 72-22 facility in licensing development. Putting the petition with the PFS NRC Docket No. 72-22 matter was a choice of the Licensing Board, not us! This a prerogative of the Licensing Board.

Our matter put before the NRC Licensing Board is licensing of Pigeon Spur. How and where the NRC Licensing Board sees the January 20, 2004 petition for Pigeon Spur is entirely the prerogative of the board. The question of the authority of the board to see the matter is now an issue between the Board and the NRC Counsel. 10CFR clearly says the board can see new licensing conditions (the licensing decision will be based on all relevant information, including information which might go beyond that in the hearing record). The Commission may also include additional license conditions as it finds appropriate.

It would be unfortunate if the NRC internal procedures would stop a most scientifically sound solution to dispose of SNF, overcoming problems confronting other facilities being proposed. If the petition cannot be considered where it is put by the NRC License Board Judges,

then it needs to be moved to another venue. This is a decision and action that must be made by the NRC judges or commission, or an oversight court, not the petitioner.

We are engineers and scientists. We are committed to solving the SNF dilemma. We believe we have an SNF solution and we want seen what we are offering. We plead to the NRC, its Licensing Board, and the NRC Commission to find a way to see and consider the solutions to SNF we are offering and issue license, or find a way to provide funds to proceed with licensing.

Accompanying memorandum supports the plea.

Dated this February 9, 2004,

Sincerely yours,

William D. (Bill) Peterson, M.S., P.E.

P&A Engineers, Pigeon Spur Fuel Bank

William D. (Bill) Peterson

Pigeon Spur Fuel Bank

Ref: NRC Docket No. 72-23

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In the Matter of

PRIVATE FUEL STORAGE, L.L.C.

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Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

APPEAL MEMORANDUM

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

Response to NRC's RESPONSE to PETITION to license Pigeon Spur

ABSTRACT

On January 20, 2004, William D. (Bill) Peterson petitioned to the Licensing Board for license of Pigeon Spur for 50 years extending to 300 years storage of spent nuclear fuel (SNF), or its separated fission waste components. The proposed SNF intermediate storage supports a proposed 300-year disposal solution combination of storage and five nines (99.999%) separation of transuranics from the fission wastes. The system supports Yucca Mountain (YM) disposal by doing required heat unloading of the SNF for fifty years with convection air cooling, thus reducing the spacing required, enabling expanded use of YM.

In addition, it is expected that INEEL will develop improved SNF processing (five nines) which will enable the SNF fission waste component of SNF to be disposed of as low level Class-C waste material which can also potentially be done at Pigeon Spur.

During the 1987 - 1993 period of the Nuclear Waste Negotiators, two sites for intermediate storage of SNF were proposed - Skull Valley Goshute Indian Chief Leon Bear proposed the Goshute reservation and William Peterson in association with the Southern Pacific railroad proposed the Pigeon railroad spur area. The Pigeon Spur Fuel Storage Facility (PSFSF) project

license, NRC Docket No. 72-23 was not completed for lack of funds. The Private Fuel Storage (PFS) project, NRC Docket No. 72-22, is stalled because of potential interference with the aircraft training operations of Hill Air Force Base. The PFS and PSFSF sites are somewhat similar in that they are 85 miles apart sharing opposite ends of the same alluvion shelf of the old Lake Bonneville. The PSFSF staff did attend and support PFS's licensing hearings. In the Public input period of the PFS licensing process, the PSFSF site was proposed for its advantages as a substitute for PFS site.

On submitting the January 20, 2004, petition for Pigeon Spur, the NRC Licensing Board elected to associate the new 50-300-year storage effort with the PFS Docket No. 27-22 effort, ref 10CFR72.44 and 10CFR72.5. This way the Licensing Board can also bring in information which might go beyond that in the hearing record, ref 10CFR110.113(b). This is done at the discretion of the Licensing Board not subject to outside interpretation, ref 10CFR72.5, also 10CFR110.3. We did not ask for this.

