



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 25, 2022

Zachary E. Ogaz
Assistant Attorney General
Office of the Attorney General
State of New Mexico
P.O. Drawer 1508
Santa Fe, NM 87504

Dear Zachary E. Ogaz:

I am writing in response to your petition, on behalf of the New Mexico Attorney General, Hector Balderas, dated December 20, 2021 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML21362A429), addressed to the U.S. Nuclear Regulatory Commission (NRC) Executive Director for Operations (EDO). The NRC EDO referred your petition to the Office of Nuclear Reactor Regulation for review in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.206, "Requests for action under this subpart." In the petition, you requested that the NRC take enforcement action against Interim Storage Partners (ISP) by revoking their Materials License No. SNM-2515 and by revoking the NRC's Record of Decision regarding issuance of Materials License No. SNM-2515. Your rationale for requesting this action is your assertion that the NRC's process for approving SNM-2515 is not in accordance with the National Environmental Policy Act (NEPA) and the Waste Control Specialists, LLC (WCS) Consolidated Interim Storage Facility (CISF) will have a negative impact on the human environment and on the State of New Mexico. The bases for your request are summarized below:

1. The NRC failed to obtain backing and necessary permitting from host communities.
2. The NRC used flawed assumptions including the likelihood of a de facto permanent nuclear waste storage facility.
3. The site is geologically unsuitable.
4. There is a potential for terrorist attacks and sabotage.
5. The NRC did not consider potential impacts on water and ecological resources.
6. The NRC failed to consider the amount of funding needed to ensure the safety and protection of New Mexico's citizens and natural resources.
7. The NRC used a faulty analysis of environmental justice concerns.

Consistent with NRC Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions" (ADAMS Accession No. ML18296A043), the NRC established a petition review board (PRB) to evaluate your petition. The PRB consists of staff from NRC who are knowledgeable of the materials licensing process and related safety and environmental issues. In evaluating your petition, the PRB reviewed NRC's records regarding the issues you raised in your petition.

The PRB's initial assessment was that your submittal is not appropriate for the 2.206 petition process for several reasons. First, the 10 CFR 2.206 petition process is not an appropriate means to challenge the NRC staff's review of a license application, to include the NRC staff's

compliance with NEPA. Second, your petition does not meet the criteria in Management Directive 8.11, Directive Handbook Section III.C.1(b)(ii) for accepting petitions because the concerns raised in your petition have already been the subject of the NRC staff's review and evaluation and none of the additional Section III.C.1(b)(ii) circumstances apply.

On February 11, 2022, the NRC informed you by e-mail of the PRB's initial assessment (ADAMS Accession No. ML22045A056) and offered you an opportunity to meet with the PRB to clarify or supplement your petition with information for the PRB to consider before the PRB makes a final determination. On February 25, 2022, you declined the offer to meet with the PRB (ADAMS Accession No. ML22062A400).

Given no additional information, the PRB's final determination is unchanged in that the SNM-2515 licensing, safety and/or environmental issues described in your petition do not meet the criteria for consideration under 10 CFR 2.206 for the reasons described above.

Specific information regarding the detailed concerns expressed in your petition is presented in the enclosure to this letter along with the specific NRC issued document and section number where each concern was considered by the NRC staff during the licensing process.

The regulations in 10 CFR 2.206 provide an opportunity for the public to petition the NRC to take enforcement-related action, and, while the PRB determined that the issues raised do not warrant further review, the NRC understands that this process takes time, resources, and energy by petitioners. Accordingly, I thank you for taking the time to raise your concerns.

