

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of:

INTERIM STORAGE PARTNERS LLC

(Consolidated Interim Storage Facility)

)
) Docket No. 72-1050-ISFSI
)

) ASLBP No. 19-959-01-ISFSI-BD01
)

) October 15, 2019
)

**INTERIM STORAGE PARTNERS LLC'S ANSWER OPPOSING
FASKEN'S AND PBLRO'S APPEAL OF LBP-19-7**

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. PROCEDURAL HISTORY	2
III. STANDARD OF REVIEW	3
IV. THE COMMISSION SHOULD DENY THE APPEAL BECAUSE PETITIONERS IDENTIFY NO ERROR OR ABUSE OF DISCRETION BY THE BOARD.....	5
A. The Board Correctly Denied Contention Number 2 (Oil And Gas Wells).....	5
1. The Board Correctly Concluded That Contention 2 Lacks Factual or Legal Support	6
2. The Board Correctly Concluded That Contention 2 Fails to Acknowledge and Address the Relevant Portions of the Application.....	9
3. Petitioners’ Discussion of ISP’s Response to an NRC Staff Request for Additional Information (RAI) and the Staff’s Related Change in Position Regarding Contention 2 Does Not Identify Any Error in the Board’s Ruling.....	11
B. The Board Correctly Denied Contention Number 3 (Emergency Preparedness and Airplane Crashes).....	13
C. The Board Correctly Denied Contention Number 4 (Groundwater Contamination)	20
V. CONCLUSION.....	24

TABLE OF AUTHORITIES

Page(s)

NRC Cases

<i>AmerGen Energy Co., LLC</i> (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235 (2009).....	4
<i>Crow Butte Res., Inc.</i> (Marland Expansion Area), CLI-14-2, 79 NRC 11 (2014).....	4
<i>Curators of the Univ. of Mo.</i> (TRUMP-S Project), CLI-95-8, 41 NRC 386 (1995).....	12
<i>Dominion Nuclear Conn., Inc.</i> (Millstone Nuclear Power Station, Units 2 & 3), CLI-04-36, 60 NRC 631 (2004).....	4
<i>Entergy Nuclear Operations, Inc.</i> (Indian Point, Units 2 & 3), LBP-08-13, 68 NRC 43 (2008).....	6
<i>Entergy Nuclear Vt. Yankee</i> (Vt. Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333 (2011).....	12
<i>Fla. Power & Light Co.</i> (Turkey Point Nuclear Generating Plant, Units 3 & 4), ALAB-952, 33 NRC 521, 532 (1991)	4
<i>Fla. Power & Light Co.</i> (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-91-13, 34 NRC 185 (1991).....	4
<i>Interim Storage Partners LLC</i> (Consolidated Interim Storage Facility), LBP-19-7, 90 NRC __ (Aug. 23, 2019).....	passim
<i>La. Energy Servs., L.P.</i> (Nat'l Enrichment Facility), CLI-04-35, 60 NRC 619 (2004).....	5
<i>NextEra Energy Seabrook, LLC</i> (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301 (2012).....	15
<i>Pac. Gas & Elec. Co.</i> (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-15-21, 82 NRC 295 (2015).....	21
<i>Pac. Gas & Elec. Co.</i> (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-16-9, 83 NRC 472 (2016).....	4
<i>Private Fuel Storage, L.L.C.</i> (Indep. Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255 (2001).....	19
<i>Private Fuel Storage, L.L.C.</i> (Indep. Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340 (2002).....	22
<i>Private Fuel Storage, L.L.C.</i> (Indep. Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125 (2004).....	5, 23
<i>Private Fuel Storage, L.L.C.</i> (Indep. Spent Fuel Storage Installation), CLI-05-1, 61 NRC 160 (2005).....	4
<i>S. Nuclear Operating Co.</i> (Early Site Permit for Vogtle ESP Site), LBP-09-7, 69 NRC 613 (2009).....	22

<i>Shieldalloy Metallurgical Corp.</i> (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility), CLI-07-20, 65 NRC 499 (2007).....	4
<i>Statement of Policy on Conduct of Adjudicatory Proceedings</i> , CLI-98-12, 48 NRC 18 (1998).....	15
<i>Tenn. Valley Auth.</i> (Clinch River Nuclear Site Early Site Permit Application), CLI-18-5, 87 NRC 119 (2018).....	4
<i>USEC, Inc.</i> (Am. Centrifuge Plant), CLI-06-10, 63 NRC 451 (2006).....	5

Federal Court Cases

<i>Robertson v. Methow Valley Citizens Council</i> , 490 U.S. 332 (1989).....	22
---	----

Rules

10 C.F.R. § 2.309	2
10 C.F.R. § 2.309(f).....	passim
10 C.F.R. § 2.311(b)	1
10 C.F.R. § 2.311(c).....	4
10 C.F.R. § 51.45	21, 22, 23
10 C.F.R. § 51.45(b)(1).....	20
10 C.F.R. § 51.45(e).....	20
10 C.F.R. § 72.103(a)(1).....	7, 9, 11
10 C.F.R. § 72.122	23
10 C.F.R. § 72.122(c).....	14, 15, 17, 18
10 C.F.R. § 72.32	14
10 C.F.R. § 72.44(c)(1)(i)	18
10 C.F.R. § 72.94	16

Treatises

Interim Storage Partners Waste Control Specialists Consolidated Interim Storage Facility, 83 Fed. Reg. 44,070 (Aug. 29, 2018).....	2, 10
Interim Storage Partners Waste Control Specialists Consolidated Interim Storage Facility, 83 Fed. Reg. 44,680 (Aug. 31, 2018).....	2
NUREG-1567, Standard Review Plan for Spent Fuel Dry Storage Facilities, Final Report, (Mar. 2000)	passim

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I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.311(b), Interim Storage Partners LLC (“ISP”) submits this Answer opposing the Appeal filed by Fasken Land and Minerals, Ltd. (“Fasken”) and Permian Basin Land and Royalty Owners (“PBLRO”) (together, the “Petitioners”).¹ Petitioners seek to appeal LBP-19-7, the August 23, 2019 Order of the Atomic Safety and Licensing Board (“ASLB” or “Board”) denying their Petition for Intervention and Request for Hearing (“Petition”).² More specifically, Petitioners seek reversal of that portion of LBP-19-7 denying the admission of three proposed contentions: Contention 2, Contention 3, and Contention 4.³ As explained more fully below, Petitioners have shown no error of law or abuse of discretion by the Board. Accordingly, the Commission should deny the Appeal.

