

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

November 15, 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
(Petition for Review filed by Fasken Land and Minerals,
Limited and Permian Basin Land and Royalty Owners)

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.

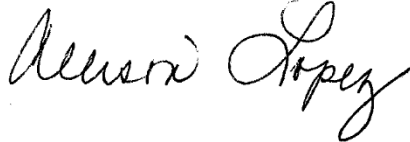
A party seeking to designate a document as highly sensitive in the first instance or to change its designation as HSD must do so by motion. Parties are required to contact the Clerk's office for guidance before filing such motions.

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

A handwritten signature in black ink, appearing to read "Allison G. Lopez". The signature is written in a cursive, flowing style.

By: _____
Allison G. Lopez, Deputy Clerk
504-310-7702

Enclosure(s)

cc w/encl:

Mr. Michael Abrams
Mr. Andrew Paul Averbach
Mr. Arnold Bradley Fagg
Mr. Merrick Garland, U.S. Attorney General
Mr. Justin Heminger
Mr. Allan L. Kanner
Mr. Henry Carl Myers
Ms. Monica Renee Perales

P.S. to Ms. Svinicki: The petition for review includes over 1400 pages of Exhibits/Attachments, which are not included with this mailing. You may access the documents on the court's public document through PACER.

P.S. to Petitioners: As a certified list has already been filed in this case in lieu of the record, a briefing notice will issue under separate cover.

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; Fasken Land and
Minerals, Limited; Permian Basin Land and Royalty Owners,

Petitioners

v.

Nuclear Regulatory Commission; United States of America,

Respondents

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

FASKEN LAND AND
MINERALS, LTD. AND
PERMIAN BASIN LAND AND
ROYALTY OWNERS,

Petitioners,

v.

UNITED STATES NUCLEAR
REGULATORY COMMISSION
and the UNITED STATES OF
AMERICA,

Respondents.

Case No. _____

PETITION FOR REVIEW

Pursuant to 42 U.S.C. §§ 10139(a)(1)(D) and (a)(2), 2239(b), 4370m-6 and Rule 15(a) of the Federal Rules of Appellate Procedure, Fasken Land and Minerals (“Fasken”) and Permian Basin Land and Royalty Owners (“PBLRO”), (collectively “Petitioners”), hereby petition the Court for review of the following record of decision entered by the U.S. Nuclear Regulatory Commission (“NRC”) on September 13, 2021 in Docket No. 72-1050: *Interim Storage Partners, LLC* [“ISP”] (WCS [Waste Control Specialists] Consolidated Interim Storage Facility [“CISF”]), the notice of which was published in the Federal Register, 86 Fed. Reg. 51,926 (Sept.

17, 2021) (relating to the issuance of Materials License No. SNM-2515). In accordance with Fifth Circuit Rule 15.1(b), copies of the record of decision, Federal Register Notices, license materials in Docket No. 72-1050 and related materials are attached hereto as Exhibits A through S.

Section 102 of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*, (“NEPA”), requires federal agencies, like the NRC, to prepare “a detailed statement . . . on the environmental impact” of any proposed major federal action that “significantly affect[s] the quality of the human environment.” *See* 42 U.S.C. § 4332(1)(C)(i). The ISP/WCS CISF and necessarily connected activity of transporting high-level radioactive waste from across the country for long-term storage within the Permian Basin in West Texas is undeniably an action that will significantly impact surrounding human environments and that mandates agency completion of an appropriate environmental impact statement (“EIS”). The NRC has not satisfied either statutory or regulatory requirements in this regard. To the contrary, the NRC’s record of decision eschews reasonable consideration of environmental impacts of the ISP/WCS CISF, failing on both the information-gathering and the public participation functions vital to NEPA.

This Court has jurisdiction, including but not limited to, jurisdiction to review the agency's actions under 5 U.S.C. § 702, jurisdiction to review the EIS pursuant to 42 U.S.C. § 10139(a)(1)(D), and jurisdiction to review the order and record of decision pursuant to 28 U.S.C. § 2342(4). Venue is appropriate in this Court because Petitioners reside in and have their principal offices within this judicial circuit. 28 U.S.C. § 2343; 42 U.S.C. § 10139(a)(2). Moreover, the location of ISP/WCS CISF and epicenter of consequences stemming from the NRC's record of decision is in Andrews County, Texas, within this judicial circuit.

Petitioners pray that, upon review, this Court will find the NRC's conclusions and determinations in the challenged record of decision, and more specifically in the ISP/WCS CISF final EIS, to be arbitrary and capricious, in violation of NEPA, 42 U.S.C. §§ 4321, *et seq.*, and otherwise not in accordance with the law, and thus in violation of the Administrative Procedures Act, 5 U.S.C. § 706(2) ("APA"). Petitioners further respectfully request that this Court set aside and vacate the NRC's record of decision and issuance of Materials License No. SNM-2515 until the agency is in accordance with the law and complies with

mandatory NEPA requirements, including but not limited to 42 U.S.C. §§ 4332(C), (D), (E), and (G), and conducts a comprehensive and appropriate evaluation of the environmental impacts of the ISP/WCS CISF on the human environment within the Permian Basin and the State of Texas.

Dated: November 12, 2021

Respectfully submitted by:

KANNER & WHITELEY, LLC

/s/ Allan Kanner

Allan Kanner, Esq.

Annemieke M. Tennis, Esq.

701 Camp Street

New Orleans, Louisiana 70130

(504) 524 - 5777

a.kanner@kanner-law.com

a.tennis@kanner-law.com

Monica Renee Perales, Esq.

6101 Holiday Hill Road

Midland, TX 79707

Phone (432)687-177

monicap@forl.com

Counsel for Fasken and PBLRO

CERTIFICATE OF SERVICE

I, Allan Kanner, hereby certify that I caused a true and correct copy of Petitioners' Petition for Review to be served this 12th day of November, by U.S. mail on the following parties listed below. This certificate is intended to serve as compliance with FRAP 15(c)(1) and (2), as well as 28 U.S.C. § 2344.

Jeffery D. Isakson
Chief Executive Officer/President
Interim Storage Partners LLC
P.O. Box 1129
Andrews, TX 79714

Marian Zabler, General Counsel
Andrew Averbach, Solicitor
United States Nuclear Regulatory Commission
Office of General Counsel
OWFN Mail Stop 14A44
11555 Rockville Pike
Rockville, MD 20852
Marian.zabler@nrc.gov
Andrew.averbach@nrc.gov

Hon. Annette Vietti-Cook, Secretary
United States Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852-2738
Annette.vietti-cook@nrc.gov

Merrick Garland, Attorney General
United States Department of Justice
Environment and Natural Resources Division
950 Pennsylvania Avenue N.W.

Washington, D.C. 20530-001

/s/ Allan Kanner
Allan Kanner