

20973

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'99 NOV 12 A10:25

Before Administrative Judges:

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

OFFICE OF THE
GENERAL COUNSEL
ADJUDICATORY DIVISION

SERVED NOV 12 1999

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

November 12, 1999

MEMORANDUM AND ORDER
(Granting Motion to Compel
Interrogatory Answers)

By motion dated July 20, 1999, applicant Private Fuel Storage, L.L.C., (PFS) seeks a Licensing Board directive compelling intervenor State of Utah (State) to provide more complete answers to several interrogatories relating to contention Utah O, Hydrology, that PFS propounded on May 13, 1999. In its July 30, 1999 response, the State asserts that it has provided as complete a response as possible given the information it has been supplied by PFS relative to the subject matter of contention Utah O. For the reasons set forth below, we grant the PFS motion to compel.

The interrogatories in question -- numbers 2, 3, 4, and 6 -- ask for State responses outlining:

(1) the specific contaminants from the PFS sewer/wastewater system, detention basin,

D502

independent spent fuel storage installation (ISFSI) operations, and ISFSI construction activities that the State contends could enter Skull Valley, Utah surface water or groundwater; the contamination means/mechanism for entering each pathway; and the technical/scientific bases for the State's contentions (Interrogatory 2);

(2) the likelihood that each of the identified contaminants would enter the Skull Valley surface water or groundwater through the identified pathways and the technical/scientific basis for the State's probability conclusions on releases, including likely radiological releases (Interrogatory 3);

(3) the specific perennial and intermittent surface water bodies that would be contaminated by PFS facility construction, operation, and decommissioning, and the technical/scientific bases therefor (Interrogatory 4); and

(4) the measurable or adverse downgradient hydrological resource impacts, and the asserted impact mechanisms, that the State contends would result from the asserted pathways and contaminants previously identified in interrogatory responses, and the technical/scientific bases therefor (Interrogatory 6).

See [PFS] Second Set of Formal Discovery Requests to Intervenors [State] and Confederated Tribes (May 13, 1999) at 13-14. The State's answers to Interrogatory Nos. 2, 3, and 6 refer to its response to contention Utah 0 Interrogatory No. 1, in which the State described the pathways from the PFS sewer/wastewater system, detention basin, ISFSI operations, and ISFSI construction activities through which Skull Valley surface water and groundwater contamination would occur and the basis for its conclusions regarding those pathways. For Interrogatory No. 4, which is

also referenced in the answer to Interrogatory No. 3, the State response refers to a State-provided list of forty-five surface waters and declares that the State contends all surface waters downgradient of the PFS Skull Valley facility or the Rowley Junction, Utah intermodal transfer facility (ITF), or any that are crossed by transportation routes such as the Low Junction rail corridor, could be contaminated from accidents, spills, negligence, or intentional acts. See [State] Response to [PFS] Motion to Compel Answers to Interrogatories for Utah Contention O (July 30, 1999) [hereinafter State Response], exh. 2, at 81-85 (June 28, 1999 State responses to PFS second set of Group II and Group III discovery requests).

In light of the issue framed by the State's contention Utah O and the information that forms the basis for that contention, we see nothing on the face of these interrogatories that renders them objectionable. Nor can we conclude, on the basis of the State's responses up to this point, that it has fulfilled its duty to provide "complete, explicit, and responsive" answers to these particular interrogatories. Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 583 (1975). The crux of the State's defense of its answers is that PFS in its application and responses to State discovery requests has not provided the State with the information

necessary to permit it to answer these questions. See State Response at 3-4. We have several problems with that objection, however.

First, the State's declaration that it cannot provide a further particularized response to these questions because PFS has not produced all the information the State wants or needs regarding water quality matters does not, in and of itself, carry the day. Certainly, in this instance in which PFS has outlined in some detail the nature of its facility and how that facility will operate in the context of the State's concerns about surface and groundwater contamination, see [PFS] Objections and Non-Proprietary Response to State's First Requests for Discovery (April 21, 1999) at 45-60, such an argument is not persuasive.

The State's assertion that it is unable to provide more particularized answers to these interrogatories also is belied by its own filing describing the experience of its potential expert witness, Don E. Ostler, relative to the matters at issue in contention Utah O. According to the State, as a former permitting and review engineer in the State Bureau of Water Quality and as the current Director of the Division of Water Quality of the Utah Department of Environmental Quality, over the past twenty-six years Mr. Ostler has reviewed hundreds of water pollution control plans from a variety of point and nonpoint sources and now


is responsible for implementing and enforcing the State's water quality program. This, the State asserts, has provided him with the expertise and experience to evaluate the water quality information submitted by PFS and provide interrogatory answers. See State Response at 7. Given his credentials, with the information provided in the PFS application and the PFS answers to the State's own discovery requests regarding contention Utah 0, it appears to us that the State should be able to provide a more detailed response to the PFS interrogatories at issue, or at least a better explanation about what is lacking that precludes it from answering those interrogatories in more detail. See Pilgrim, LBP-75-30, 1 NRC at 583 & n.10.

As a consequence, we grant the July 20, 1999 PFS motion to compel relative to contention Utah 0 Interrogatory Nos. 2, 3, 4, and 6. The State's revised response to those interrogatories should be filed on or before Monday, November 22, 1999. In setting this schedule, however, we suggest that the parties may wish to consult further regarding the substance of the State's response to these questions to determine whether contention Utah 0 may be the subject of additional discovery during the Group III "limited window" that would place the State in a better posture to provide a full response to the PFS interrogatories at issue, thereby alleviating the need for

later supplemental answers as additional information comes to light.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD*



G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

November 12, 1999

* 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; and (3) the NRC staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

PRIVATE FUEL STORAGE, LLC

(Independent Spent Fuel Storage
Installation)

Docket No.(s) 72-22-ISFSI

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (GRANTING MOTION...) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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

Administrative Judge
G. Paul Bollwerk, III, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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

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

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

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

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

Joro Walker, Esq.
Land and Water Fund of the Rockies
2056 East 3300 South, Suite 1
Salt Lake City, UT 84109

Docket No.(s)72-22-ISFSI
LB M&O (GRANTING MOTION...)

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

Jay E. Silberg, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, NW
Washington, DC 20037

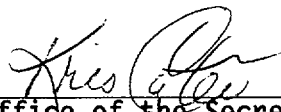
John Paul Kennedy, Esq.
Confederated Tribes of the Goshute
Reservation and David Pete
1385 Yale Avenue
Salt Lake City, UT 84105

Richard E. Condit, Esq.
Land and Water Fund of the Rockies
2260 Baseline Road, Suite 200
Boulder, CO 80302

Danny Quintana, Esq.
Skull Valley Band of Goshute Indians
Danny Quintana & Assocs., P.C.
68 South Main Street, Suite 600
Salt Lake City, UT 84101

Richard Wilson
Department of Physics
Harvard University
Cambridge, MA 02138

Dated at Rockville, Md. this
12 day of November 1999


Office of the Secretary of the Commission