¹ Fasken and PBLRO’s Notice of Appeal of LBP-19-07 (Sept. 17, 2019) (ML19260J387).

² *Interim Storage Partners LLC* (Consolidated Interim Storage Facility), LBP-19-7, 90 NRC __ (Aug. 23, 2019) (slip op.) (ML19235A165).

³ *See* Fasken and PBLRO’s Brief on Appeal of LBP-19-07 (Sept. 17, 2019) (ML19260J386) (“Appeal”).

II. PROCEDURAL HISTORY

ISP is a joint venture of Waste Control Specialists, LLC (“WCS”) and Orano CIS, LLC. This proceeding stems from ISP’s submittal to the NRC of a revised license application on August 29, 2018, to construct and operate a consolidated interim storage facility (“CISF”) on a WCS-owned site in Andrews County, Texas for a 40-year term (“Application”).⁴ After receiving the Application, the NRC issued a *Federal Register* notice allowing members of the public to request a hearing by submitting a petition to intervene by October 29, 2018.⁵ The Secretary later extended the deadline to submit petitions to intervene to November 13, 2018.⁶ On October 29, 2018, Fasken and PBLRO filed their Petition proffering five contentions.⁷

Petitioners also submitted a motion to the Commission on September 28, 2018, seeking dismissal of the licensing proceeding arguing that the NRC lacked jurisdiction over the Application because it hinges on the DOE taking title to the spent fuel in violation of the Nuclear Waste Policy Act (NWPA) (“Motion to Dismiss”).⁸ The Commission denied Petitioners’ Motion to Dismiss on October 29, 2018, stating that NRC regulations do not “provide for the filing of threshold ‘motions to dismiss’ a license application” and referred the Motion to Dismiss the ASLB for consideration under the hearing procedures in 10 C.F.R. § 2.309.⁹

⁴ Interim Storage Partners LLC License Application, Rev. 2 (ML18206A483) (“Application”).

⁵ Interim Storage Partners Waste Control Specialists Consolidated Interim Storage Facility, 83 Fed. Reg. 44,070, 44,070-75 (Aug. 29, 2018), corrected, 83 Fed. Reg. 44,680 (Aug. 31, 2018) (correcting the deadline for petitioners to request a hearing to Oct. 29, 2018).

⁶ Order of the Secretary at 2 (Oct. 25, 2018) (ML18298A335).

⁷ Petition of [PBLRO] and [Fasken] for Intervention and Request for Hearing (Oct. 29, 2015) (ML18302A412). As described further below, Petitioners are appealing the Board’s decision on only three of the five contentions (Contentions 2, 3, and 4).

⁸ Motion of [Fasken] and [PBLRO] to Dismiss Licensing Proceedings for Hi-Store Consolidated Interim Storage Facility and WCS Consolidated Interim Storage Facility (Sept. 28, 2018) (ML18271A244).

⁹ *Interim Storage Partners LLC* (WCS Consolidated Interim Storage Facility), Order (Denying Motions to Dismiss) at 2 (Oct. 29, 2018) (unpublished) (ML18302A329) (“Oct. 29 Order”).

ISP and NRC Staff submitted answers to Fasken and PBLRO's Petition. ISP argued that Fasken and PBLRO failed both to demonstrate standing and submit an admissible contention.¹⁰ ISP also opposed the admission of Petitioners' Motion to Dismiss, which the Commission had referred to the ASLB for consideration as a contention.¹¹ The NRC Staff opposed the admission of Contentions 1, 3, 4, 5 as well as the referred Motion to Dismiss.¹² Petitioners submitted replies to the answers of ISP¹³ and NRC Staff¹⁴ on November 28, 2018.

The Board heard oral arguments concerning standing and contention admissibility on July 10 and 11, 2019 in Midland, Texas. In LBP-19-7, the Board found that while Petitioners demonstrated standing,¹⁵ they failed to submit an admissible contention.¹⁶ Petitioners now appeal LBP-19-7 insofar as it pertains to three rejected contentions: Contention 2 (Oil and Gas Wells), Contention 3 (Airplane Crash), and Contention 4 (Groundwater and Aquifers).¹⁷

III. STANDARD OF REVIEW

"An order denying a petition to intervene, and/or request for hearing . . . is appealable by the requestor/petitioner on the question as to whether the request and/or petition should have

¹⁰ ISP Answer Opposition Hearing Request and Petition to Intervene Filed by [PBLRO] and [Fasken] (Nov. 20, 2018) (ML18324A892).

¹¹ ISP Answer Opposing Fasken's and PBLRO's Motion to Dismiss Referred to the ASLB for Consideration Under 10 C.F.R. § 2.309 (Nov. 20, 2018) (ML18324A886).

¹² NRC Staff's Response to Petitions to Intervene and Requests for Hearing Filed by [PBLRO] and [Fasken] (Nov. 23, 2018) (ML18327A071) (NRC Staff did not oppose granting standing to Petitioners and did not oppose the admission of Contention Number 2 related to oil and gas wells).

¹³ Fasken and PBLRO's Reply to ISP's Opposition to Hearing Request and Petition to Intervene (Nov. 28, 2018) (ML18332A530).

¹⁴ Fasken and PBLRO's Reply to Staff's Response to Hearing Request and Petition to Intervene (Nov. 28, 2018) (ML18334A361).

¹⁵ For the same reasons explained in ISP's appeal of LBP-19-7, the Board's conclusion that Fasken and PBLRO demonstrated standing is legally erroneous. *See* Brief in Support of Interim Storage Partners LLC's Appeal of LBP-19-7 at 6-14 (Sept. 17, 2019) (ML19260H452).