Sincerely,

Caroline L. Carusone, Deputy Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Enclosure:
Petition Concern Table

10 CFR 2.206 Petition to Revoke License SNM-2515
Addressing of Petitioner Concerns

Petitioner Concerns	How NRC Addressed
INTRODUCTION.	
<ul style="list-style-type: none"> Petitioner Seeks Stay Until ... Agency Conducts Evaluation of the Cumulative Impacts of the ISP/WCS [Interim Storage Partners LLC/ Waste Control Specialists] CISF [consolidated interim storage facility] on the Human Environment and on the State of New Mexico. 	<p>Issue addressed in staff's final Environmental Impact Statement (FEIS) (ADAMS Accession No. ML21209A955) (Section 5 - Cumulative Impacts).</p>
<ul style="list-style-type: none"> Thorough examination of long-term impacts and reasonably foreseeable consequences of licensing decision for ISP CISF is not only good policy, but required by law 	<p>Issue addressed in staff's FEIS (Section 4 - Environmental Impacts and Section 5 - Cumulative Impacts).</p>
<ul style="list-style-type: none"> Because New Mexico side of the New Mexico/Texas border is more densely populated, the ISP CISF will disproportionately impact New Mexicans in the immediate vicinity for decades (if not longer) and poses unacceptable risks to New Mexico's citizens, communities, and economy. 	<p>Issue addressed in staff's FEIS (Section 4 - Environmental Impacts and Section 5 - Cumulative Impacts).</p>
<p>I. FAILURE TO CONSIDER FACTORS ENSURING SAFETY AND PROTECTION OF NEW MEXICO'S CITIZENS, REGIONAL ECONOMIES, AND NATURAL RESOURCES</p>	
<ul style="list-style-type: none"> The NRC has fundamentally failed in conducting an independent investigation into the reasonably foreseeable cumulative impacts of the ISP CISF. In violation of its own regulations and NEPA [National Environmental Policy Act of 1969], NRC failed to: ... 	<p>Issue addressed in staff's FEIS (Section 4 - Environmental Impacts and Section 5 - Cumulative Impacts).</p>
<p>PART I. FLAWED SITE SELECTION PROCESS</p>	
<p>A. Failures to Obtain Backing and Necessary Permitting from Host Communities</p>	
<ul style="list-style-type: none"> The selection of the ISP site has no support from the local communities where the proposed ISP CISF project is licensed to be constructed and operated for decades. In the glaring absence of consent from the Texas and New Mexico governors and legislatures, and given the lack of necessary permitting for the facility, the ISP facility cannot be built as proposed and therefore the License should be revoked. 	<p>Issue addressed in staff's FEIS (Section D.2.2.17 - NEPA Process/Public Participation - Consent-Based Siting and Community Consent for the Project).</p>
<ul style="list-style-type: none"> NRC's licensure of the ISP CISF facility fails to consider major opposing viewpoints and fails to adhere to a reasonable site selection process. A primary parameter in the site selection process for nuclear waste storage sites is political and community support for hosting a CISF, expressed at the time of the screening process. Yet, the ISP EIS [Environmental Impact Statement] fails to address the major opposing viewpoints of New Mexico and Texas, who will shoulder the burden of costs and risks for the proposed action, in violation of NEPA and NRC regulations. 	<p>Issue addressed in staff's FEIS (Section D.2.2.17 - NEPA Process/Public Participation - Consent-Based Siting and Community Consent for the Project).</p>

