

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Kristine L. Svinicki, Chairman
Jeff Baran
Annie Caputo
David A. Wright
Christopher T. Hanson

In the Matter of

INTERIM STORAGE PARTNERS LLC

(WCS Consolidated Interim Storage Facility)

Docket No. 72-1050-ISFSI

CLI-20-15

MEMORANDUM AND ORDER

This order addresses Sierra Club's appeal of two Board decisions in this matter: LBP-19-7, which dismissed sixteen of seventeen proposed Sierra Club contentions, and LBP-19-9, which dismissed Sierra Club's sole admitted contention as moot.¹ For the reasons described below, we *dismiss as moot* Sierra Club's appeal of Contention 9 and *affirm* the Board with respect to the other contentions.

I. BACKGROUND

This proceeding involves the application of Interim Storage Partners LLC (ISP) for a license to construct and operate a consolidated interim storage facility (CISF) in Andrews County, Texas. ISP is a joint venture between Waste Control Specialists LLC (WCS) and

¹ *Sierra Club's Brief in Support of Appeal from Atomic Safety and Licensing Board Rulings Denying Admissibility of Contentions in Licensing Proceeding* (Dec. 13, 2019) (Sierra Club Appeal); see LBP-19-7, 90 NRC 31 (2019); LBP-19-9, 90 NRC 181(2019).

Orano CIS LLC formed to design, build, and operate the WCS CISF.² The proposed CISF would be located within the owner-controlled area of the existing WCS site, which currently includes two separate low-level radioactive waste (LLRW) disposal facilities.³ ISP has applied for a forty-year license to store 5,000 metric tons (MTU) of spent nuclear fuel (SNF), mixed oxide fuel, and Greater-than-Class-C LLRW in the proposed CISF.⁴ ISP anticipates that, if the license is granted, it will subsequently request license amendments for seven expansion phases over the next twenty years and ultimately store up to 40,000 MTU.⁵

Sierra Club petitioned to intervene and proposed seventeen contentions.⁶ In LBP-19-7, the Board found that Sierra Club had established standing and had proposed one admissible contention, Contention 13.⁷ In Contention 13, Sierra Club challenged the Environmental Report's conclusion that the project will have small effects on two species of concern. Because Sierra Club was granted a hearing on one contention, any appeal of the Board's rejection of its other contentions would be considered interlocutory.⁸

² WCS Consolidated Interim Storage Facility System Safety Analysis Report, rev. 2 (July 19, 2018), at 1-2 (SAR) (ADAMS accession no. ML18221A408 (package)).

³ *Id.*

⁴ WCS Consolidated Interim Spent Fuel Storage Facility Environmental Report, rev. 2 (July 19, 2018), at 1-1 (Environmental Report) (ML18221A405).

⁵ *Id.*

⁶ *Petition to Intervene and Request for Adjudicatory Hearing by Sierra Club* (Nov. 13, 2018) (Sierra Club Petition); *see also Sierra Club's Reply to Answers filed by Interim Storage Partners and NRC Staff* (Dec. 17, 2018) (Sierra Club Reply).

⁷ LBP-19-7, 90 NRC at 39, 50, 78-80.

⁸ *See* 10 C.F.R. § 2.311(a), (c).

ISP appealed the Board's finding that Sierra Club had standing and its admission of Sierra Club Contention 13.⁹ ISP's appeal with respect to Contention 13 became moot, however, after ISP cured the deficiencies identified in the contention. The Board denied Sierra Club's motion to amend Contention 13, and the Board dismissed the contention in LBP-19-9.¹⁰ At that point, the proceeding ended for Sierra Club, and its appeal of both Board decisions became ripe.¹¹

Sierra Club has appealed the Board's rejection of eight contentions at the outset of the proceeding as well as the Board's denial of its motion to amend Contention 13. The NRC Staff and ISP oppose the appeal.¹²

⁹ *Interim Storage Partners LLC's Notice of Appeal of LBP-19-7* (Sept. 17, 2019); *Brief in Support of Appeal of Interim Storage Partners LLC's Appeal of LBP-19-7* (Sept. 17, 2019) (ISP Appeal); see 10 C.F.R. § 2.311(d)(1).

¹⁰ See LBP-19-9, 90 NRC at 184-85.

¹¹ Shortly after dismissing Sierra Club's last contention, the Board rejected a proposed late-filed contention introduced by a different petitioner and terminated the proceeding altogether. See LBP-19-11, 90 NRC 258 (2019).

¹² *NRC Staff's Answer in Opposition to Sierra Club's Appeal of LBP-19-7 and LBP-19-9* (Jan. 7, 2020) (Staff Answer); *Interim Storage Partners LLC's Answer Opposing Sierra Club's Appeal of LBP-19-7 and LBP-19-9* (Jan. 7, 2020) (ISP Answer). We note that, because the Board granted Sierra Club's petition to intervene, its appeal comes to us not under 10 C.F.R. § 2.311(c) (as the Board apparently suggested, see LBP-19-9, 90 NRC at 192, but, rather, under 10 C.F.R. § 2.341.

II. DISCUSSION

We give substantial deference to a Board's ruling on standing, and we will defer to that ruling absent an error of law or abuse of discretion.¹³ We defer to the Board's ruling on contention admissibility in the absence of clear error, mistake of law, or abuse of discretion.¹⁴

A. Sierra Club's Standing

The Board found that Sierra Club had established standing based on the proximity to the proposed CISF site of one of its members, Shirley Henson, who lives about six miles away.¹⁵ In her standing declaration, Ms. Henson stated that she lives in Eunice, New Mexico, which is also on a rail line on which SNF potentially will be shipped.¹⁶ Ms. Henson asserted that she is concerned about accidents at the storage site or on the rail line potentially releasing radioactive material into the air or groundwater.¹⁷

The Board explained in its discussion that standing requires a showing that an intervenor "might suffer a concrete and particularized injury that is (1) fairly traceable to the challenged action; (2) likely redressable by a favorable decision; and (3) arguably within the zone of interests protected by the governing statutes" including the Atomic Energy Act of 1954, as amended (AEA) and the National Environmental Policy Act (NEPA).¹⁸ It further explained that

¹³ *Strata Energy, Inc.* (Ross In Situ Uranium Recovery Project), CLI-12-12, 75 NRC 603, 608 (2012); *Nuclear Fuel Services, Inc.* (Erwin, Tennessee), CLI-04-13, 59 NRC 244, 248 (2004) (citing *International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001)).