¹⁶ *ISP*, LBP-19-7, 90 NRC at __ (slip op. at 19, 95-105).

¹⁷ Appeal at 1.

been granted.”¹⁸ The Commission generally defers to Board decisions on standing and contention admissibility, but will reverse a Board’s ruling if there has been an “error of law or abuse of discretion.”¹⁹ The Commission reviews questions of law *de novo*,²⁰ and will “reverse a licensing board’s legal rulings if they are ‘a departure from, or contrary to, established law.’”²¹ Under the abuse of discretion standard, the appellant must persuade the Commission “that a reasonable mind could reach no other result” to prevail.²²

An appeal that does not point to an error of law or an abuse of discretion, but simply restates the petitioner’s arguments does not constitute a valid appeal.²³ When a licensing board holds that a contention is inadmissible for failing to meet more than one of the requirements specified in 10 C.F.R. § 2.309(f)(1)(i)-(vi), a petitioner’s failure to acknowledge and rebut each ground for the Board’s ruling is sufficient justification for the Commission to reject the petitioner’s appeal.²⁴ Furthermore, when considering an appeal, the Commission is free to affirm a board decision on any ground finding support in the record, whether or not relied on by the Board.²⁵

¹⁸ 10 C.F.R. § 2.311(c).

¹⁹ *Tenn. Valley Auth.* (Clinch River Nuclear Site Early Site Permit Application), CLI-18-5, 87 NRC 119, 121 (2018) (citing *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-16-9, 83 NRC 472, 482 (2016); *Crow Butte Res., Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 13-14 (2014)).

²⁰ *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 259 (2009).

²¹ *See id.* (citation omitted).

²² *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), ALAB-952, 33 NRC 521, 532 (1991), *aff’d*, CLI-91-13, 34 NRC 185 (1991).

²³ *Shieldalloy Metallurgical Corp.* (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility), CLI-07-20, 65 NRC 499, 503-05 (2007).

²⁴ *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-04-36, 60 NRC 631, 638 (2004).

²⁵ *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-05-1, 61 NRC 160, 166 (2005) (redacted public version of decision) (citing federal court precedent).

A petitioner is also limited to the contentions as initially filed and may not seek to remedy its deficiencies through an appeal.²⁶ As the Commission explained, “absent extreme circumstances, [it] will not consider on appeal ‘either new arguments or new evidence supporting the contention[s], which the Board never had the opportunity to consider.’”²⁷ Any new claims on appeal are prohibited because “[a]llowing petitioners to file vague, unsupported contentions, and later on appeal change or add contentions at will would defeat the purpose of [the NRC’s] contention-pleading rules.”²⁸ This is consistent with the purpose of an appeal, which “is to point out errors made in the Board’s decision, not to attempt to cure deficient contentions by presenting arguments and evidence never provided to the Board.”²⁹

IV. THE COMMISSION SHOULD DENY THE APPEAL BECAUSE PETITIONERS IDENTIFY NO ERROR OR ABUSE OF DISCRETION BY THE BOARD

Petitioners’ Appeal identifies no error of law or abuse of discretion by the Board in LBP-19-7. Petitioners largely repeat prior arguments, seek to cure defects in their contentions, continue to misconstrue applicable NRC requirements, and raise various irrelevant and immaterial issues. Accordingly, the Commission should deny their Appeal.

A. The Board Correctly Denied Contention Number 2 (Oil And Gas Wells)

Contention 2 alleges that ISP’s Safety Analysis Report (“SAR”) fails to provide adequate data regarding active and abandoned oil and gas wells and borings on or near the proposed WCS CISF site, contrary to the requirements of 10 C.F.R. § 72.103.³⁰ In rejecting Contention 2, the

²⁶ See *USEC, Inc. (Am. Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 458 (2006);

²⁷ *USEC*, CLI-06-10, 63 NRC at 458 (quoting *Private Fuel Storage, L.L.C. (Indep. Spent Fuel Storage Installation)*, CLI-04-22, 60 NRC 125, 140 (2004)).

²⁸ *Id.* (citing *La. Energy Servs., L.P. (Nat’l Enrichment Facility)*, CLI-04-35, 60 NRC 619, 622-23 (2004)).

²⁹ *USEC*, CLI-06-10, 63 NRC at 458 (citation omitted).

³⁰ Petition at 15. Petitioners contend, without legal support, that ISP is required to analyze the impacts of oil and gas wells within a 10-mile radius of the proposed CISF. See *id.* at 15-17.

Board cited Petitioners' failure both to provide factual or legal support for their claims, and their failure to address the relevant portions of ISP's application, as required by 10 C.F.R.

§§ 2.309(f)(1)(v) and (vi).³¹ As discussed below, Petitioners' Appeal identifies no error of law or abuse of discretion in the Board's ruling, which is amply supported by the record in this proceeding.

1. The Board Correctly Concluded That Contention 2 Lacks Factual or Legal Support

In denying Contention 2 as inadmissible, the Board correctly identified a threshold and fundamental legal flaw in that contention; that is, its failure to “identify a *requirement* for additional discussion of the well bores within a 10-mile radius of the proposed site.”³² This defect is both significant and dispositive because a petitioner must make at least a “minimal demonstration” that the application “fails to meet a statutory or regulatory requirement.”³³ Petitioners' failure to do so here necessarily precludes the admission of their proposed contention. Thus, the Board did not err or abuse its discretion in rejecting Contention 2—it reached the correct result.

Contention 2 rests on the premise that ISP must “analyze the risk” that *offsite* abandoned wells, orphaned wells, and wells drilled before the 1967 implementation of plugging standards purportedly will pose to the CISF site's geological stability.³⁴ But as the Board noted, “[a]bsent some demonstration that such wells would affect the consideration of ‘unstable geological characteristics, soil stability problems, or potential for vibratory ground motion *at the site*’ that is

³¹ ISP, LBP-19-7, 90 NRC at ___ (slip op. at 99).

³² *Id.* at ___ (slip op. at 97) (emphasis added).

