

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SIERRA CLUB,)	
)	
Petitioner,	)	No. 21-1055
)	
vs.	)	Consolidated with Case Nos.
	)	21-1048, 21-1056, 21-1179
UNITED STATES NUCLEAR)	
REGULATORY COMMISSION and	)	Date Docketed: February 9, 2021
the UNITED STATES OF)	
AMERICA,	)	SIERRA CLUB'S DOCKETING
	)	STATEMENT
Respondents.)	

Comes now the Petitioner, Sierra Club, and hereby submits the following Docketing Statement:

TYPE OF CASE: Review of administrative action

IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? No

CASE INFORMATION:

a. Identify agency whose order is to be reviewed: Nuclear Regulatory Commission

b. Give agency docket or order numbers: Docket No. 72-1050; Order No. CLI-2020-15

c. Give dates of orders: Order CLI-2020-15 was issued on December 17, 2020; the license was issued on September 13, 2021.

d. Has a request for rehearing or reconsideration been filed at the agency? No

e. Identify the basis of appellant's/petitioner's claim of standing:

Sierra Club was accorded standing before the agency in the administrative proceedings below. The NRC has very strict requirements for standing, so Sierra Club had to make a clear showing, through its members who live in close proximity to the site of the proposed nuclear waste storage facility at issue in this case, that its members would be impacted by the construction and operation of the facility. Attached hereto are the declarations of Sierra Club members Shirley Henson and Fletcher Williams. In those declarations Ms. Henson and Ms. Williams state that they live within 6 miles of the proposed waste facility and within one mile of the railroad line where high level radioactive waste would be transported. The declarants further explain that emergency responders in Eunice, New Mexico, where they live, are not adequately trained and equipped to deal with a situation involving a radioactive release.

The NRC, in Order CLI-2020-15, affirmed the decision of the licensing board that Sierra Club had standing in the administrative proceedings below. The Commission noted that 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 transported to the facility. Distinguishing this case from cases cited by ISP, the Commission noted the “obvious potential for offsite consequences.” Furthermore, in the case cited by ISP the petitioner lived 19 miles from the site. Here, Ms. Henson and Ms. Williams live within 6 miles of the site. Finally, contrary to ISP’s argument that there can be no radiological impact from its proposed facility, the Commission said, “The Commission has not held that there can be no offsite radiological consequences from a [waste storage facility].”

Pursuant to the decision of this Court in *Sierra Club v. EPA*, 292 F.3d 895 (D.C. Cir. 2002), Sierra Club in this case has shown through evidence in the administrative record and the declarations of Ms. Henson and Ms. Williams that Sierra Club members will be impacted by the proposed nuclear waste facility at issue in this case. The *Sierra Club* decision also cited with approval *Horsehead Resource Dev. Co. v. Browner*, 16 F.3d 1246 (D.C. Cir. 1994), where this Court said “environmental organizations [whose members live in affected areas] clearly do have standing.” That precisely describes Ms. Henson and Ms. Williams.

Sierra Club’s standing in this case is further supported by the Supreme Court decision in *Friends of the Earth v. Laidlaw*, 528 U.S. 167, 120 S.Ct. 693 (2000). In *Laidlaw* the plaintiff organization had members who were concerned about pollution in a river into which Laidlaw had been discharging pollutants. The *Laidlaw* decision emphasized that the concerns expressed by the plaintiff members were injuries to persons who use and

enjoy an area for whom the aesthetic and recreational values will be adversely affected.