¹⁴ See *Crow Butte Resources, Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 26 (2014).

¹⁵ LBP-19-7, 90 NRC at 50; see also *id.* at 47-49.

¹⁶ Sierra Club Petition, Attach., Declaration of Shirley Henson (Oct. 23, 2018).

¹⁷ *Id.* at 1 (unnumbered).

¹⁸ LBP-19-7, 90 NRC at 47.

the NRC recognizes proximity-based presumptions of standing. The Board explained that where an application concerns issuing a license for a nuclear power plant, we presume that persons who reside or have frequent contacts within a fifty-mile radius of a plant can establish standing under the above criteria.¹⁹ Where an application concerns other types of facilities, we use a “proximity plus” standard, which will find standing on a “case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source.”²⁰ The Board also observed that because the CISF is a passive structure, the distance it takes to be “realistically threatened” is less than that for a power reactor. But the Board noted that Ms. Henson’s residence six miles from the proposed site was well within the distance for which standing has been found at similar (and much smaller) materials facilities.²¹

On appeal, ISP argues that the Board did not “articulate a factual basis” for Sierra Club’s standing.²² ISP asserts that the Board erroneously based standing solely on the large quantity of spent fuel that would be stored at the facility and that “quantity alone does not create an obvious potential for offsite consequences.”²³ It argues that the Board’s ruling does not constitute the “case-by-case” analysis that we use in materials facilities cases. The Staff opposes ISP’s appeal and argues that the Board’s standing analysis was correct.²⁴ We agree that the Board’s standing analysis was consistent with our case law and was reasonable.

¹⁹ *Id.*; see also *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 914-18 (2009).

²⁰ LBP-19-7, 90 NRC at 47-48 (citing *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 116-17 (1995)).

²¹ *Id.* at 50.

²² ISP Appeal at 5-14.

²³ *Id.* at 9.

²⁴ *NRC Staff’s Answer in Opposition to Interim Storage Partners LLC’s Appeal of LBP-19-7* (Oct. 15, 2019, at 7-11 (Staff Answer to ISP)).

The Board specifically considered both the nature of the proposed action and the significance of the radioactive source. The nature of the proposed action is to build and operate a facility to hold up to 40,000 tons of nuclear waste, which must be brought to the facility. It is quite unlike the situation in *Schofield Barracks*, which ISP cites, where we upheld a board's determination that a petitioner had shown no "obvious potential for offsite consequences" or "plausible means by which he could be harmed by the possession-only license that the Army [was] seeking."²⁵ The petitioner in *Schofield Barracks* lived nineteen miles away from a site contaminated with low radioactivity depleted uranium (DU) left over from spotting ammunition used on a military gun range.²⁶ There, not only was the radioactive source small but the nature of the proposed action (that is, leaving DU on a controlled-access facility where it was already present) cut against petitioner's standing. These circumstances are not present here.

ISP further argues that, because the Board found Sierra Club's assertions of radiological harm insufficient to support an admissible contention, the Board's "uncritical acceptance" of Sierra Club's "conclusory" standing statements constitutes legal error.²⁷ We disagree. ISP conflates the contention admissibility standards with the standing analysis. Commission case law holds that standing and contention admissibility are "separate issues with distinct requirements."²⁸ And whereas assertions of standing are construed in favor of the petitioners, a petitioner has the burden of establishing each element of contention admissibility.²⁹

²⁵ ISP Appeal at 9; *U.S. Army Installation Command* (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), CLI-10-20, 72 NRC 185, 189 (2010).

²⁶ See *Schofield Barracks*, CLI-10-20, 72 NRC at 187.

²⁷ ISP Appeal at 12.

²⁸ *Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 338 n.34 (2009).

²⁹ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 215-16 (2003).

ISP argues that because there is no emergency planning requirement for away-from-reactor independent spent fuel storage installations (ISFSIs), the “Commission determined that there simply is no objective basis for a claim that offsite radiological harm can accrue from facilities such as the WCS CISF.”³⁰ The Board rejected ISP’s argument that standing should not be presumed unless a petitioner resides within a facility’s emergency planning zone.³¹ The Board observed that under ISP’s reasoning, a petitioner who lived across the street from the proposed CISF would not have standing.³² In its discussion of standing of another petitioner, the Board declined to accept the argument that standing can be based on nothing short of “the level of risk necessary to trigger emergency planning requirements.”³³ Rather, the Board held that a petitioner can base standing on “potential long-term effects that have nothing to do with a sudden emergency.”³⁴

We find the Board’s determination to be reasonable. The Commission has not held that there can be no offsite radiological consequences from an ISFSI. We therefore affirm the Board’s finding that Sierra Club has standing.

B. Sierra Club’s Appeal

1. Contention 13: Wildlife Impacts

In Contention 13, Sierra Club argued that ISP’s Environmental Report provided insufficient factual support for its assertion that the proposed CISF would not affect two species

³⁰ ISP Appeal at 10-11.

³¹ LBP-19-7, 90 NRC at 49.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

of concern that may be present at the site.³⁵ Sierra Club argued that although the Environmental Report identified the two species, the Dunes Sagebrush Lizard and the Texas Horned Lizard, it did not provide studies or surveys that could determine whether the species are present or could be adversely impacted by the proposed project.³⁶

The Board admitted the contention because none of the five sources cited in ISP's analysis of these species were publicly available, and therefore no interested member of the public would be able to assess their reliability.³⁷ It admitted the contention solely as a contention of omission "insofar as none of the five references in section 3.5.16 of ISP's Environmental Report is either sufficiently described to judge its technical adequacy or made publicly available."³⁸

Thereafter, ISP supplemented its Environmental Report with copies of or ADAMS accession numbers for the materials cited in section 3.5.16 and moved to dismiss Contention 13 as moot.³⁹ Shortly thereafter, Sierra Club moved to amend Contention 13.⁴⁰ In its amended Contention 13, Sierra Club argued that the sources cited all referred to the adjacent WCS LLRW

³⁵ Sierra Club Petition at 78-79.

³⁶ *Id.*

³⁷ LBP-19-7, 90 NRC at 78-79.

