

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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CLERK

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September 23, 2021

Ms. Kristine L. Svinicki
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852-2738

No. 21-60743 State of Texas v. NRC
Agency No. 72-1050

Dear Ms. Svinicki,

You are served with the following document(s) under **FED. R. APP. P.**
15:

Petition for Review.

Special Guidance for Filing the Administrative Record: Pursuant to 5th Cir. R. 25.2, Electronic Case Filing (ECF) is mandatory for all counsel. Agencies responsible for filing the administrative record with this court are requested to electronically file the record via CM/ECF using one or more of the following events as appropriate:

Electronic Administrative Record Filed;
Supplemental Electronic Administrative Record Filed;
Sealed Electronic Administrative Record Filed; or
Sealed Supplemental Electronic Administrative Record Filed.

Electronic records must meet the requirements listed below. Records that do not comply with these requirements will be rejected.

- Max file size 20 megabytes per upload.
- Where multiple uploads are needed, describe subsequent files as "Volume 2", "Volume 3", etc.
- Individual documents should remain intact within the same file/upload, when possible.
- Supplemental records must contain the supplemental documents only. No documents contained within the original record should be duplicated.

Electronic records are automatically paginated for the benefit of counsel and the court and provide an accurate means of citing to the record in briefs. A copy of the paginated electronic record is provided to all counsel at the time of filing via a Notice of

Docket Activity (NDA). Upon receipt, counsel should save a copy of the paginated record to their local computer.

Agencies unable to provide the administrative record via docketing in CM/ECF may instead provide a copy of the record on a flash drive or CD which we will use to upload and paginate the record.

If the agency intends to file a certified list in lieu of the administrative record, it is *required* to be filed electronically. Paper filings will not be accepted. See **FED. R. APP. P.** 16 and 17 as to the composition and time for the filing of the record.

ATTENTION ATTORNEYS: Attorneys are required to be a member of the Fifth Circuit Bar and to register for Electronic Case Filing. The "Application and Oath for Admission" form can be printed or downloaded from the Fifth Circuit's website, www.ca5.uscourts.gov. Information on Electronic Case Filing is available at www.ca5.uscourts.gov/cmecf/.

We recommend that you visit the Fifth Circuit's website, www.ca5.uscourts.gov and review material that will assist you during the appeal process. We especially call to your attention the Practitioner's Guide and the 5th Circuit Appeal Flow Chart, located in the Forms, Fees, and Guides tab.

Counsel who desire to appear in this case must electronically file a "Form for Appearance of Counsel" within 14 days from this date. You must name each party you represent, see **FED. R. APP. P.** and **5TH CIR. R.** 12. The form is available from the Fifth Circuit's website, www.ca5.uscourts.gov. If you fail to electronically file the form, we will remove your name from our docket.

Special guidance regarding filing certain documents:

General Order No. 2021-1, dated January 15, 2021, requires parties to file in paper highly sensitive documents (HSD) that would ordinarily be filed under seal in CM/ECF. This includes documents likely to be of interest to the intelligence service of a foreign government and whose use or disclosure by a hostile foreign government would likely cause significant harm to the United States or its interests. Before uploading any matter as a sealed filing, ensure it has not been designated as HSD by a district court and does not qualify as HSD under General Order No. 2021-1.

A party seeking to designate a document as highly sensitive in the first instance or to change its designation as HSD must do so by motion. Parties are required to contact the Clerk's office for guidance before filing such motions.

Sealing Documents on Appeal: Our court has a strong presumption of public access to our court's records, and the court scrutinizes any request by a party to seal pleadings, record excerpts, or other documents on our court docket. Counsel moving to seal matters must explain in particularity the necessity for sealing in our court. Counsel do not satisfy this burden by simply stating that the originating court sealed the matter, as the circumstances that justified sealing in the originating court may have changed or may not apply in an appellate proceeding. It is the obligation of counsel to justify a request to file under seal, just as it is

their obligation to notify the court whenever sealing is no longer necessary. An unopposed motion to seal does not obviate a counsel's obligation to justify the motion to seal.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Dantrell L. Johnson, Deputy Clerk
504-310-7689

Enclosure(s)

cc w/encl:

Mr. Andrew Paul Averbach
Mr. Merrick Garland, U.S. Attorney General
Mr. Henry Carl Myers

P.S. to Respondents: The petition for review includes over 400 pages of Exhibit/Attachments. Please be advised that the Court will not include the voluminous Exhibit/Attachments as part of this mailing. However, said Exhibit/Attachments are available for review upon accessing the public docket of this case at Pacer.gov. Or, this Court will e-mail or print & mail the voluminous Exhibit/Attachments upon your request.

Provided below is the court's official caption. Please review the parties listed and advise the court immediately of any discrepancies. If you are required to file an appearance form, a complete list of the parties should be listed on the form exactly as they are listed on the caption.

Case No. 21-60743

State of Texas; Greg Abbott, Governor of the State of Texas;
Texas Commission on Environmental Quality,

Petitioners

v.

Nuclear Regulatory Commission; United States of America,

Respondents

No. _____

**In the United States Court of Appeals
for the Fifth Circuit**

STATE OF TEXAS;
GREG ABBOTT, GOVERNOR OF TEXAS;
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,
Petitioners,

v.

U.S. NUCLEAR REGULATORY COMMISSION;
UNITED STATES OF AMERICA,
Respondents.

PETITION FOR REVIEW

Pursuant to 42 U.S.C. § 2239(b) and Rule 15(a) of the Federal Rules of Appellate Procedure, the State of Texas, Governor Greg Abbott, and the Texas Commission on Environmental Quality hereby petition the Court for review of the following order entered by the U.S. Nuclear Regulatory Commission in Docket No. 72-1050 on September 13, 2021: *Interim Storage Partners, LLC; WCS Consolidated Interim Storage Facility; Issuance of Materials License and Record of Decision*, 86 Fed. Reg. 51,926 (Sept. 17, 2021) (issuing Materials License No. SNM-2515). In accordance with Fifth Circuit Rule 15.1(b), copies of the license

materials in Docket No. 72-1050 and of the Federal Register notice of the issuance of the license are attached as Attachments A-G.

Venue is appropriate in this Court because Petitioners reside in and have their principal offices in this judicial circuit. 28 U.S.C. § 2343.

Petitioners pray that, upon review, the Court will hold unlawful and set aside the order issuing Materials License No. SNM-2515 and vacate the License.

Respectfully submitted,

KEN PAXTON
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GRANT DORFMAN
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/s/ H. Carl Myers
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COUNSEL FOR PETITIONERS,
STATE OF TEXAS, GREG ABBOTT,
GOVERNOR OF TEXAS, AND

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of Petitioners' Petition for Review to be served this September 23, 2021, by U.S. mail on the following. This certificate is intended to serve as compliance with FRAP 15(c)(1) and (2), and with 28 U.S.C. § 2344.

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/s/ H. Carl Myers
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