What to do with SNF is a problem that has been going on for thirty years and more. PFS and Yucca Mountain may eventually be solutions of sorts. But the petitioners' proposed that the proposed Pigeon Spur storage with the associated proposed 300-year disposal system is part of a permanent disposal solution where the intermediate storage of PFS and Yucca Mountain are not permanent solutions. Note again that the proposed Pigeon Spur would supplement, support, and assist both PFS and Yucca Mountain. But Pigeon Spur has a potential of being a solution this decade where PFS and Yucca Mountain might not happen this decade, ref 10CFR110.113(d).

AS A PRACTICAL AND LAWFUL MATTER, THE NRC LICENSING BOARD
SHOULD LICENSE SNF STORAGE AT PIGEON SPUR

Sherwin E. Turk, allegation (a):

Mr. Peterson is not a party to this proceeding and lacks standing to request that any action be taken by the Licensing Board herein;

Response: We recognize that we don't have standing in the PFS matter. In making this petition we did not ask for standing. There has been more than five years of legal public hearings in this matter. Peterson and Pigeon Spur have been a part of all these proceedings. Mr. Turks's allegation that Mr. Peterson lacks standing to make a request infers that public response is pointless. Questions and suggestions were timely taken from the public and in that period Mr. Peterson respectfully proposed the merits and advantages of Pigeon Spur by submitting a copy of the NRC Docket No. 72-23 license application, as well as for a time attempted to be an intervener. Even if Peterson did none of this, even without the common background, the Licensing Board could rightly choose to bring all Pigeon Spur into the PFS matter, ref §110.113(b) Commission action, although in this petition we did not ask for it. This proceeding is not a trial where parties are protected by controlling facts. This is a proceeding to get a job done, to solve the physical problem of SNF. Information is not withheld. How information is assembled is the prerogative of the Licensing Board , ref §72.5 Interpretations. Mr. Turk is not the seeing the issues of the pleading, he is trying to control the way the Licensing Board is seeing the pleading which is not his domain, again see §110.113(b) Commission action.

Sherwin E. Turk, allegation (b):

The Licensing Board lacks jurisdiction to consider Mr. Peterson's request for action concerning any facility other than the PFS Facility which is the subject of this proceeding;

Response: The licensing board can see and use any information from any source. In fact, the License Board can search and look for information, ref §110.113(b) Commission action. The

Congress made it law that after spent nuclear fuel (SNF) is utility pool stored for a period of around five years (what ever is required for around 99% fission waste decay heat generation) the SNF can then be removed from pool storage then the U.S. Government will take possession and control of the SNF and the SNF will be removed by the Government from the utility property and go to a Government storage facility. But the Government has not had such a facility. So, in the 1980s the Congress created the office of the Nuclear Waste Negotiator to operate under the President to find a party[s] to host SNF storage. Two offers to host SNF were made - Chief Leon Bear, and William D. Peterson. Each proposed a location, but no limit to locations was ever specified by the Congress, the Negotiators, or Bear or Peterson. Actually Peterson considered and suggested several locations. Likewise, the Licensing Board was given jurisdiction to consider other sites, any sites. And likewise, no limit to location, method, or host is imposed upon the Licensing Board. The licensing board has been considering the merits of the Private Fuel Storage proposal. In the future the licensing board will be considering the merits of a Yucca Mountain proposal. Within the Board's jurisdiction, Peterson has petitioned for the Licensing Boards consideration of yet a third alternative, "a different time of storage," not for 20 + 20 years as is PFS, and not to 10,000 years as is Yucca Mountain, but for a period of 50 years extending to 300 years then becoming a Class-C storage facility. The proposed hardened storage configuration of Pigeon Spur is not above ground as is PFS, and is not a deep repository with 10,000 horsepower of forced air cooling as is Yucca Mountain, but is only slightly subsurface so still has the PFS advantages of being convection air cooled. Also, Pigeon Spur is proposed to support a proposed 300-year disposal solution of a combination of storage and "five nine" separation processing. Clearly, Pigeon Spur is different from either PFS or Yucca Mountain, but Pigeon Spur does the same as PFS and Yucca Mountain; it actually does more, because Pigeon Spur with the 300-year disposal process is a final solution for SNF where PFS and Yucca Mountain are not, PFS being short range intermediate storage, and YM being long term intermediate storage where after 10,000 years the SNF still is not disposed of like it is with our 300-year low level Class-C. It is clear that Licensing Board has jurisdiction to consider the PFS site application and has jurisdiction and latitude to consider licensing of Yucca Mountain. If the Licensing

Board has latitude and jurisdiction to consider and license PFS and Yucca Mountain, then surely the Licensing Board has jurisdiction to consider Mr. Peterson's request to license Pigeon Spur, a storage time between. In considering licensing PFS the Licensing Board would also have latitude to consider alternatives including location, method, licensee, and owner/operator. Typically, judges are given broad latitude. Surely, the Congress gave the NRC Licensing Board every bit as much latitude as given any other court, even more.