Petitioner Concerns	How NRC Addressed
<ul style="list-style-type: none"> Contrary to the fundamentals of consent-based siting, “a broad range of businesses, state, local, and tribal leaders have expressed their opposition to this project ...” New Mexico has lodged numerous objections to the ISP site due to the potential impact on the State’s economic resources. 	<p>Issue addressed in staff’s FEIS (Section D.2.2.17 - NEPA Process/Public Participation - Consent-Based Siting and Community Consent for the Project).</p>
<ul style="list-style-type: none"> Lack of necessary permitting for the facility (ISP has not obtained the necessary amendment(s) to groundwater discharge permit DP-1817 for the low-level radioactive waste disposal and storage operations at the ISP site)the ISP EIS does not even recognize the need for this required permit amendment 	<p>Issue addressed in staff’s FEIS (Sections 4.5.1.1.2 - Operations Impacts and D.2.12.2 Surface Water - Precipitation, Runoff, and Flooding).</p>
<ul style="list-style-type: none"> Further, the NRC lacks authority to build the proposed CISF in the State of Texas. 	<p>The NRC issued the license to ISP to construct and operate the WCS CISF (ADAMS Accession No. ML21188A099). It is a 40-year term license.</p>
<p>B. Flawed Assumptions and Likelihood of a De Facto Permanent Nuclear Waste Storage Facility</p>	
<ul style="list-style-type: none"> NRC has no reasonable basis to assume in the ISP EIS that a permanent repository will be established by 2048. 	<p>Issue addressed in staff’s FEIS (Section D.2.6.2 - Assumptions - Availability of a Repository). Issue addressed in Appendix B to NUREG-2157 (ADAMS Accession No. ML14196A105).</p>
<ul style="list-style-type: none"> Over time, it is likely that the casks storing spent nuclear fuel and high-level waste will lose integrity and will require repackaging. 	<p>Issue addressed in staff’s SER [safety evaluation report] (Sections 9.3.3 - Confinement Monitoring, and 10.3.17- Management of Aging Degradation) (ADAMS Accession No. ML21188A101).</p>
<ul style="list-style-type: none"> New Mexico does not “have the luxury of assuming the canisters will not fail before a permanent SNF [spent nuclear fuel] storage location is constructed because there is no presumable end date to the proposed interim storage. 	<p>The NRC issued the license for a 40-year term, which expires on 09/13/2061. This is also discussed in the staff’s SER (Section 10.3.17- Management of Aging Degradation).</p>
<p>C. Geologically Unsuitable Location</p>	
<ul style="list-style-type: none"> The ISP EIS ignores reality that nuclear waste in over-sized railcars and/or heavy-haul trucks will be transported along rails and roads in the region which will inevitably traverse such geological instability (subsidence, sinkholes and karst fissures). 	<p>Issue addressed in staff’s FEIS (Section D.2.9.26 - Transportation of SNF – Infrastructure).</p>
<ul style="list-style-type: none"> ISP EIS fails to examine the status of approximately 600 boreholes on the ISP property or conduct an adequate risk assessment as to whether or not these boreholes have been improperly abandoned or plugged and whether they pose a threat of subsidence or sinkholes. 	<p>Issue addressed in staff’s FEIS (Section 3.2.4 - Mineral Extraction and Other Industry Activities). Issue addressed in staff’s SER (Section 2.3.2 - Nearby Industrial, Transportation and Military Facilities).</p>
<ul style="list-style-type: none"> Seismicity concerns at and around the ISP site are not adequately addressed, with the ISP site selection process glossing over the recent March 2020 	<p>Issue addressed in staff’s FEIS (Section 3.4.5 - Seismology).</p>