³⁸ *Id.* at 80.

³⁹ Letter from Jack Boshoven, ISP, to Document Control Desk, NRC (Sept. 4, 2019) (ML19248C915) (ISP Letter Providing Supplemental References); *Interim Storage Partners LLC's Motion to Dismiss Sierra Club's Contention 13 as Moot and Terminate this Proceeding* (Sept. 9, 2019), at 1.

⁴⁰ *Sierra Club Motion to Amend Contention 13* (Sept. 13, 2019) (Motion to Amend); *Amended Contention 13* (Sept. 13, 2019) (Amended Contention 13).

site and did not apply directly to the CISF site, and, further, that they were eleven to twenty-two years out of date.⁴¹

The Board rejected the amended contention because it did not raise a genuine dispute “as to whether the recently available studies adequately support[ed] the factual description of the affected environment in ISP’s Environmental Report” or as to whether the report’s characterization of the project’s environmental impact is reasonable.⁴² The Board found that there were no significant discrepancies between the information in the newly available studies and the Environment Report.⁴³ The Board further found that the Sierra Club had not asserted that the Environmental Report’s conclusions were unreasonable.⁴⁴ The Board pointed out, for example, that ISP’s Environmental Report asserts that impacts on the two species would be “small.” The Board also found factual support for the Environmental Report’s conclusions that the CISF site is only a small percentage of the suitable habitat for the affected species in the region and neither of the two species is federally listed as endangered or threatened.⁴⁵ Further, the Board credited ISP’s rationale in the Environmental Report that the two species will not be greatly affected by construction at the site because they either are not present or are “highly adaptable”—meaning they would be able to move away from construction activities.⁴⁶

⁴¹ Amended Contention 13 at 2-3.

⁴² LBP-19-9, 90 NRC at 187-88. A majority of the Board rejected arguments that the amended contention was not timely under the factors set forth in 10 C.F.R. § 2.309(c)(1). *Id.* at 185-87.

⁴³ *Id.* at 188-90.

⁴⁴ *Id.* at 190-91.

⁴⁵ *Id.* The Environmental Report acknowledges that the Texas Horned Lizard is state-listed as threatened in Texas. See Environmental Report at 3-34, Tbl. 3.5-1.

⁴⁶ See LBP-19-9, 90 NRC at 191 (citing Environmental Report at 4-38).

Moreover, the Board concluded that proposed facility site was within the survey area of the studies.⁴⁷

The Board also rejected Sierra Club's claim that the studies cited in the Environmental Report are outdated. The Board noted that this aspect of the amended contention was untimely, given that the Environmental Report provided the dates of the studies at the outset.⁴⁸ The Board further stated that Sierra Club cited no factual or legal reason why ISP must use more recent studies.

On appeal, Sierra Club does not identify a clear Board error or an abuse of discretion. Instead, it reiterates the same arguments it raised before the Board without addressing the Board's reasons for rejecting them. An appeal must point to a Board error; it is not enough for an appellant to simply repeat the arguments it made before the Board and hope for a different result from the Commission.⁴⁹ We see no reason to disturb the Board's decision, and we affirm its ruling.

2. Contentions Dismissed at the Outset (LBP-19-7)

a. Contention 1: The NWPA Prohibits Licensing the Proposed CISF

The focus of Sierra Club's Contention 1 argument before the Board—and its exclusive argument on appeal—is that the license cannot be issued because the “project might be illegal.”⁵⁰ Specifically, Sierra Club argued before the Board that the license would allow ISP to

⁴⁷ *Id.* at 188.

⁴⁸ *Id.* at 187 n.39.

⁴⁹ *Florida Power & Light Company* (Turkey Point Nuclear Generating Units 6 and 7), CLI-17-12, 86 NRC 215, 219 (2017).

⁵⁰ Sierra Club Appeal at 8. Sierra Club's proposed Contention 1 included an argument that neither the AEA nor the Nuclear Waste Policy Act (NWPA) gives the NRC authority to license the facility. Sierra Club Petition at 14, 17, 20-23. The Board rejected Sierra Club's argument as an impermissible challenge to NRC regulations, which expressly allow such storage. LBP-19-7, 90 NRC at 60; see also 10 C.F.R. § 2.335 (precluding challenges to NRC regulations in

enter into a contract with the Department of Energy (DOE) for storage of spent fuel, whereas the NWPA prohibits the Department of Energy from taking title to SNF before it has constructed a permanent repository.⁵¹

The Board found that the contention did not raise a genuine dispute with the application because the proposed license includes the option of contracting directly with the power plant owners (an option which Sierra Club does not claim would be illegal).⁵² The Board explained that whether ISP finds that option commercially viable in the future is not an issue material to the license proceeding.⁵³

On appeal, Sierra Club reiterates its argument before the Board that the license cannot be issued because we lack the authority to approve “a project that might be illegal.” We disagree for the reasons explained by the Board as well as for the reasons we discussed in our recent decisions on appeals of similar contentions.⁵⁴

We further note that Sierra Club’s argument misconstrues the purpose and effect of the proposed license condition that discusses DOE. The application contemplates that ISP will raise its operating costs through disposal contracts with the owners of the SNF—either power plant operators who currently own the fuel or DOE, which is responsible for the ultimate disposal of SNF. Proposed license condition 23 provides, “Prior to commencement of operation, the Licensee shall have an executed contract with the U.S. Department of Energy (DOE) *or other*

individual adjudications without a waiver). Sierra Club appears to have abandoned this specific argument on appeal.

⁵¹ Sierra Club Petition at 14-20.

⁵² *Id.* at 60.

⁵³ *Id.*

⁵⁴ See CLI-20-14, 92 NRC __ (Dec. 17, 2020) (slip op.); *Holtec International* (HI-STORE Consolidated Interim Storage Facility), CLI-20-4, 91 NRC 167, 173-176 (2020).