Sherwin E. Turk, allegation (c):

The Licensing Board lacks authority to provide the relief requested in the Petition (*i.e.*, to award a license to Mr. Peterson). Accordingly, Mr. Peterson's Petition should be denied.

Response: It is clear that Licensing Board has jurisdiction to consider the PFS site application and has jurisdiction and latitude to consider licensing Yucca Mountain. If the Licensing Board has latitude and jurisdiction to consider and license PFS and Yucca Mountain, then surely the Licensing Board has jurisdiction to consider another, like Mr. Peterson's request to license Pigeon Spur. In considering licensing PFS the Licensing Board would also have latitude to consider alternatives including location, method, and owner/operator. Typically, judges are given broad latitude. The President appoints the NRC Commission, the Senate approves the appointments. The Commission oversees the Licensing Board who is given unquestionable latitude to get SNF storage and disposal solutions licensed for the United States. Three fronts are working on this - Yucca Mountain, Private Fuel Storage, and Peterson. The Licensing Board can put the matter in a venue of its best options and from the offers made to the board license anything that works, ref 10CFR110.113(b) Commission action. Right now, Pigeon Spur may be the Licensing Board's best option.

THE 300-YEAR DISPOSAL SOLUTION AND PROCESSING OF SNF
SHOULD BE WRITTEN SUB-PARTS IN THE CODE OF FEDERAL REGULATIONS

In 10 code of federal regulations parts 1 to 199, 10CFR part 60 addresses DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES. Then in 10CFR part 72 LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE is addressed. The Pigeon Spur Fuel Bank or Pigeon Spur Fuel Storage Facility (PSFSF) works for 10CFR part 72. PSFSF also would supplement and greatly improve the use of YM by taking its initial 50-year heat loading requirement then enable more dense packing in YM, ref 10CFR60. But Pigeon Spur with the proposed 300-year disposal solution, a combination of storage and five nines (99.999%) separation of transuranics from the fission wastes is different than either part 60 or part 72. We propose that the commission establish a new part in 10CFR for the processing of SNF and another new part in 10CFR for the proposed 300-year disposal solution, a combination of storage and processing which frees part of SNF for making new fuel, and puts the fission wastes in low level Class-C.

NRC's STAFF'S RESPONSE DOES NOT OBJECT TO PETERSON'S PETITION

Nowhere do we read that the NRC's Staff's response objects to any part of the petition for Pigeon Spur license for intermediate SNF storage, for 50 years extending to 300 years storage time. NRC did not object to Pigeon's proposed method of hardened subsurface convection-air cooled storage, or Pigeon's location at the Pigeon Spur railroad siding on the main line of the Southern Pacific Railroad in Box Elder County, Utah. NRC did not object to Pigeon's location in seismic zone 2, 25 miles from closest ever recorded seismic activity. NRC did not object to Pigeon's location 26 miles and a mountain range away from Hill Air Force Base flight training operations. NRC did not object to

Pigeon's proposed transfer from shipping cask to storage cask building, Pigeon's proposed railroad serviced storage field with protective earthen berms. NRC did not object to Pigeon's site location 100 miles by air from Salt Lake City, but 210 miles by automobile, having only around nine persons living within the 100 square mile area centered around Pigeon Spur. NRC did not object to Pigeon's 200 hours of public hearings over five years, beginning eight years ago, 150 families in 5,000 square miles, a citizens petition for the project, for its work, its contentions with Governor Leavitt, its legal battles and court judgments. NRC did not object to the changing from an above ground exposed cask design to an under ground - multi concrete structure protective against aircraft impact and TOW missiles. NRC did not object to Pigeon Spur's organization of around a dozen of the U.S.'s finest nuclear scientists, business, political, and legal leaders. And finally, NRC did not comment on the 300-year disposal solution making new fuel from separated transuranics as well as uranium and disposing of the fission wastes as low level Class-C wastes.