Petitioner Concerns	How NRC Addressed
<p>magnitude 5.0 earthquake and the potential for more frequent and more powerful earthquakes in the region in the future.</p>	<p>Issue addressed in staff's SER (Section 2.3.6 - Geology and Seismology).</p>
<ul style="list-style-type: none"> The ISP EIS provides "general information" but does not include discussion of mitigation measures to limit such impacts or "provide specific information about safeguards" to protect against these known threats. Such lack of adequate assessments violates NRC regulations for siting evaluation. See, e.g., 10 CFR §§ 72.90 –108. 	<p>Issue addressed in staff's FEIS (Section 4.4.1.2 - Operations Impacts). Issue addressed in staff's SER (Section 2.3.6 - Geology and Seismology).</p>
<p>D. Potential for Terrorist Attacks and Sabotage</p>	
<ul style="list-style-type: none"> The NRC's unjustifiable position that multiple rounds of transport across the nation will result in absolutely zero possibility of a release 	<p>Issue addressed in staff's FEIS (Section 4.3.1.2.2 - Transportation Impacts from Nationwide SNF Shipments to the CISF).</p>
<ul style="list-style-type: none"> [NRC's] refusal to conduct any assessment at all for potential terrorist or sabotage attacks relating to the ISP CISF, is unacceptable and unsupportable. 	<p>The staff performed this review for the WCS CISF as part of the safety evaluation and documented the review in a separate security evaluation (safeguards). Physical security is discussed in Section 11.3.6 - Physical Security and Safeguards Contingency Plans - of the non-proprietary SER (ADAMS Accession No. ML21188A101).</p>
<ul style="list-style-type: none"> Given that storage of SNF at the ISP CISF is inextricably linked to national transport of SNF to the ISP site in the Permian Basin (a vital energy and security sector), the NRC must conduct a risk assessment for potential terrorist attacks and sabotage as required by NEPA and consistent with DOE recommendations and NRC's own policies for the Ninth Circuit. 	<p>Issue addressed in staff's FEIS (Section D.2.25.1 - Security and Terrorism - Out of Scope).</p>
<p>E. Precious Water and Ecological Resources</p>	
<ul style="list-style-type: none"> If there is any discharge of SNF or any other non-radiological contaminant, New Mexico's water resources will be directly impacted. The NRC does not comprehensively assess such potential impacts or mitigation measures to limit adverse effects on New Mexico's waters in violation of NEPA. 	<p>Issue addressed in staff's FEIS (Sections 4.5.1.1.2 - Operations Impacts and D.2.12.2 - Surface Water - Precipitation, Runoff, and Flooding).</p>
<ul style="list-style-type: none"> Misleading characterization of shallow groundwater aquifers below and in the vicinity of the ISP CISF site 	<p>Issue addressed in staff's FEIS (Sections 3.4.2 - Site Geology and 3.5.1 - Surface Water Resources).</p>
<ul style="list-style-type: none"> Misrepresentations as to the source and potential contamination of nearby playas 	<p>Issue addressed in staff's FEIS (Sections 3.5.1.2 - Local Topography, Surface Water, and Floodplains and 3.5.1.3 - Wetlands).</p>
<ul style="list-style-type: none"> Disregard of known competition for limited water resources and impacts on those resources both from overlapping ISP CISF sites and climate change 	<p>Issue addressed in staff's FEIS (Sections 3.5.2.3 - Groundwater Use and 5.7.2.2 -</p>

Petitioner Concerns	How NRC Addressed
	Overlapping Impacts of the Proposed CISF and Climate Change).
<ul style="list-style-type: none"> Failure to consider the adequacy of groundwater monitoring and NMED [New Mexico Environment Department or TPDES [Texas Pollutant Discharge Elimination System] permitting requirements 	Issue addressed in staff's FEIS (Sections 4.5.1.1.2 - Operations Impacts and D.2.12.2 - Surface Water - Precipitation, Runoff, and Flooding and Table 6.3-1 Summary of Mitigation Measures ISP Proposed).
<ul style="list-style-type: none"> NRC's position on permitting is that New Mexico's water resources are "not within NRC's jurisdiction and are not required for an impact determination." See ISP EIS at D-96. But the NRC is tasked with the responsibility of evaluating such impacts in the EIS regardless of the entity that is ultimately responsible for permitting 	Issue addressed in staff's FEIS (Sections 4.5.1.1.2 - Operations Impacts and D.2.12.2 - Surface Water - Precipitation, Runoff, and Flooding).
<p>PART II. NRC'S FAILURE TO CONSIDER THE AMOUNT OF FUNDING NEEDED TO ENSURE THE SAFETY AND PROTECTION OF NEW MEXICO'S CITIZENS AND NATURAL RESOURCES</p>	
<ul style="list-style-type: none"> The NRC assumes without foundation that New Mexico and its political subdivisions will provide resources, personnel, equipment, medical facilities, fire departments, and necessary training to mitigate any radiological accidents or exposures during regional transportation and continued storage at the site. 	Issue addressed in staff's FEIS (Section 4.11.1.2 - Socioeconomic Impacts-Operations Impacts).
<ul style="list-style-type: none"> NRC shirked its mandatory responsibilities regarding radiological accidents or exposures during regional transportation and continued storage at the site claiming that another party or entity will mitigate the risk without evaluating the impacts in violation of NEPA. 	Issue addressed in staff's FEIS (Sections 4.3.1.2.2.3 - Radiological Impacts to Workers and the Public from SNF Transportation Accidents and 4.15 - Accidents).
<ul style="list-style-type: none"> NRC improperly segments the financially and functionally connected activity of transportation in the ISP EIS, in violation of NEPA, relying on untimely and piecemeal evaluations that fail to capture actual costs and adverse impacts to New Mexico, its communities and existing industries. 	Issue addressed in staff's FEIS (Sections 4.3.1.2 - Operations Impacts and 4.11.1.2 - Socioeconomic Impacts-Operations Impacts).
<ul style="list-style-type: none"> The risks, hazards and feasibility of SNF transport to the ISP site are ignored, as are the added infrastructure costs and whether such costs outweigh any alleged economic benefits of the project. 	Issue addressed in staff's FEIS (Sections 4.3.1.2 - Operations Impacts, 4.11.1.2 - Socioeconomic Impacts-Operations Impacts, and 8.3.2 - Economic and Other Costs and Benefits of the Proposed CISF).
<ul style="list-style-type: none"> But, NRC failed to conduct an independent investigation into the regional risks of transporting the SNF through New Mexico and <i>sub silentio</i> outsourced the responsibility for emergency response to New Mexico without properly analyzing the risks of permanent storage or of waste repackage or retrieval. 	Issue addressed in staff's FEIS (Section 4.3.1.2 - Operations Impacts). The NRC issued the license for a 40-year term, expires on 09/13/2061. Issue addressed in staff's SER (Sections 9.3.3 - Confinement Monitoring and 10.3.17 - Management of Aging Degradation).