SNF Title Holder(s) stipulating that the DOE or the other SNF Title Holder(s) is/are responsible for funding operations required for storing the SNF.”⁵⁵

ISP acknowledges that under the NWPA as currently drafted, DOE cannot take title to SNF until after it has commenced operations at a permanent repository and that the CISF license, until granted, would not authorize DOE to do so.⁵⁶ The license condition, as written, would allow ISP to take advantage of a future change in the law to bid on a DOE disposal contract without first amending its license. Nothing in the proposed condition purports to authorize ISP or the DOE to enter into the contracts. Rather, it expresses a limitation on ISP’s operating authority: ISP could not begin operations until it entered a valid contract with either DOE or power plant owners. We therefore affirm the Board’s decision dismissing this claim.

b. Contention 4: Transportation Risks

Sierra Club argued in proposed Contention 4 that ISP’s Environmental Report does not adequately evaluate the risks of transporting SNF from across the country.⁵⁷ Sierra Club referred to a 2001 report prepared by Matthew Lamb and Dr. Marvin Resnikoff, “Worst Case Credible Nuclear Transportation Accidents: Analysis for Rural and Urban Nevada,” which was prepared in support of a challenge to the DOE’s Yucca Mountain repository application.⁵⁸ Sierra

⁵⁵ See Interim Storage Partners, LLC, License Application, rev. 2 (July 19, 2018) (ML18221A397 (package)) (Application), Attach. A, Proposed License, at 3 (Proposed License).

⁵⁶ See 42 U.S.C. §§ 10143, 10222(a)(5)(A); *Interim Storage Partners LLC’s Response to the Atomic Safety and Licensing Board’s Questions Regarding the U.S. Department of Energy’s Authority Under the Nuclear Waste Policy Act* (June 28, 2019); see also Tr. at 43-44 (Mr. Matthews) (“[T]he license that . . . we seek here does nothing to authorize DOE to use the facility. There’s nothing that the NRC Staff, this Board, or the Commission can do to change the DOE’s authority under the Nuclear Waste Policy Act.”).

⁵⁷ Sierra Club Petition at 31-43.

⁵⁸ Matthew Lamb, Marvin Resnikoff and Richard Moore, *Worst Case Credible Nuclear Transportation Accidents: Analysis for Urban and Rural Nevada* (Aug. 2001) (RWMA Report). Sierra Club did not attach the RWMA Report to its petition but provided a web address, www.state.nv.us/nucwaste/trans//rwma0108.pdf (last visited Feb. 20, 2020).

Club provided a declaration of Dr. Resnikoff, who stated that he had read the contention and agreed with it, but the declaration provided no further information.⁵⁹ Sierra Club also proffered the testimony of Dr. Gordon Thompson, who described various scenarios that he argued could result in canister breach and release of radiation.⁶⁰

The Board rejected the contention because it failed to raise a genuine dispute with the application. With respect to the impacts of accidents, the Board pointed out that the estimated doses from accidents were contained in section 4.2.8 of the application, and it noted that Sierra Club did not address these estimates or “explain why they are inadequate or unreasonable.”⁶¹ According to the Board, Sierra Club merely proffered an eighteen-year-old report and pointed out that its analysis had much higher accident consequence estimates than those contained in the application.⁶² However, the Board found that the report was admittedly a worst-case analysis.⁶³ It held that under NEPA, Sierra Club would have to show that ISP’s analysis was unreasonable or that Sierra Club’s proposed methodology would be more appropriate.⁶⁴ The Board found that Sierra Club “*assumes* that ISP’s analysis is inadequate solely because it

⁵⁹ Sierra Club Petition, Attach., Declaration of Dr. Marvin Resnikoff (Nov. 9, 2018). Sierra Club’s appeal claims that Dr. Resnikoff “cited recent information about rail fires and expanded traffic of oil tanker cars,” but that information is not in Dr. Resnikoff’s declaration. See *id.*; Sierra Club Appeal at 9. Sierra Club’s Petition listed thirteen oil tanker train car derailment accidents that have occurred since 2013 and resulted in fires. Sierra Club Petition at 39-40.

⁶⁰ Sierra Club Petition, Attach., Declaration of 12 November 2018 by Gordon R. Thompson, at 9-13.

⁶¹ LBP-19-7, 90 NRC at 64.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* (citing *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 323 (2012)).

produced estimated doses that are smaller than the ‘worst case’ results in [the report Sierra Club provided].”⁶⁵

On appeal, Sierra Club does not demonstrate any Board error. Its only mention of the Board’s ruling is to claim that the Board erred in holding that Sierra Club had failed to dispute the information in the Environmental Report’s section 4.2.8, when Sierra Club “was disputing the adequacy of section 4.2.6.”⁶⁶ But the Board pointed out that impacts from transportation accidents—the subject of Sierra Club’s contention—were discussed in section 4.2.8. And the Board was correct that simply presenting an alternative analysis is not enough to raise an admissible contention unless the petitioner also shows that the application’s analysis is inadequate or unreasonable.⁶⁷

The remainder of Sierra Club’s argument on appeal contains a brief summary of the claims it made in Contention 4. But an appeal cannot simply repeat the same arguments it raised before the Board; it must show that the Board’s ruling was in error.⁶⁸ We see no Board error, and we affirm its ruling with respect to Contention 4.

c. Contention 6: Earthquakes

Sierra Club argued in Contention 6 that the application’s discussion of the potential impacts from earthquakes—particularly induced earthquakes from oil and gas activities—was inadequate.⁶⁹

⁶⁵ *Id.*

⁶⁶ Sierra Club Appeal at 10.

⁶⁷ See *Seabrook*, CLI-12-5, 75 NRC at 323.

⁶⁸ *Turkey Point*, CLI-17-12, 86 NRC at 219.

⁶⁹ Sierra Club Petition at 49-53.

The Board considered the contention as both an environmental and safety challenge. The Board found that the contention failed to dispute the relevant portions of the Environmental Report, which discusses seismicity, including induced seismicity from oil and gas activities.⁷⁰ The Board observed that the studies on which Sierra Club relied to support its contention simply reviewed historic instances of induced seismicity, which the application acknowledged.⁷¹

The Board further rejected the contention as a safety contention because Sierra Club did not dispute the material in SAR Attachment D, which analyzes the ground motions of likely earthquakes.⁷² Attachment D contains non-public, proprietary information, to which Sierra Club did not seek access. The Board rejected Sierra Club's claim that the analysis it had not seen was inadequate.⁷³

On appeal, Sierra Club argues that it presented evidence of seismic activity in an area that was not addressed by the Environmental Report.⁷⁴ However, the Environmental Report discusses induced seismicity in section 3.3.3 and concludes that there is low risk to the facility. We see no clear error in the Board's finding that, as an environmental contention, this contention lacked factual support and failed to dispute the application.