The *Laidlaw* court also emphasized that the plaintiffs' reasonable concern that pollution in the Tyger River would adversely impact their use and enjoyment of the river and its environs was not the general conclusory allegations that were alleged in *Lujan v. National Wildlife Federation*, 497 U.S. 871, 110 S.Ct. 3177 (1990), nor the speculative "'some day' intentions" proffered in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 112 S.Ct. 2130 (1992). So, in this case, the reasonable concerns of Ms. Henson and Ms. Williams about impacts from the nuclear waste facility confer standing on Sierra Club. And those concerns were echoed by the NRC in the administrative proceedings below ("The Commission has not held that there can be no offsite radiological consequences from a [waste storage facility].").

f. Are any other cases involving the same underlying agency order pending in this Court or any other? No

g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which would involve *substantially the same issues* as the instant case presents? Yes

If YES, give the names and numbers of these cases and identify court/agency: Beyond Nuclear v. NRC, No. 21-1048; Don't Waste Michigan v. NRC, No. 21-1056; Fasken v. NRC, No. 21-1179. All of these cases are filed in this Court and named the Nuclear Regulatory Agency as the Respondent.

h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution? No

/s/ *Wallace L. Taylor*

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ATTORNEY FOR SIERRA CLUB

CERTIFICATE OF SERVICE

This motion was served by the ECF electronic system on November 8,
2021.

/s/ *Wallace L. Taylor*

DECLARATION OF FLETCHER WILLIAMS

My name is Fletcher Williams. I am over the age of 18 years and I live at 1800 E. Texas St, Eunice, New Mexico. My home lies about 2 miles west of the site where Interim Storage Partners (ISP) proposes to construct a storage facility for spent nuclear fuel and high level radioactive waste.

I am a member of Sierra Club and wish to be represented by the organization in the United States Court of Appeals for the District of Columbia Circuit regarding a petition for review of the decision of the Nuclear Regulatory Commission denying Sierra Club's contentions challenging the ISP project and issuing a Final Environmental Impact Statement for the project.

ISP plans to ship the deadly reactor waste mainly by rail, in a process that would take over 20 years. The license would allow high-level radioactive waste to be stored above the ground in dry casks for 40 years, and extension for storage of 100 years have been discussed. Cracks or leaks could occur in the dry casks and the radioactive material from the casks would enter the groundwater. Furthermore, oil and gas companies have been drilling in the area of the ISP site using hydraulic fracturing (fracking). This has caused the creation of geologic faults that induce earthquakes. Those earthquakes could cause the casks in the ISP facility to crack and leak radioactive material.

I could be impacted if there is a leak or accident at the site. Winds would carry contamination towards my home in Eunice. My health would be impacted by exposure to radioactive materials.

I know that Figure 2.2-5 in the ISP environmental report shows a rail route to the proposed facility goes through Eunice. So I would be impacted by radioactive exposure from a rail accident with a train carrying nuclear waste to the proposed waste site. Every shipment would travel by my home, less than one mile from the rail line. I work in Hobbs, New Mexico on weekdays. I drive east on Highway 176 and then turn north at the intersection less than 100 yards from my home towards Highway 18.

There are also risks from potential terrorist actions, which could be severe if such huge volumes of nuclear reactor waste from reactors around the country are stored at the ISP site. Large volumes of waste with high curie counts could be involved.

Emergency responders in our community are not adequately trained and equipped to deal with a situation involving a radioactive release.

I am also concerned that if a permanent repository for nuclear waste is not developed, the ISP site will become a de facto repository without the protections of a permanent repository. A permanent repository requires deep burial in impermeable rock. The ISP site is just the opposite.

I am a member of a minority group, African American. The disparate impact of discriminatory site selection by ISP, based on race and ethnicity, will have an adverse effect on me, my family, and friends, in terms of self-esteem and self-worth.

For my own health and safety, and for the sake of the health and safety of other people in the area, I oppose the ISP proposal and seek to be represented by Sierra Club.

My family, which includes my daughter of child bearing age and granddaughter, who is 13, live with me and my husband. I feel their health and well-being will be affected by the siting of high level nuclear waste so close to my home.

I state under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.

Dated this _____ day of _____, 2021.

FLETCHER WILLIAMS

DECLARATION OF SHIRLEY HENSON

My name is Shirley Henson. I am over the age of 18 years and I live at 136 Legion Rd., Eunice, New Mexico. My home lies about 6 miles west of the site where Interim Storage Partners (ISP) proposes to construct a storage facility for spent nuclear fuel and high level radioactive waste.