³³ *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 & 3), LBP-08-13, 68 NRC 43, 187 (2008).

³⁴ Petition at 17; *see also* Appeal at 4.

required by section 72.103(a)(1),” there is no “requirement to further enumerate or list wells within any specific radius of the site.”³⁵ The Board found that Petitioners had not “identified any plausible impact from oil and gas wells that might affect ISP’s proposed facility.”³⁶

The Board’s ruling is correct as both a legal and factual matter. Section 72.103(a)(1) provides that sites “will be acceptable if the results from onsite foundation and geological investigation, literature review, and regional geological reconnaissance show no unstable geological characteristics, soil stability problems, or potential for vibratory ground motion at the site in excess of an appropriate response spectrum anchored at 0.2 g.”³⁷ Significantly, neither Petitioners nor their geological consultant (Mr. Pachlhofer) even tried to explain how abandoned, orphaned, or pre-1967 wells located miles from the WCS CISF site could cause unstable geological characteristics, soil stability problems, or vibratory ground motions that could affect the suitability of the *WCS CISF site* from a geotechnical or seismic standpoint.³⁸ Petitioners ask the Board, and now the Commission on appeal, merely to *assume* that such wells are tantamount to “unstable geological characteristics.”³⁹

In their Appeal, Petitioners belatedly and improperly seek to cure this material defect, although to no avail. Citing statements made by counsel at oral argument, they assert that improperly plugged and abandoned wells are “more susceptible” to casing integrity issues, which

³⁵ *ISP*, LBP-19-7, 90 NRC at __ (slip op. at 98) (emphasis added).

³⁶ *Id.* at __ (slip op. at 99).

³⁷ 10 C.F.R. § 72.103(a)(1).

³⁸ *See generally* Petition at 15-17; Pachlhofer Decl. at 6-7.

³⁹ *See* Appeal at 5 (“Until these wells are investigated for their integrity, they *must* be classified as unstable geological characteristics.”) (emphasis added); *id.* at 6 (“[I]t is both prudent and reasonable to classify these wells as unstable geological characteristics.”); *id.* at 7 (“ISP fails to acknowledge the very real potential for improperly-plugged abandoned and orphaned wells within the region of the Site which amount to unstable geological characteristics.”).

“may” cause them to experience “[cas]ing collapse,” and which “can directly impact the integrity of the surface.”⁴⁰ They further claim—with no citation to the record—that the susceptibility of such wells to “gurgling, leaking and migrating of fluids, surface sinking and collapse” creates the “very real potential” for “unstable geological characteristics.”⁴¹ As ISP explained in its Answer and at oral argument, such vague and conclusory statements, especially with no articulation of their relevance to the *suitability of the CISF site itself*, are neither material nor adequate for purposes of the NRC’s strict contention admissibility criteria.⁴²

The Board also correctly concluded that Contention 2 lacks adequate factual support.⁴³ As the Board noted, although Petitioners claim that “ISP’s SAR fails to admit the presence of nearly 5,000 wells located within 10 miles of the site,”⁴⁴ SAR Section 2.1 reflects ISP’s consideration of local land uses, including “drilling for and production from oil and gas wells.”⁴⁵ Thus, the Board noted, “[i]t cannot be said that ISP ignored oil and gas wells.”⁴⁶ And, as the Board further observed, “the proposed site boundary includes but a single dry hole, and all but a handful of the 4,579 well bores Fasken claims are within a 10-mile radius are miles away.”⁴⁷ These Board findings, which are supported by the record, properly reflect Petitioners’ failure to provide credible and sufficient factual support for their claims in Contention 2.

⁴⁰ Appeal at 5 (citing July 11, 2019 Tr. at 326, 334 (Laughlin); Petition at 17).

⁴¹ *Id.* at 7.

⁴² ISP Answer at 39.

⁴³ *See* ISP, LBP-19-7, 90 NRC at __ (slip op. at 99).

⁴⁴ *Id.* at __ (slip op. at 98) (quoting Petition at 17).

⁴⁵ *Id.* (quoting Application at 12-2).

⁴⁶ *Id.* at __ (slip op. at 98).

⁴⁷ *Id.* at __ (slip op. at 99) (citing ISP Answer at 38).

2. The Board Correctly Concluded That Contention 2 Fails to Acknowledge and Address the Relevant Portions of the Application

Contention 2's lack of a sufficient legal or factual foundation by itself renders the contention inadmissible. Even so, the Board found Contention 2 be inadmissible for another independent reason: it fails to controvert the relevant portions of the Application, as required by Section 2.309(f)(1)(vi).⁴⁸ Here again, the Board's ruling is correct and rooted firmly in the record.

Section 72.103(a)(1) requires an applicant to assess a proposed dry storage site's geologic and seismic suitability through the conduct of onsite foundation and geological investigations, literature review, and regional geological reconnaissance. As the Board recognized, that is precisely what ISP has done to demonstrate compliance with that regulation.⁴⁹ The Board provided several specific examples of relevant sections and statements in the Application and SAR that "evaluate and reach the conclusions required by section 72.103(a)(1)," and which Petitioners "fail[ed] to challenge."⁵⁰ Specifically, the Board noted that:

- SAR Section 2.1 reflects ISP's consideration of local land uses, including "drilling for and production from oil and gas wells."⁵¹
- The Application explains that, while subsurface petroleum product exploration and production have been conducted in the area of the Central Basin Platform for over 75 years, including in the west of the CISF site in New Mexico, "[t]he absence of oil wells on the site supports the absence of favorable conditions for oil production."⁵²

⁴⁸ *See id.*

⁴⁹ *See id.* at __ (slip op. at 98-99).

⁵⁰ *Id.* at __ (slip op. at 98).

⁵¹ *Id.*

⁵² *Id.* (quoting Application at 12-2).