Further, we are not persuaded by Sierra Club's argument in support of the safety aspects of its contention that the SAR is inadequate. Although Sierra Club readily acknowledges that it never saw ISP's seismic analysis—because it never sought access to the analysis—it argues that there is “no indication . . . that ISP adequately evaluated the earthquake

⁷⁰ LBP-19-7, 90 NRC at 68-69 (citing Environmental Report §§ 3.3.2, 3.3.3, 3.3.4).

⁷¹ *Id.* at 69.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Sierra Club Appeal at 11.

potential as required by 10 C.F.R. § 72.103(f)(1).⁷⁵ Sierra Club cannot reasonably argue that it can proffer an admissible contention disputing portions of a license application that it has not reviewed. Therefore, Sierra Club has not demonstrated Board error, and we affirm the Board's ruling with respect to Contention 6.

d. Contention 9: Decommissioning Costs

In Contention 9, Sierra Club argued that the applicant had not provided reasonable assurance that it will have the necessary funds for decommissioning when the time comes, as required by 10 C.F.R. § 72.30(e).⁷⁶ Sierra Club also challenged ISP's decommissioning cost estimates and ISP's request for an exemption from decommissioning cost financial assurance requirements.⁷⁷

The Board found that Sierra Club's challenge to the cost estimate did not raise a genuine dispute with the application because the contention did not explain what was wrong with the cost estimate ISP provided.⁷⁸ The Board also found the portion of the contention referring to the exemption request to be moot because ISP withdrew the request after the petitions to intervene were filed.⁷⁹ Sierra Club does not raise either of these claims on appeal, but it reasserts its claim that ISP failed to provide a financial assurance method that complies with NRC regulations.⁸⁰

⁷⁵ *Id.*

⁷⁶ Sierra Club Petition at 60-63; see LBP-19-7, 90 NRC at 71.

⁷⁷ Sierra Club Petition at 60-62.

⁷⁸ LBP-19-7, 90 NRC at 71.

⁷⁹ *Id.*

⁸⁰ Sierra Club Appeal at 12.

Our regulations require a license application to provide financial assurance for decommissioning through (1) prepayment; (2) a surety, insurance, or other guarantee method; or (3) an external sinking fund.⁸¹ Sierra Club argued in Contention 9 that ISP could not qualify for an exemption from § 72.30(e).⁸² Therefore, it argued that there was no assurance that these costs would be funded and that ISP had “completely failed to comply with 10 C.F.R. § 72.30.”⁸³

However, on November 5, 2019, the Staff sent ISP a request for additional information (RAI) seeking clarity concerning how ISP will assure decommissioning funding in compliance with the regulation.⁸⁴ On April 7, 2020, ISP amended its Application to provide that:

*ISP will use a surety bond combined with a conformity external sinking fund as authorized by 10 CFR 72.30(e)(3). Payments from storage operations will be deposited into the external sinking fund as waste is received. A surety bond will be used to assure the difference in the decommissioning cost estimate and the value of the sinking fund until the sinking fund is fully funded. Proposed License Condition 24 ensures that ISP will have funding in place before [waste] is received on site.*⁸⁵

The revised language renders moot Sierra Club’s claim that ISP’s application does not provide adequate decommissioning funding assurance as required in 10 C.F.R. § 72.30(e). We therefore dismiss Sierra Club’s appeal with respect to Contention 9.

⁸¹ See 10 C.F.R. § 72.30(e).

⁸² Sierra Club Petition at 62.

⁸³ *Id.* at 62-63.

⁸⁴ See Letter from John-Chau Nguyen, NRC, to Jeffrey Isakson, ISP (Nov. 5, 2019), Encl. at 2 (ML19309E913).

⁸⁵ See Letter from Jeffery Isakson, ISP, to NRC Document Control Desk (Apr. 7, 2020) (ML20105A133 (package)); Encl. 3, RAIs and Responses, at 27; Encl. 5, LA Changed Pages, at 1-10.

e. *Contention 10: Groundwater Impacts*

In Contention 10, Sierra Club argued that the application does not “accurately and adequately evaluate and consider impacts” to the Ogallala aquifer from the proposed CISF.⁸⁶ Sierra Club argued that the proposed CISF site is directly above the Ogallala Aquifer and the application erroneously states that it is not.⁸⁷ It offered testimony from a geologist, Dr. Patricia Bobeck, that the Environmental Report did not adequately define the geologic units at the site.⁸⁸ It further argued that various factors could cause a release of contamination into groundwater. In particular, Sierra Club argued that casks could rupture because high burnup fuel would cause damage and weaken the fuel cladding.⁸⁹

The Board dismissed this contention because Sierra Club had not presented a material dispute with the application. The Board stated that “[a]ny disagreement concerning the location of the Ogallala Aquifer or the water saturation point at the CISF site is only material to the findings the NRC must make if it is possible for groundwater to be contaminated from a cracked or ruptured cask.”⁹⁰ Moreover, the Board found that Sierra Club’s claims regarding the storage of high burnup fuel and its claims that seismic events in the area would be sufficient to crack a canister were essentially challenges to the certified design of the licensed canisters.⁹¹ The

⁸⁶ Sierra Club Petition at 63.

⁸⁷ *Id.*

⁸⁸ *Id.* at 65; *see also id.*, Attach., Declaration of Dr. Patricia Bobeck, Geologic Review of Interim Storage Partners LLC WCS Consolidated Interim Storage Facility Environmental Report (Oct. 25, 2018), at 3-6.

⁸⁹ Sierra Club Petition at 65-67. Sierra Club also argued that the CISF site is prone to earthquakes and could cause the containers to crack, allowing “radioactive leakage that . . . would find its way into the groundwater.” *Id.* at 67.

⁹⁰ LBP-19-7, 90 NRC at 73.

⁹¹ *Id.* at 74.