Petitioner Concerns	How NRC Addressed
<ul style="list-style-type: none"> NRC’s segmentation of transportation impacts is largely silent on the reasonably foreseeable cumulative impacts, including (i) potential risks from wear and tear and geologic instability, (ii) adverse impacts on regional industries’ use of the transportation infrastructure and the inevitable need for infrastructure improvement costs, and (iii) the costs associated with equipping and training first responders and emergency services to respond to a radiological incident or exposure in this rural region (i.e., what the New Mexico Governor refers to as “unfunded mandates”). 	<p>Issue addressed in staff’s FEIS (Sections 4.11.1.2 - Socioeconomic Impacts- Operations Impacts, D.2.9.12 - Transportation of SNF - Impact Analysis Approach - NEPA Compliance, and D.2.9.26 - Transportation of SNF - Infrastructure).</p>
<p>PART III. FLAWED ANALYSIS OF ENVIRONMENTAL JUSTICE CONCERNS</p>	
<ul style="list-style-type: none"> NRC’s faulty cost and benefit analyses omits key information and misleadingly overstates an alleged beneficial socioeconomic impact while discounting adverse impacts to communities that have historically been overlooked or disadvantaged. 	<p>Issue addressed in staff’s FEIS (Sections 4.12 and 5.12 - Environmental Justice, and D.2.18 - Comments Concerning Environmental Justice).</p>
<ul style="list-style-type: none"> NRC’s skewed environmental justice review turns a blind eye to existing minority and low-income populations in the region and along undisclosed transportation routes. Minority population density in this region far exceed [sic] the national average, and the NRC improperly downplays the disproportionate impacts on these communities by not including an analysis of those impacts in its evaluation. 	<p>Issue addressed in staff’s FEIS (Sections 4.12 and 5.12 - Environmental Justice, and D.2.18 - Comments Concerning Environmental Justice).</p>

SUBJECT: OEDO-21-00547 - 2.206 PETITION FOR REVOCATION OF INTERIM STORAGE PARTNERS MATERIALS LICENSE SNM-2515 (EPID L-2021-CRS-0002) DATED MARCH 25, 2022

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DATE	3/17/2022	3/17/2022	3/21/2022	3/22/2022
OFFICE	NRR/D	NRR/DORL/DD		
NAME	AVeil (MKing for)	CCarusone		
DATE	3/25/2022	3/25/2022		

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