- SAR Section 2.6.2 states that “[t]he absence of late-Quaternary faulting and the low to moderate rate of background seismicity, even that associated with petroleum recovery activities, results in relatively low seismic hazard at the WCS CISF.”⁵³
- Section 4.3 of the Attachment D to the SAR contains an “extensive evaluation of induced seismicity from oil and gas activities.”⁵⁴
- ISP’s Application explains why groundwater contamination is not an issue. For example, SAR Section 2.7 states: “The method of storage (dry cask), the nature of the storage casks, the extremely low permeability of the red bed clay and the depth to groundwater beneath the WCS CISF preclude the possibility of groundwater contamination from the operation of the WCS CISF.”⁵⁵

In LBP-19-7, the Board found that Petitioners failed to address relevant portions of the Application, including those identified immediately above, thereby rendering the contention inadmissible under 10 C.F.R. § 2.309(f)(1)(vi).⁵⁶ Petitioners’ arguments on appeal identify no material error or abuse of discretion by the Board. Indeed, Petitioners concede that, other than SAR Section 2.1, they “did not challenge any of the other sections cited by the Board.”⁵⁷ As for SAR Section 2.1, they claim that they challenged it “by criticizing its inadequate description of past and present oil and gas activity within the region of the Site.”⁵⁸

Even if that statement is true, it still fails to support an admissible contention for the reasons explained in Section IV.A.1 above. In short, Petitioners never identified in Contention 2 any plausible mechanism by which allegedly “[q]uestionable wells” located miles from the WCS

⁵³ *Id.* at __ (slip op. at 98-99) (quoting SAR, Rev. 2 at 2-29).

⁵⁴ *Id.* at __ (slip op. at 99). As the Board noted, while Attachment D to the SAR is proprietary, Petitioners had the opportunity to seek access to that document, but failed to do so. *See id.* at 42, 99 (citing 83 Fed. Reg. at 44,073-75).

⁵⁵ *ISP*, LBP-19-7, 90 NRC __ (slip op. at 99) (quoting SAR, Rev. 2 at 2-21, 2-35).

⁵⁶ *Id.* at __ (slip op. at 99).

⁵⁷ Appeal at 6.

⁵⁸ *Id.* (citing Petition at 17 n.27).

CISF site “could negatively impact the Site’s suitability.”⁵⁹ Nor did they identify any specific requirement that ISP “investigate” and “assess the integrity” of those purportedly nearly five thousand offsite wells—a proposition that is illogical and impracticable on its face given Section 72.103(a)(1)’s focus on the geological and seismological characteristics of the proposed site.⁶⁰ While Petitioners repeatedly cite ISP’s alleged failure to meet its burden under Section 72.103(a)(1), they failed to satisfy *their* burden under Section 2.309(f)(1)(vi). That is, Petitioners’ vague and unsupported claims that “suspect” and “questionable” wells are located within a 10-mile radius of WCS CISF site, and “could” affect the site’s suitability, as well as their admitted failure to review directly applicable sections of the application, are insufficient to establish a genuine material dispute with the Application.⁶¹

3. Petitioners’ Discussion of ISP’s Response to an NRC Staff Request for Additional Information (RAI) and the Staff’s Related Change in Position Regarding Contention 2 Does Not Identify Any Error in the Board’s Ruling

Petitioners devote much of their argument on appeal to discussing an RAI response and related SAR revisions filed by ISP on May 31, 2019,⁶² and disclosed to the Board and parties as potentially relevant to Contention 2 on June 3, 2019 by an ISP Board notification.⁶³ At oral argument, the NRC Staff announced that its position regarding the admissibility of Contention 2 had changed in light of ISP’s response to RAI-2.2-2, which expanded ISP’s discussion of gas

⁵⁹ *Id.* at 8, 9.

⁶⁰ *Id.* at 5-9.

⁶¹ *Id.* at 5, 8, 9.

⁶² See Letter from J. Isakson, ISP, to Director, Division of Spent Fuel Management, NRC, “Submittal of Partial Response to First RAI, Part 1, Docket 72-1050 CAC/EPID 001028/L-2017-NEW-0002”, E-54257 (May 31, 2019) (“ISP Letter E-54257”) (ML19156A038).

⁶³ Letter from T. Matthews, Counsel for ISP, to Licensing Board, “Licensing Board Notification Regarding ISP Letter E-54257” (June 3, 2019) (ML19154A586).

and oilfield operations in the vicinity of the proposed facility.⁶⁴ Specifically, the Staff found Contention 2 to be moot and inadmissible in its entirety.⁶⁵ Petitioners now claim that ISP's response to RAI 2.2-2, and related revision to SAR Section 2.2, constitute "ISP's attempt to enhance its inadequate description of oil and gas activity within the region of the Site."⁶⁶ They further attempt to address or rebut, on a line-by-line basis, each sentence of the revised SAR discussion, intending to show that it does not "remedy" ISP's alleged failure "to investigate the region for unstable geological characteristics associated with orphaned and abandoned wells."⁶⁷

Petitioners' argument is misplaced given that the Board did not rely on the RAI response, the related SAR revision, or the Staff's change in position in denying Contention 2 as inadmissible.⁶⁸ The Board briefly mentioned the RAI response and the Staff's related change in position in a footnote at the very end of its ruling on Contention 2.⁶⁹ However, in doing so, the Board did not state or suggest that either development undergirded its conclusion that Contention 2 is inadmissible. As such, Petitioners' criticisms of statements in the RAI response and revised SAR discussion are irrelevant and immaterial to the Board's admissibility ruling. At most, they reflect Petitioners' repeated efforts to shift *their* pleading burden under Section 2.309(f)(1) by

⁶⁴ *ISP*, LBP-19-7, 90 NRC at __ (slip op. at 99 n.549) (citing Tr. at 198).

⁶⁵ *Id.*

⁶⁶ Appeal at 10.

⁶⁷ *Id.* at 10-12.

⁶⁸ As a general matter, Staff RAIs, applicant responses thereto, and related revisions to an application are normal and integral aspects of the NRC's "dynamic licensing process." See *Entergy Nuclear Vt. Yankee* (Vt. Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333, 345 (2011) (quoting *Curators of the Univ. of Mo.* (TRUMP-S Project), CLI-95-8, 41 NRC 386, 395 (1995) ("Nothing in [NRC] rules prevents an applicant from amending its application at any time. Permitting an application to be 'modified or improved' throughout the NRC's review is compatible 'with the dynamic licensing process followed in Commission licensing proceedings.'").