Board held that such claims pose an impermissible challenge to NRC regulations and are therefore outside the scope of the proceeding.⁹²

On appeal, Sierra Club repeats the claims it made before the Board without asserting that the Board erred. Sierra Club reiterates arguments that the Environmental Report and SAR fail to acknowledge that the site is above the Ogallala aquifer but does not address the Board's explanation that the depth of the water table is not relevant absent a showing that contamination could plausibly get into the groundwater.⁹³ In addition, we agree with the Board that Sierra Club's claims that high burnup fuel could rupture the licensed casks was an impermissible challenge to the certified design of the casks. We therefore affirm the Board with respect to Contention 10.

f. Contention 11: Site-Selection Process

In Contention 11, Sierra Club challenged ISP's site-selection process and argued that the fifteen site-selection criteria ISP used "bear little or no relationship to any criteria in the statutes or regulations."⁹⁴ Sierra Club argued that many of the criteria used "have nothing to do with the environmental impacts of reasonable alternatives."⁹⁵

In its Environmental Report, ISP explained that it focused on a seven-state region of interest that included sparsely-populated, arid areas where there is support for such a facility.⁹⁶ The Environmental Report included analyses of four sites—two in Texas and two in New

⁹² *Id.*

⁹³ Sierra Club Appeal at 12-13.

⁹⁴ Sierra Club Petition at 68.

⁹⁵ *Id.* at 71.

⁹⁶ Environmental Report § 2.3.1, at 2-10.

Mexico—using fifteen criteria.⁹⁷ The report further broke down the fifteen general criteria into subcategories and included an explanation of why the criteria were important to ISP in selecting a site.⁹⁸ ISP’s siting criterion 11 provided (among other things) that candidate sites should have no existing contamination, should not be located within the 500-year floodplain, should have a “low probability of containing archeological/cultural resources,” and “should have a low probability of disproportionate, adverse impacts to low-income or minority communities.”⁹⁹

The Board found that ISP’s site selection criteria need only be reasonable. It pointed out that there are no site selection criteria described in 10 C.F.R. Part 51 and that the NRC accords “‘substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project’ so long as the application is not [so] artificially narrow as to circumvent the requirement that reasonable alternatives must be considered.”¹⁰⁰ The Board concluded that Sierra Club had not shown that ISP’s site selection process contravened NEPA or any other statutory or regulatory requirement.¹⁰¹

On appeal, Sierra Club does not show the Board erred. It reasserts three arguments against ISP’s siting criteria, but it does not show that any of ISP’s criteria are either unreasonable or contrary to law. First, Sierra Club disputes ISP’s statement that the proposed CISF site has not been contaminated by the neighboring WCS LLRW site and calls that claim

⁹⁷ *Id.* §§ 2.3.4 to 2.3.7.

⁹⁸ *Id.* § 2.3.3.

⁹⁹ *See id.* § 2.3.2, at 2-16 to 2-17.

¹⁰⁰ LBP-19-7, 90 NRC at 75-76 (quoting *Hydro Resources, Inc.* (P. O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 55 (2001), and citing *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-90-8, 32 NRC 201, 206 (1991)).

¹⁰¹ *Id.* at 76.

both unsupported and irrelevant.¹⁰² But as ISP argued before the Board, its assessment is well-founded because the WCS LLRW has been under a monitoring plan to detect radiological or hazardous releases since it was licensed in 1997.¹⁰³ And Sierra Club provides no reason why a lack of existing contamination is an unreasonable factor to consider in choosing a site. Next, Sierra Club argues that ISP should not have used a location outside the 500-year floodplain as a siting criteria.¹⁰⁴ Sierra Club argued before the Board that ISP should have evaluated the impacts of the proposed facility being in the 100-year floodplain as required by 10 C.F.R. § 72.90(f).¹⁰⁵ But as the application states, the site is neither in the 100-year flood plain nor in the 500-year floodplain.¹⁰⁶ In any case, Sierra Club has not shown why low flooding risk would be an inappropriate siting criterion.

Finally, Sierra Club argues that ISP's environmental justice and archeological analyses of the selected site were inadequate.¹⁰⁷ But these claims do not address whether it was inappropriate or contrary to law for ISP to consider in its site selection criteria whether the candidate sites contain archeological resources or present environmental justice concerns. Therefore, the arguments do not support proposed Contention 11 and we affirm the Board's decision to dismiss it.¹⁰⁸

¹⁰² Sierra Club Appeal at 17; see Sierra Club Petition at 71-72.

¹⁰³ See ISP Opposition to Hearing Request at 95 (citing Environmental Report at 2-23).

¹⁰⁴ Sierra Club Appeal at 17; see Sierra Club Petition at 72 (citing 10 C.F.R. §§ 72.3, 72.90(f)).

¹⁰⁵ Sierra Club Petition at 72.

¹⁰⁶ See Environmental Report at 3-20; SAR, ch. 2, Attach. B at 77.

¹⁰⁷ Sierra Club Appeal at 17-18, see *also* Sierra Club Petition at 73-75.

¹⁰⁸ We observe that Sierra Club also proposed a contention on environmental justice, which the Board rejected and which Sierra Club does not appeal. See LBP-19-7, 90 NRC at 82-84.

g. Contention 14: Impacts of Storage Containers Used Beyond Their Licensing Period

Sierra Club argued in proposed Contention 14 that ISP should evaluate the environmental effects of the SNF containers being used beyond their licensing period. Sierra Club argued that the canisters that will hold the SNF during transportation and storage are only licensed for twenty years, whereas the proposed CISF will be licensed for forty years, and ISP acknowledges that it expects to extend its license for a total of 100 years.¹⁰⁹ Sierra Club also claimed that ISP has no plan for handling canisters that may arrive at the CISF damaged or leaking or that may develop a crack during storage.¹¹⁰

The Board dismissed the contention as factually unsupported and raising matters outside the scope of the proceeding. First, it cited our *Private Fuel Storage* decision, in which we noted that the NRC has determined, through several safety evaluations for waste packages, that accidental canister breach during shipping or storage was not a credible scenario.¹¹¹ Next, it observed that the NRC has approved and issued certificates of compliance for all the canisters that are proposed for use at the CISF and that the certificates of compliance have been codified through the rulemaking process.¹¹² Therefore, the Board held that any challenge to the certificates of compliance are outside the scope of this proceeding.¹¹³ Similarly, it held that challenges to the safety of the transportation of spent fuel canisters would be an

¹⁰⁹ Sierra Club Petition at 79-81.

