

ARGUMENT NOT YET SCHEDULED

No. 21-1048  
(Consolidated with Nos. 21-1055, 21-1056,  
21-1179, 21-1227, 21-1229, 21-1230, 21-1231)

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

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DON'T WASTE MICHIGAN, et al.,  
Petitioners,

v.

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

INTERIM STORAGE PARTNERS LLC,  
Intervenor.

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ON APPEAL FROM THE  
NUCLEAR REGULATORY COMMISSION

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**NOTICE OF INTENT BY NATURAL RESOURCES DEFENSE COUNCIL  
TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF  
BEYOND NUCLEAR**

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Dated: March 24, 2022

Pursuant to D.C. Circuit Rule 29(b), Natural Resources Defense Council (“NRDC”) hereby notifies this Court of the intent to file an amicus curiae brief in the above captioned matter in support of the Petitioner Beyond Nuclear in the consolidated cases. All parties have consented to NRDC’s participation.

NRDC is a national non-profit membership environmental organization with offices in New York City, Washington, D.C., San Francisco, Chicago, Santa Monica, Bozeman, and Beijing. NRDC has a nationwide membership of over one million combined members and activists. NRDC’s activities include maintaining and enhancing environmental quality and monitoring federal agency actions to ensure that federal statutes enacted to protect human health and the environment are fully and properly implemented. Since its inception in 1970, NRDC has sought to improve the environmental, health, and safety conditions at the civil nuclear facilities licensed by the Nuclear Regulatory Commission and the nuclear facilities operated by the U.S. Department of Energy and its predecessor agencies, and we will continue to do so.

NRDC has advocated for decades on the challenging matters of nuclear waste storage and disposal before Congress, Federal Agencies, and the courts. Informed by our understanding of science, law, and policy, NRDC has both succeeded and failed over the years in our attempts to hold accountable the federal government and industry to ensure that the public and environment are durably

protected from nuclear waste to the greatest extent possible.<sup>1</sup> NRDC has also testified dozens of times over multiple decades before Congress, relevant federal agencies, and commissions.<sup>2</sup>

NRDC's scientists and lawyers have invested decades of work on this most challenging of environmental problems. Informing our understanding is this Circuit's careful treatment in one of its (many) related judgments:

Having the capacity to outlast human civilization as we know it and the potential to devastate public health and the environment, nuclear waste has vexed scientists, Congress, and regulatory agencies for the last half-century. After rejecting disposal options ranging from burying nuclear

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<sup>1</sup> See, e.g., *Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519 (1978); *Balt. Gas & Elec. Co. v. NRDC*, 435 U.S. 964 (1978); *NRDC v. EPA*, 824 F.2d 1258 (1st Cir. 1987); *Nuclear Energy Inst. v. EPA*, 373 F.3d 1251 (D.C. Cir. 2004); *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012); *New York v. NRC*, 824 F.3d 1012 (D.C. Cir. 2016).

<sup>2</sup> NRDC scientists and lawyers have appeared before Congress and federal agencies dozens of times to address nuclear waste, starting in the early 1970s and continuing to this day. See, e.g., *Nuclear Waste Management Reorganization Act: Hearing on S. 742 Before the S. Comm. on Governmental Affairs*, 96th Cong. (July 5, 1979) (statement of Dr. Thomas Cochran, Senior Staff Scientist, NRDC), [https://nuke.fas.org/cochran/nuc\\_79070501a\\_32b.pdf](https://nuke.fas.org/cochran/nuc_79070501a_32b.pdf); *Nuclear Waste Policy Amendments Act of 2019: Hearing on S. \_\_\_ Before the S. Comm. on Env't & Public Works*, 116th Cong. (May 1, 2019) (statement of Geoffrey H. Fettus, Senior Attorney, NRDC), [https://www.epw.senate.gov/public/\\_cache/files/4/6/460c517c-edce-41cd-a7df-a37accf8f9f4/AE893E1E168B3648E465F050D50880AF.05.01.2019-fettus-testimony.pdf](https://www.epw.senate.gov/public/_cache/files/4/6/460c517c-edce-41cd-a7df-a37accf8f9f4/AE893E1E168B3648E465F050D50880AF.05.01.2019-fettus-testimony.pdf); *Nuclear Waste Administration Act of 2019: Hearing on S. 1234 Before the S. Comm. on Energy & Nat. Res.*, 116th Cong. (June 27, 2019) (statement of Geoffrey H. Fettus, Senior Attorney, NRDC) (includes Texas and New Mexico letters of objection – Att. B and Att. C of this testimony), <https://www.energy.senate.gov/services/files/0BF5FFBC-A14A-43AA-8364-BACE1BEAF26C>.

waste in polar ice caps to rocketing it to the sun, the scientific consensus has settled on deep geologic burial as the safest way to isolate this toxic material in perpetuity.

*Nuclear Energy Inst. v. EPA*, 373 F.3d 1251, 1257 (D.C. Cir. 2004). Our appearance before this Court is consistent with that.

NRDC intends to file an amicus brief of no more than 6,500 words, addressing points not made by the Petitioner Beyond Nuclear, that will aid the Court's consideration of this case.

NRDC is aware that the City of Fort Worth also intends to file an amicus curiae brief in the above captioned matter in support of the Petitioner Beyond Nuclear in the consolidated cases. Pursuant to Circuit Rule 29(d), undersigned counsel for amicus curiae certifies that NRDC and the City of Fort Worth require separate amicus briefs because the two parties represent distinct interests with diverse knowledge bases. Whereas the City of Fort Worth is a local government concerned with the local impacts of an interim nuclear waste facility, NRDC is a nationwide environmental organization with expertise of the history of U.S. nuclear waste policy. For the past fifty years, NRDC has been one of the consistent advocates that has attempted to influence and shape U.S. nuclear waste policy before these agencies, federal courts, and Congress. Permitting separate amicus briefs will allow NRDC and the City of Fort Worth to assist the Court by offering diverse but equally relevant information.

Respectfully submitted,

/s/ Geoffrey Fettus

March 24, 2022

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### **RULE 26.1 DISCLOSURE STATEMENT**

Amicus curiae Natural Resources Defense Council is a private 501(c)(3) non-profit organization with no parent corporation, and no publicly held corporation owns any of its stock.

/s/ Geoffrey Fettus  
GEOFFREY FETTUS

**CERTIFICATE OF SERVICE**

I hereby certify, pursuant to Fed. R. App. P. 25(d) and Cir. R. 25(a), that on March 24, 2022, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter who are registered with the Court's CM/ECF system.

Dated: March 24, 2022

/s/ Caroline Reiser  
CAROLINE REISER