⁶⁹ See *ISP*, LBP-19-7, 90 NRC at __ (slip op. at 99 n.549).

incorrectly asserting that ISP has a duty under Section 72.103(a)(1) to investigate the region for unstable geological characteristics associated with orphaned and abandoned wells.

In any event, Petitioners' Appeal is not the proper procedural vehicle for challenging information provided to them and the NRC Staff over four months ago, and more than a month in advance of the oral argument. If Petitioners believed that the RAI response and/or SAR revision contained new and materially different information or conclusions with which they disagreed, then they could have sought to amend or supplement their contention. By failing to do so, and withholding their criticisms of the RAI response and SAR revision until now, they have improperly presented new arguments on appeal. Thus, their belated arguments can and should be rejected by the Commission on procedural grounds alone.

* * *

In conclusion, the Commission should deny Petitioners' Appeal because it identifies no error of law or abuse of discretion with respect to the Board's decision to reject Contention 2 as inadmissible.

B. The Board Correctly Denied Contention Number 3 (Emergency Preparedness and Airplane Crashes)

Contention 3 alleges that "[t]he Applicant's Emergency Response Plan (ERP) fails to address how [sic] licensee will protect the facility from credible fire and explosion effects including those that are caused by aircraft crashes."⁷⁰ The Board denied this contention as inadmissible under 10 C.F.R. §§ 2.309(f)(1)(v) and (vi), "primarily because Fasken misunderstands the regulatory requirements for [ERPs], and therefore fails to address, much less

⁷⁰ Petition at 18.

dispute, the sections of ISP’s application that actually concern the matters Fasken raises.”⁷¹ In so ruling, the Board found that Contention 3 is “rooted in [a] fundamental confusion.”⁷² As the Board explained, while Contention 3 purports to challenge the adequacy of the ERP, which must address the *emergency planning and response* requirements in 10 C.F.R. § 72.32, Petitioners instead allege that the ERP does not satisfy the *facility design* requirements in Section 72.122(c).⁷³

Petitioners argue on appeal that “the Board abused its discretion by failing to address the applicability of NUREG-1567 Section 2.5.2 to Contention 3 and by permitting ISP to disregard an analysis of the hazards associated with airplane crashes pursuant to this NUREG.”⁷⁴ They claim that Section 2.5.2 “is not dependent on whether a particular hazard is credible,” and that it “unambiguously directs applicants to review the potential hazards associated with aircraft crashes for facilities located near airports.”⁷⁵ Petitioners accuse the Board of having “arbitrarily excluded” consideration of NUREG-1567, particularly in light of the Board’s discussion of other NRC guidance in its rulings on other proposed contentions.⁷⁶

Petitioners’ arguments lack merit for several reasons and fall far short of establishing any “abuse of discretion” by the Board. First, by its express terms, Contention 3 challenges the adequacy of the ERP, the contents of which are governed by Section 72.32. If Petitioners had

⁷¹ ISP, LBP-19-7, 90 NRC at ___ (slip op. at 100).

⁷² *Id.*

⁷³ *See id.* Section 72.122(c) provides, in part, that “[s]tructures, systems, and components important to safety must be designed and located so that they can continue to perform their safety functions effectively under credible fire and explosion exposure conditions.”

⁷⁴ Appeal at 14-15 (citing NUREG-1567, “Standard Review Plan for Spent Fuel Dry Storage Facilities, Final Report,” Sec. 2.5.2 at 2-15 (Mar. 2000) (ML003686776)).

⁷⁵ *Id.* at 13.

⁷⁶ *Id.* at 13-14.

wished to challenge the Application’s compliance with Section 72.122(c), then they should have made that clear in framing their contention. It is Petitioners’ burden—not the Board’s—to articulate the issues they wish to litigate with specificity and basis, to challenge the relevant sections of the Application, and to provide adequate support for their claims.⁷⁷ They did not do so here. The Board rejected Contention 3 due to Petitioners’ clear failure to comply with the NRC’s contention pleading requirements—not because of any error or abuse of discretion on its part.

Furthermore, the Board correctly observed that Contention 3 is based on a fundamental misunderstanding of the regulatory requirements applicable to a Part 72 license applicant’s ERP. Contention 3 asserts that ISP’s ERP fails to establish that the proposed CISF will effectively perform its safety functions under all credible fire and explosion conditions, as required by 10 C.F.R. § 72.122(c). As the Board noted, Section 72.122(c) imposes facility *design* requirements that are intended to ensure that structures, systems, and components classified as important to safety (as well as explosion and fire detection, alarm, and suppression systems) are appropriately designed and located in light of credible fire and explosion exposure conditions.⁷⁸ In contrast, Section 72.32—the requirements of which are implemented via the ERP—is intended to ensure appropriate onsite and offsite emergency responses to any incident potentially involving the

⁷⁷ See *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998) (“A contention’s proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for the admission of contentions”); *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 312 (2012) (internal quotation marks and citation omitted) (noting petitioners’ “ironclad obligation to review the Application thoroughly and to base their challenges on its contents”).

⁷⁸ See *ISP*, LBP-19-7, 90 NRC at __ (slip op. at 100).

release of radioactive or other hazardous material without limitation to credibility of those initiating events.⁷⁹

Evidently recognizing this fundamental flaw in their contention, Petitioners *now* seek to shift focus to ISP's alleged noncompliance with the guidance in NUREG-1567, Section 2.5.2, which directs applicants to "[r]eview the potential hazards associated with nearby facilities" in preparing the SAR.⁸⁰ With regard to airports, Section 2.5.2 states that applicants should "[c]onsider aircraft size, velocity, weight and fuel load in assessing the hazards of aircraft crashes on an installation near an airport."⁸¹ As explained below, Petitioners' reliance on NUREG-1567 is misplaced and establishes no abuse of discretion in the Board.