¹¹⁰ *Id.* at 81-83.

¹¹¹ See LBP-19-7, 90 NRC at 80-81 (citing *Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation)*, CLI-04-22, 60 NRC 125, 136-37 (2004)). In *Private Fuel Storage*, we held that to challenge the factual determinations on which a regulation rests in the context of NEPA, a petitioner would have to present “specific, fact-based claims to the contrary, not mere allegations.” CLI-04-22, 60 NRC at 134.

¹¹² LBP-19-7, 90 NRC at 81.

¹¹³ *Id.*

impermissible challenge to NRC's Part 71 regulations. Finally, it ruled that Sierra Club's challenge to the lack of a dry transfer system was an impermissible challenge to the Continued Storage Rule and the Continued Storage Generic Environmental Impact Statement (GEIS).¹¹⁴

On appeal, Sierra Club focuses on a single argument: that the application is based on the fallacy that renewal of the certificates of compliance for the SNF containers will be automatic and that the Board did not address this issue.¹¹⁵ Sierra Club's argument assumes that the certificates of compliance define the boundary of the useful life of the containers and that ISP will be unable to renew the certificates of compliance. However, our regulations allow the licensee to apply to renew a certificate if the certificate holder does not seek renewal.¹¹⁶ Any renewal application will necessarily require a safety analysis report that includes design basis information, a description of the aging management program for issues related to structures, systems and components important to safety, as well as time-limited aging analysis that demonstrates that those same systems will continue to perform their intended function for the requested period.¹¹⁷ Moreover, the aging management of the canisters is addressed in the SAR, which Sierra Club did not address in its contention as originally stated or as phrased on

¹¹⁴ *Id.*; see 10 C.F.R. § 50.23 (Continued Storage Rule); "Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel," NUREG-2157, vol. 1, at 5-52 (ML14196A105) (Continued Storage GEIS).

¹¹⁵ Sierra Club Appeal at 21. ISP argues that this argument is new on appeal. ISP Answer at 22. If the argument were truly new on appeal, that would be sufficient grounds for us to reject it. *USEC Inc. (American Centrifuge Plant)*, CLI-06-10, 63 NRC 433, 458 (2006). But we see a connection between the original contention's apparent assumption that the containers would begin to decay after the original certificates expire and its current argument that there is no guarantee that the certificates will be renewed.

¹¹⁶ See 10 C.F.R. § 72.240(a).

¹¹⁷ See *id.* § 72.240(c).

appeal.¹¹⁸ Specifically, the SAR discusses stress corrosion cracking as a factor considered in selecting material for the storage system, as well as surveillance activities and routine maintenance of the casks for identification and resolution of any issues.¹¹⁹

Sierra Club establishes no Board error and we therefore affirm the Board's decision to dismiss Contention 14.

h. Contention 16: High Burnup Fuel Risks

Sierra Club argued in its proposed Contention 16 that the Environmental Report and the SAR failed to account for the effects of storing high-burnup fuel at the proposed CISF.¹²⁰ Sierra Club argued that high-burnup fuel causes the cladding of the fuel rods to become thinner and more brittle, which increases the risk of release of radioactive material. It also claimed that the SAR misleadingly stated that no high-burnup fuel would be transported and stored at the CISF, which is unlikely because most nuclear fuel used in this country since 1999—and all of it since 2012—has been high-burnup fuel.¹²¹ In a reply brief, Sierra Club challenged the Environmental Report's dose modeling using the RADTRAN computer model and argued that the model does not indicate whether it accounted for high-burnup fuel.¹²²

¹¹⁸ See, e.g., SAR § 5.1.3.2 (“Surveillance of the Storage Overpacks”); *id.* § 5.1.3.5 (“Maintenance Operations”).

¹¹⁹ See, e.g., SAR at A.3-9 (NUHOMS-MP187 Cask System), B.3-9 (NUHOMS Horizontal Modular Storage System), C.3-9 (NUHOMS 61BT System), D.3-9 (NUHOMS-61BTH Type 1 System), E.3-9 (La Crosse MPC storage system); see *also* SAR at 5-5 (Section 5.1.3.2, “Surveillance of the Storage Overpacks”); 5-5 to 5-6 (Section 5.1.3.5, “Maintenance Operation”); 5-7 (Section 5.1.5.5, “Maintenance Techniques”).

¹²⁰ Sierra Club Petition at 91-95.

¹²¹ *Id.* at 92.

¹²² Sierra Club Reply at 44.

The Board found that the issues Sierra Club raised were out of scope and failed to challenge the information in the application.¹²³ The Board found that the challenge to the safety of transporting high-burnup fuel to be an out of scope challenge to our Part 71 regulations and Department of Transportation regulations.¹²⁴ To the extent that the contention challenged the safety of storing high-burnup fuel, the Board found that the application states that only NRC-approved storage systems will be used at the CISF and the SAR incorporates the technical specifications for those designs.¹²⁵ Therefore, Sierra Club's claim that the certified storage systems would not be suitable to store fuel as allowed by their design certifications was barred by 10 C.F.R. § 72.46(e).¹²⁶

The Board also found that the contention failed to challenge the Environmental Report, which discusses both the effects of transportation and storage of high-burnup fuel.¹²⁷ With respect to the probability that the CISF will store high-burnup fuel, the Board observed that Sierra Club misconstrued the application.¹²⁸ The application states that the facility will not accept uncanned high-burnup fuel, not that it will not accept any high-burnup fuel.¹²⁹ The Board

¹²³ LBP-19-7, 90 NRC at 85-87.

¹²⁴ *Id.* at 85-86.

¹²⁵ *Id.* at 86 (citing SAR at 1-6 to 1-10).

¹²⁶ *Id.* Section 72.46(e) provides that, to the extent that an application under Part 72 "incorporates by reference information on the design of a spent fuel storage cask for which NRC approval . . . has been issued . . . , the scope of and public hearing held to consider the application will not include any cask design issues."

¹²⁷ LBP-19-7, 90 NRC at 86-87.

¹²⁸ *Id.*

¹²⁹ *Id.* at 86 (citing Proposed License at unnumbered A-3, ¶ 9). Canning provides an alternative means for confinement of fuel material and replaces the function of cladding.