The NRC's Staff response only objected to the NRC Licensing Board's putting the petition with the Private Fuel Storage effort for its review. In making the petition for Pigeon Spur it was not claimed to be a part of the PFS Docket No. 72-22 effort. It was explained how the previous license application for Pigeon Spur NRC assigned Docket No. 72-23, the Box Elder Fuel Storage Initiative, so named by NRC, was unsuccessful. The petitioners maintain that the NRC Licensing Board has the authority and the latitude to see the petition for Pigeon Spur in any manner, even to see it with Dockets Nos. 72-22 or 72-23, if the Licensing Board so elects. How the NRC Licensing Board sees the Pigeon Spur petition is not the petitioners or the NRC's staff prerogative to determine or interpret, see, ref 10CFR72.44 and 10CFR72.5. It can be speculated that by doing it the way the Licensing Board is seeing the petition, the Board can also bring in information which might go beyond that which is already in the hearing record, ref 10CFR110.113(b). This might make it possible to do the licensing where otherwise it might not be so possible. After all, what the NRC, the Congress, the

President, and the U.S. nation needs is a solution for SNF. So the petition is received and seen at the discretion of the Licensing Board at its own discretion not subject to outside interpretation, ref 10CFR72.5, also 10CFR110.3

So the NRC Staff has in no way and in no words objected to the Peterson Petition for license of SNF storage at Pigeon Spur. The NRC Staff has rebuked none of the averments of Peterson's petition, so has accepted them. Peterson moves for license of SNF storage at Pigeon Spur.

Dated this 9th Day of February, 2004.

Sincerely yours,

William D. (Bill) Peterson, M.S., P.E.

P&A Engineers, Pigeon Spur Fuel Bank

See references, 10CFR parts copied and attached

CERTIFICATE OF E-mail SERVICE / DELIVERY

Copies of this PETITION were sent this date by Internet e-mail transmission to (1) Atomic Safety Licensing Board Judge G. Paul Bollwerk, III, Esq., Judge - Dr. Jerry R. Kline, and Judge - Dr. Peter S. Lam, (2) Vice President Dick Cheney, (3) Secretary of Energy Spencer Abraham (4) Senate and House Energy Committees (4) Nuclear Regulatory Commission, (5) OCRWM Director Dr. Margaret Chu, (6) EPA Director Michael O. Leavitt, (7) Governor of Utah Olene Walker, (8) Box Elder County Commission, (9) Park Valley Committee for Pigeon Spur SNF Work Employment, and (10) Grouse Creek Committee for Pigeon Spur SNF Work Employment.

P&A Engineers and Pigeon Spur Scientific Advisory Board:

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*Also Scientific Advisers for Private Fuel Storage (PFS)

Relevant U.S. Patent Nos.: 5448604, 1995, on a railroad transfer system and No. 5862195, 1999, on dry-fluid storage. 300-yr solution Pat Pend. P&A Engineers proprietary and patented designs. Ref NRC Docket No. 72-23 Box Elder Fuel Storage Initiative

see: <http://www.spentnuclearfuel.com> <http://www.geocities.com/nuclearsolutions>
<http://www.pigeonspur.com>

10CFR-L - Energy, code of federal regulations, Revised as of January 1, 1998

PART 1-STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

Subpart A-Introduction

§1.1 Creation and authority,

(a) The Nuclear Regulatory Commission was established by the Energy Reorganization Act of 1974 ... This Act abolished the Atomic energy Commission and transferred to the Nuclear Regulatory Commission all the licensing and related regulatory functions assigned to the Atomic Energy Commission by the Atomic Energy Act of 1954. These functions included those of the Atomic Safety and Licensing Board Panel. The Energy Reorganization Act became effective January 19, 1975.

(b) As used in this part: *Commission* means the five members of the Nuclear Regulatory Commission or a quorum thereof sitting as a body.

Subpart B-Headquarters

§1.11 The *Commission*. is composed of five members, appointed by the President and confirmed by the Senate.