To begin with, Petitioners entirely fail to establish the relevance of NUREG-1567, Section 2.5.2 to the issues raised in Contention 3, which, as noted above, alleges inadequacies in ISP's ERP.⁸² The ERP is separate and distinct from the SAR, and serves a different regulatory purpose. Section 2.5.2 of NUREG-1567 relates to an applicant's compliance with 10 C.F.R. § 72.94 ("Design basis external man-induced events"), as demonstrated in the SAR. Significantly, Petitioners never cite that regulation in Contention 3 or in their Appeal, much less allege any ISP noncompliance with it.⁸³ Thus, the Board's failure to discuss NUREG-1567 is of

⁷⁹ See generally 10 C.F.R. § 72.32.

⁸⁰ NUREG-1567 at 2-15.

⁸¹ *Id.*

⁸² NUREG-1567 is an NRC guidance document. Although it may identify possible means of complying with NRC regulations and facilitate the Staff's review of applications, it does not impose any binding legal or regulatory requirements on Part 72 applicants. Thus, Petitioners' claim that "ISP failed to comply with *guidance* from NUREG-1567" does not by itself support any claim that ISP's Application is deficient vis-à-vis applicable NRC requirements.

⁸³ See NUREG-1567 at 2-6, 2-7.

no moment and does not constitute an abuse of discretion, especially given the document's lack of relevance to the issues at hand.

Furthermore, as the Board aptly noted, Petitioners' arguments concerning aircraft crashes are "premised on a misreading of whether ISP has determined that an aircraft crash is a credible event for purposes of the design requirements of 10 C.F.R. § 72.122(c)."⁸⁴ Specifically, in support of Contention 3, Petitioners referenced ERP Appendix C ("Facility Emergency Action Levels").⁸⁵ That document lists an airplane crash as among the "Incidents" that could trigger an "Alert" or a "Site Area Emergency"—as those terms are defined and used in the ERP—at the WCS site.⁸⁶ An "incident" is broadly defined as "[a]n occurrence that requires action by the Emergency Response Organization."⁸⁷ Appendix C lists an "Airplane Crash" as one type of incident, and indicates that "[a] plane crash on Facility property" would trigger an Alert, and "[a] plane impacting a hazardous material or radiologically controlled area" would trigger a Site Area Emergency.⁸⁸

Petitioners erroneously assumed that the twelve "Incidents" listed in ERP Appendix C are considered "credible incidents."⁸⁹ But as ISP and the Staff explained in their Answers, the ERP is *not* intended to demonstrate compliance with, or to otherwise implement, Section 72.122(c)'s design-related requirements, and the ERP's reference to a hypothetical accident like a plane crash does not mean that it is a "credible" event for the CISF.⁹⁰ In fact, SAR Section 13.5

⁸⁴ ISP, LBP-19-7, 90 NRC at __ (slip op. at 101).

⁸⁵ See Petition at 19 (quoting ERP at 59).

⁸⁶ Consolidated Emergency Response Plan, Rev. 1 at 59-60 (App. C) (Mar. 15, 2017) (ML17082A054) ("ERP").

⁸⁷ *Id.* at 57 (App. B).

⁸⁸ *Id.* at 59 (App. C).

⁸⁹ Petition at 19.

⁹⁰ See ISP Answer at 45-48; NRC Staff Answer at 18-21.

(“Emergency Response Planning”) specifically states “[t]hat the planning basis includes credible events *as well as hypothetical accidents whose occurrence is not considered credible*, so as not to limit the scope of Emergency Response Planning.”⁹¹ It further notes that the “Alert classification” encompasses “worst-case consequences of potential accidents which are postulated to occur at the WCS CISF.”⁹² As discussed below, SAR Chapter 12—not the ERP—identifies credible design basis accidents for purposes of compliance with Section 72.122(c).⁹³

Even if Contention 3 is properly construed as a challenge to ISP’s compliance with Section 72.122(c), it still fails to meet the NRC’s contention admissibility requirements for the reasons explained by the Board in LBP-19-7.⁹⁴ Insofar as they raised concerns related to Section 72.122(c) or any other NRC regulation, Petitioners failed to cite or address the relevant SAR sections, in contravention of 10 C.F.R. § 2.309(f)(1)(vi). As the Board noted, SAR Chapter 12 (“Accident Analysis”) provides ISP’s grounds for complying with Section 72.122(c).⁹⁵ Notably, SAR Section 12.2.2 “identifies the credible events that could lead to such an accident from an offsite event, and they do not include aircraft crashes.”⁹⁶ Petitioners did “not reference or

⁹¹ ISP Safety Analysis Report, Rev. 2 at 13-37 (July 19, 2018) (ML18206A527) (emphasis added).

⁹² *Id.*

⁹³ In a similar vein, citing 10 C.F.R. § 72.44(c)(1)(i), which requires that a license include technical specifications to guard against the uncontrolled release of radioactive materials, Petitioners suggested that such specifications should appear in ISP’s ERP. See Petition at 19. As the Board noted, they are appropriately located in ISP’s Proposed License, Appendix A (“Proposed Technical Specifications”), which Petitioners do not cite or address. See ISP, LBP-19-7, 90 NRC at __ (slip op. at 101).

⁹⁴ See ISP, LBP-19-7, 90 NRC at __ (slip op. at 101-02).

⁹⁵ See *id.* at __ (slip op. at 101).