The purpose of canning is to confine gross fuel particles to a known, subcritical volume during off-normal and accident conditions, and to facilitate handling and ready retrieval of

also rejected Sierra Club's challenge to ISP's dose modeling because that model encompasses spent fuel of any burnup level.¹³⁰

Further, Sierra Club's appeal repeats its arguments that the Environmental Report does not discuss the impacts of transporting high-burnup fuel. It also argues, without identifying any factual or expert support, that transportation of high-burnup fuel would have different doses to the public, transportation modes, and treatment and packaging procedures than other SNF.¹³¹ This challenge is unsupported, and we dismiss it.

Finally, Sierra Club asserts that it does not challenge the certified design of the casks, but rather the "storage of the radioactive waste with respect to the design of the CIS facility."¹³² However, Sierra Club's contention does not identify a characteristic of the CISF facility's design that would make otherwise safe storage systems unsafe.

We find no error in the Board's dismissal of this contention, and we affirm its ruling.

III. CONCLUSION

For the reasons described above, we *dismiss as moot* Sierra Club's appeal of Contention 9 and *affirm* the Board with respect to the other contentions.

IT IS SO ORDERED.

contents. Canning of damaged fuel also provides geometry control of the SNF to avoid relocation, concentration, or both, of radiation sources that may create problems for radiation shielding.

"Standard Review Plan for Spent Fuel Dry Storage Systems and Facilities (Draft Report for Comment)," NUREG-2215 (Nov. 2017), at 1-8.

¹³⁰ LBP-19-7, 90 NRC at 86.

¹³¹ Sierra Club Appeal at 21-22.

¹³² *Id.* at 22.



For the Commission

Annette L. Vietti-Cook
Digitally signed by Annette L. Vietti-Cook
Date: 2020.12.17 15:37:05 -05'00'

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 17th day of December 2020

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
INTERIM STORAGE PARTNERS LLC) Docket No. 72-1050-ISFSI
)
(WCS Consolidated Interim Storage Facility))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (CLI-20-15)** have been served upon the following persons by the Electronic Information Exchange:

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O16-B33
Washington, DC 20555-0001
E-mail: ocaamail.resource@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop: O16-B33
Washington, DC 20555-0001
Hearing Docket
E-mail: Hearing.Docket@nrc.gov

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

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-14A44
Washington, DC 20555-0001
Joe Gillespie, Esq.
Sara Kirkwood, Esq.
Mauri Lemoncelli, Esq.
Patrick Moulding, Esq.
Kevin Roach, Esq.
Carrie Safford, Esq.
Thomas Steinfeldt
Alana Wase, Esq.

Paul S. Ryerson, Chair
Administrative Judge
E-mail: paul.ryerson@nrc.gov

Nicholas G. Trikouros
Administrative Judge
E-mail: nicholas.trikouros@nrc.gov

Dr. Gary S. Arnold
Administrative Judge
E-mail: gary.arnold@nrc.gov

Brian Newell, Senior Paralegal
E-mail: joe.gillespie@nrc.gov
sara.kirkwood@nrc.gov
mauri.lemoncelli@nrc.gov
patrick.moulding@nrc.gov
kevin.roach@nrc.gov
carrie.safford@nrc.gov
thomas.steinfeldt@nrc.gov
alana.wase@nrc.gov
brian.newell@nrc.gov

Ian Curry, Law Clerk
Stephanie Fishman, Law Clerk
Molly Mattison, Law Clerk
E-mail: ian.curry@nrc.gov
stephanie.fishman@nrc.gov
molly.mattison@nrc.gov

**WCS CISF - Docket No. 72-1050-ISFSI
COMMISSION MEMORANDUM AND ORDER (CLI-20-15)**

Counsel for Beyond Nuclear

Diane Curran, Esq.
Harmon, Curran, Spielberg and Eisenberg
1725 DeSales Street NW, Suite 500
Washington, DC 20036
E-mail: dcurran@harmoncurran.com

Mindy Goldstein, Esq.
Emory University School of Law
Turner Environmental Law Clinic
1301 Clifton Road
Atlanta, GA 30322
E-mail: magolds@emory.edu

Nuclear Information and
Resource Service (NIRS)
Diane D'Arrigo
6930 Carroll Avenue
Suite 340
Takoma Park, MD 20912
Email: dianed@nirs.org

Chris Hebner, Esq.
City of San Antonio, TX
P.O. Box 839966
San Antonio, TX 78283
E-mail: chris.hebner@sanantonio.gov

Counsel for Sierra Club
Wallace Taylor
4403 1st Avenue S.E.
Suite 402
Cedar Rapids, IA 52402
E-mail: wtaylorlaw@aol.com

Counsel for Don't Waste Michigan, et al
Terry Lodge, Esq.
316 N. Michigan Street
Suite 520
Toledo, OH 43604
E-mail: tjlodge50@yahoo.com

Dated at Rockville, Maryland,
this 17th day of December 2020

Sustainable Energy and
Economic Development (SEED) Coalition

Karen D. Hadden
Executive Director,
605 Carismatic Lane
Austin, TX 78748
E-mail: karendhadden@gmail.com

Counsel for Interim Storage Partners LLC
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue NW
Washington, DC 20004
Grant Eskelsen, Esq.
Timothy Matthews, Esq.
Ryan Lighty, Esq.
Paul Bessette, Esq.
E-mail: grant.eskelsen@morganlewis.com
timothy.matthews@morganlewis.com
ryan.lighty@morganlewis.com
paul.bessette@morganlewis.com

Counsel for Fasken Land and Oil and
Permian Basin Land and Royalty Owners

Monica R. Perales, Esq.
6101 Holiday Hill Road
Midland, TX 79707
E-mail: monicap@forl.com

Kanner & Whiteley, LLC
701 Camp Street
New Orleans, LA 70130
Allan Kanner, Esq.
Elizabeth Petersen, Esq.
Cynthia St. Amant, Esq.
Annemieke M. Tennis, Esq.
Conlee Whiteley, Esq .
E-mail: a.kanner@kanner-law.com
e.petersen@kanner-law.com
c.stamant@kanner-law.com
a.tennis@kanner-law.com
c.whiteley@kanner-law.com

Herald M.
Speiser

 Digitally signed by Herald M.
Speiser
Date: 2020.12.17 15:42:16 -05'00'

Office of the Secretary of the Commission