(c) The following staff units and officials report directly to the Commission: Atomic Safety and Licensing Board Panel, Office of the General Counsel, Office of the Secretary, Office of Commission Appellant Adjudications, Office of International Programs, and authorized or established specifically by the Act. The Advisory Committee on Reactor Safeguards and the Advisory Committee on Nuclear Waste also report directly to the Commission.

§1.15 *Atomic Safety and Licensing Board Panel*, established pursuant to section 191 of the Atomic Energy Act of 1954, as amended, conducts hearings for the Commission and such other regulatory

functions as the Commission authorizes. The panel is composed of any number of administrative judges, who may be lawyers, physicists, engineers, and environmental scientists...

Subpart H-Rulemaking

§2.802 Petition for rulemaking

- (a) Any interested person may petition the Commission to issue, amend or rescind any regulation.

PART 60-DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

Subpart A-General Provisions

§60.6 Exemptions.

The Commission may, upon application by DOE, any interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest. Also same in §72.7 for the independent storage of spent nuclear fuel.

PART 72-LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

Subpart A-General Provisions

§72.6 License required; types of licenses.

(a) Licenses for the receipt, handling, storage, and transfer of spent fuel or high-level radioactive waste are of two types: general and specific. Any general license provided in this part is effective without the filing of an application with the Commission or the issuance of a licensing document to a particular person. A specific license is issued to a named person upon application filed pursuant to regulations in this part.

§72.44 License conditions.

(a) Each license issued under this part shall include license conditions. The license conditions may be derived from the analyses and evaluations included in the Safety Analysis Report and amendments thereto submitted pursuant to §72.24. License conditions pertain to design, construction, and operation. The Commission may also include additional license conditions as it finds appropriate.

§72.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by an officer or employee of the Commission, other than a written

interpretation by the General Counsel, will be recognized to be binding upon the Commission. Also same in §51.5, 52.5, 54.5, 55.6, 60.5, 70.6, 71.2, 73.3, 74.5, 75.5, 76.6, 95.7, 110.3, 140.4, 150.5, 170.4, and §171.7.

PART 110-EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIALS

Subpart A-General Provisions

§110.1 Purpose and scope.

(b) The regulations in this part apply to all persons in the United States except: (1) The Departments of Defense and Energy for activities authorized by sections 54, 64, 82, and 91 of the Atomic Energy Act, except when the Department of Energy seeks an export license under section §111 of the Atomic Energy Act;

Subpart I-Hearings

§110.113 Commission action.

(a) Upon completion of a hearing, the Commission will issue a written opinion including its decision on the license application, the reasons for the decisions and any dissenting views.

(b) While the Commission will consider fully the hearing record, the licensing decision will be based on all relevant information, including information which might go beyond that in the hearing record.

(c) If the Commission considers information not in the hearing record in reaching its licensing decision, the hearing participants will be informed and, if not classified or otherwise privileged, the information will be placed in the Public Document Room and furnished to the participants.

(d) The Commission may issue a license before completion of a hearing if it finds that:

(1) Prompt issuance is required in the public interest, particularly the common defense and security; and

(2) A participant establishing that his interest may be affected has been provided a fair opportunity to present his views.

(e) The Commission may;

(1) Defer any hearing;

(2) Consolidate applications for hearings;

(3) Narrow or broaden the hearing issues; and

(4) Take other action, as appropriate.

Subpart K-Rulemaking

§110.130 Initiation of rulemaking

The Commission may issue action to amend the regulations in this part on its own initiative or in response to a petition.

§110.132 Commission action on a petition.

(a) The Commission may grant or deny the petition in whole or in part.

(b) If the petition is granted, a notice of proposed rulemaking or a notice of rulemaking will be published in the FEDERAL REGISTER.

(c) If the petition is denied, the petitioner will be informed of the grounds.

(d) Commission action on a petition will normally follow, whenever appropriate, receipt and evaluation of Executive Branch Views.