I am a member of Sierra Club and wish to be represented by the organization in the United States Court of Appeals for the District of Columbia Circuit regarding a petition for review of the decision of the Nuclear Regulatory Commission denying Sierra Club's contentions challenging the ISP project and issuing a Final Environmental Impact Statement for the project.

ISP plans to ship the deadly reactor waste mainly by rail, in a process that would take over 20 years. The license would allow high-level radioactive waste to be stored above the ground in dry casks for 40 years, and extension for storage of 100 years have been discussed. Cracks or leaks could occur in the dry casks and the radioactive material from the casks would enter the groundwater. Furthermore, oil and gas companies have been drilling in the area of the ISP site using hydraulic fracturing (fracking). This has caused the creation of geologic faults that induce earthquakes. Those earthquakes could cause the casks in the ISP facility to crack and leak radioactive material.

I could be impacted if there is a leak or accident at the site. Winds would carry contamination towards my home in Eunice. My health would be impacted by exposure to radioactive materials.

I know that Figure 2.2-5 in the ISP environmental report shows a rail route to the proposed facility goes through Eunice. So I would be impacted by radioactive exposure from a rail accident with a train carrying nuclear waste to the proposed waste site.

There are also risks from potential terrorist actions, which could be severe if such huge volumes of nuclear reactor waste from reactors around the country are stored at the ISP site. Large volumes of waste with high curie counts could be involved.

Emergency responders in our community are not adequately trained and equipped to deal with a situation involving a radioactive release.

I am also concerned that if a permanent repository for nuclear waste is not developed, the ISP site will become a de facto repository without the protections of a permanent repository. A permanent repository requires deep burial in impermeable rock. The ISP site is just the opposite.

For my own health and safety, and for the sake of the health and safety of other people in the area, I oppose the ISP proposal and seek to be represented by Sierra Club.

My family and other family members live close to each other and we rely on our water wells to grow our garden and water our domestic animals as well as our livestock, which include cattle, goats, pigs and chickens.

I state under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.

Dated this _____ day of _____, 2021.

SHIRLEY HENSON

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SIERRA CLUB,)	
)	
Petitioner,	)	No. 21-1055
)	
vs.)	
	)	CERTIFICATE OF OTHER
UNITED STATES NUCLEAR	)	PARTIES IN THIS CASE,
REGULATORY COMMISSION and	)	NON-BINDING STATEMENT OF
UNITED STATES OF AMERICA,	)	ISSUES, AND CORPORATE
	)	DISCLOSURE STATEMENT
Respondents.)	

CERTIFICATE OF OTHER PARTIES IN THIS CASE

Other parties in this case are United States Nuclear Regulatory Commission and United States of America, and Interim Storage Partners LLC. Parties in consolidated cases in this Court are: Beyond Nuclear; Don't Waste Michigan, Alternatives to Chemical Contamination, Citizens' Environmental Coalition, Leona Morgan, Nuclear Energy Information Service, Public Citizen, Inc., San Luis Obispo Mothers for Peace, Sustainable Energy and Economic Development Coalition; Fasken Land and Minerals, Ltd, Permian Basin Land and Royalty Owners; United States Nuclear Regulatory Commission and United States of America; and Interim Storage Partners LLC.

CORPORATE DISCLOSURE STATEMENT

Sierra Club is a non-profit corporation incorporated in the State of California. Sierra Club has no parent corporation and no publicly held corporation owns any stock in Sierra Club.

NON-BINDING STATEMENT OF ISSUES

Sierra Club expects that it will present the following issued in this case:

- Contention 1: The AEA and NWPA prohibit the licensing of the proposed CIS facility.

- Contention 4: Transportation Risks

- Contention 6: Earthquakes

- Contention 9: Decommissioning Costs

- Contention 10: Groundwater Impacts

- Contention 11: Site Selection Process

- Contention 13: Wildlife Impacts

- Contention 14: Impacts of Storage Containers Used Beyond Their

Licensing Period

- Contention 16: High Burnup Fuel Risks

/s/ *Wallace L. Taylor*

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