(e) The Commission, in exercising the discretion authorized by section 4(a)(1) of the Administrative Procedure Act (5 U.S.C. 553(a)(1)), will decide what, if any, public rulemaking procedures will be followed.

additional law references:

U.S. Third District Court Case No. 2:01-CV-270C, order of United States District Judge Tena Campbell, dated the 30th of July, 2002. Skull Valley Goshute Indians and PFS v Utah

U.S. Third District Court Case No. 2:01-CV-170C, Judge Dale A. Kimball, Tenth Circuit No. 01-4087, U.S. Supreme Court No. 01-10599 , Peterson v Utah

Petitioner's Docket No. 72-23 license application

Patent Nos. 5448604 & 5862195, *Cask Transport, Storage, Monitoring, and Retrieval Systems*, 300-Year Disposal System - Patent Pending

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2,30, 40, 50, 51, 61, 70, 72, and 110

Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is revising Part 51 of its regulations to implement section 102(2) of the National Environmental Policy Act of 1969, as amended (NEPA) in a manner which is consistent with the NRC's domestic licensing and related regulatory authority. Related conforming amendments are being made to Parts 2, 30, 40, 50, 61, 70, and 110. This rule reflects the Commission's policy to develop regulations to take account of the regulations of the Council on Environmental Quality (CEQ) implementing the procedural provisions of NEPA voluntarily, subject to certain conditions.

EFFECTIVE DATE: Upon approval of the information collection requirements by the Office of Management and Budget or June 7, 1984, whichever is later. NRC will announce the date of approval of information collection requirements by OMB in a future document.

FOR FURTHER INFORMATION CONTACT: Jane R. Mapes, Senior Regulations Attorney, Regulations Division, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (310) 492-8695.

SUPPLEMENTARY INFORMATION: On March 3, 1980, the Nuclear Regulatory Commission published in the Federal Register (45 FR 13739-13766) a proposed revision of 10 CFR Part 51 and related conforming amendments to 10 CFR Parts 2, 30, 40, 50, 61, 70, and 110 of its regulations. Interested persons were invited to submit written comments and suggestions on the proposed amendments during the sixty day comment period which expired May 2, 1980. Comments were also solicited on several provisions of the CEQ regulations which the Commission had identified as requiring further study before implementing regulations could be prepared.

In addition to the preliminary views of the Council on Environmental Quality as set out in CEQ's letters of September 26, 1979 and October 29, 1979 which were published in Appendix B to the proposed rule, the Commission received twenty-one letters of comment, expressing the views of interested Federal agencies, state and local governments, industry, including electric utilities, vendors and architect-engineers, professional organizations and individual members of the public. The letters contained more than 100 individual comments and in some instances represented the views of several commenters. Comments were also received from interested members of the NRC staff.

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F4701 rev. 10-12-83

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As requested in the Commission's notice of proposed rulemaking, several commenters expressed views on the following sections of the CEQ regulations: 40 CFR 1502.14(b), 1502.22 (a) and (b) and 1508.18. A brief description of each of these provisions, accompanied by a summary of the relevant comments and a statement of the Commission's present views on the issues raised, is set out below. The views of the commenters are fully set out in the individual letters of comment and in a subject matter compendium which has been placed with the letters in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. where they are available for inspection and copying.

Since the topics addressed by §§ 1502.14(b) and 1502.22(a) of CEQ's regulations are interrelated, these sections will be discussed together.

By way of preface, the Commission restates its view that, as a matter of law, the NRC as an independent regulatory agency can be bound by CEQ's NEPA regulations only insofar as those regulations are procedural or ministerial in nature. NRC is not bound by those portions of CEQ's NEPA regulations which have a substantive impact on the way in which the Commission performs its regulatory functions.

Consideration of Alternatives

1.40 CFR 1502.14(b). This section provides that the environmental impact statement "[d]evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits."

2. 40 CFR 1502.22(a). This section provides that "[i]f the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement."

2. *Alternative sites.* The Commission uses a two-stage decision standard to assure that adequate consideration has been given to alternative locations for constructing power generation facilities to meet the demonstrated need. The first part of this standard requires that the applicant submit a slate of alternative sites which are "among the best that could reasonably be found" inside a region in which it is reasonable to construct a plant to meet the projected need for power. **The second part of the standard requires that the proposed site be approved only if no obviously superior alternative site has been identified.**

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 APPEAL PETITION OF WILLIAM D. PETERSON have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution with copies by electronic mail or facsimile as indicated.

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Docket No. 72-22-ISFSI
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Docket No. 72-22-ISFSI
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 10th day of February 2004