⁹⁶ *Id.* at __ (slip op. at 102). As counsel for ISP noted during the oral argument (see July 10, 2019 Tr. at 186-87 (Matthews)), in response to a Staff request for additional information, ISP performed an aircraft hazards evaluation for the WCS CISF. That analysis, which ISP has since submitted to the NRC Staff, used site-specific flight information and nearby airport locations, and determined that the annual probability of an aircraft crash at the WCS CISF is approximately 3.81E-7. See ISP Letter E-54257, Encl. 3 (RAI Responses – Public Version) at 1 (ML19156A041). Using an alternative conservative approach (*i.e.*, the assumption that all flights pass over the site), ISP estimated the annual probability of occurrence to be less than 7.38E-7. *Id.* Both probabilities are below the NRC annual probability of occurrence threshold of 1.0E-6 for aircraft crash, as

dispute this section.”⁹⁷ Similarly, Petitioners failed to challenge, or even reference, other section of the SAR and Application that contain information that is actually relevant to issues raised in Contention 3.⁹⁸

Finally, the Board also correctly rejected Contention 3 for lack of adequate support, as required by 10 C.F.R. § 2.309(f)(1)(v).⁹⁹ The Board found that Petitioners made “various generalized claims about the inadequacy of ISP’s equipment and its inability to cope with a fire or explosion in a timely fashion,” but failed to “support those claims with specific fact or expert opinion.”¹⁰⁰ Nowhere in their Appeal do Petitioners challenge this aspect of the Board’s ruling, which accurately reflects the record of this proceeding.¹⁰¹

* * *

In conclusion, the Board’s rejection of Contention 3 is correct as a matter of law and soundly supported by the record. Petitioners’ argument that the Board abused its discretion by not discussing an irrelevant section of a non-binding guidance document strains credulity and provides no basis for overturning the Board’s contention admissibility ruling. Therefore, the Commission should deny the Petitioners’ Appeal.

articulated by the Commission in CLI-01-22. *Id.* (citing *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255 (2001) (affirming the Board’s decision that the facility need not be designed to withstand aircraft crashes having less than a 1×10^{-6} annual probability of occurring)).

⁹⁷ *ISP*, LBP-19-7, 90 NRC at __ (slip op. at 102).

⁹⁸ For example, Petitioners did not cite or challenge SAR Section 3.3.6 (“Fire and Explosion Protection”), SAR Section 4.3.8 (“Fire Protection”), Section 7.5.3 (“Cask Handling Building Structural Design”), SAR Section 9.1 (“Ensuring That Occupational Radiation Exposures Are ALARA”, SAR Chapter 11 (“Confinement Evaluation”), and ISP’s Proposed License, Appendix A (“Proposed Technical Specifications”). *See ISP*, LBP-19-7, 90 NRC __ (slip op. at 101); *ISP Answer* at 43; *NRC Staff Answer* at 18-22.

⁹⁹ *See ISP*, LBP-19-7, 90 NRC at __ (slip op. at 102).

¹⁰⁰ *Id.*

¹⁰¹ *See ISP Answer* at 48-52 (explaining lack of factual or other support for Petitioners various claims); *NRC Staff Answer* at 21-22 (same).

C. The Board Correctly Denied Contention Number 4 (Groundwater Contamination)

Contention 4 alleges that “ISP has failed to adequately discuss and evaluate the “potential of waste-contaminated groundwater traveling to aquifers and other groundwater formations located below and around the proposed site.”¹⁰² Petitioners claim that ISP did not adequately describe the environment and the impact that the proposed action will have on the environment pursuant to 10 C.F.R. § 51.45(b)(1) and NUREG-1567, Section 2.4.5, or include “critical adverse information in its SAR pursuant to 10 C.F.R. § 51.45(e).”¹⁰³ According to Petitioners, the cited section of NUREG-1567 directs applicants to include in the SAR “[a]n analysis bounding the potential groundwater contamination from site operations,” and “adequate information for an independent review of all subsurface hydrology-related design bases and compliance with dose radiological exposure standards.”¹⁰⁴

The Board correctly rejected Contention 4 citing its lack of adequate support and its failure to raise a genuine dispute on a material issue, contrary to the requirements of 10 C.F.R. §§ 2.309(f)(1)(v) and (vi). The Board noted that despite alleging ISP noncompliance with 10 C.F.R. Part 51, Petitioners did not challenge *any* portion of ISP’s ER, including sections that specifically evaluate potential groundwater impacts.¹⁰⁵ Citing its Contention 3 ruling, the Board also found that Petitioners failed to provide a factual basis for the contention’s core premise; *i.e.*, that a groundwater contamination pathway could result from the impact of “large, fully-fueled aircrafts,” which Petitioners claim is a “credible event.”¹⁰⁶ Relatedly, the Board also found that,

¹⁰² Petition at 26.

¹⁰³ *Id.* at 31.

¹⁰⁴ *Id.* at 27.

¹⁰⁵ *See ISP*, LBP-19-7, 90 NRC at __ (slip op. at 103) (citing ER, Rev. 2 at 3-24 to -29, 4-29 to -32).

¹⁰⁶ *Id.* (citing Petition at 27-28).

by failing to challenge ISP’s determination that the CISF’s design precludes a groundwater contamination pathway, Petitioners failed to identify any material dispute for adjudication.¹⁰⁷

On appeal, Petitioners make three main arguments that the Board’s decision is “flawed” and should be reversed. First, Petitioners claim that their self-acknowledged “failure to cite ISP’s ER” is not material because Petitioners cited purportedly relevant sections of ISP’s SAR that “are found verbatim in ISP’s ER.”¹⁰⁸ They argue that this “form over substance” issue should not preclude the admission of Contention 4.¹⁰⁹

Petitioners’ argument rings hollow. Section 2.309(f)(1)(vi) makes clear that a petitioner “must include references to *specific portions of the application* . . . that the petitioner disputes and the supporting reasons for each dispute.”¹¹⁰ Contention 4 alleges noncompliance with 10 C.F.R. § 51.45, which sets forth the required contents of an applicant’s ER. Thus, it was incumbent upon Petitioners to identify the specific sections of the *ER*—not the SAR—they view as inadequate. They failed to do so. Citing SAR sections that contain similar discussion as proxies for the relevant ER sections does not discharge Petitioners’ pleading burden under Section 2.309(f)(1) and Commission case law construing that regulation.¹¹¹ In this regard, the Board did not elevate “form over substance,” much less commit reversible legal error.

Petitioners next argue that because NUREG-1567 purportedly “requires” applicants to review and assess the hazards that a plane crash may have on a site, it is “legitimate and

¹⁰⁷ See *id.* at __ (slip op. at 102-03).

¹⁰⁸ Appeal at 15.

¹⁰⁹ *Id.*

¹¹⁰ 10 C.F.R. § 2.309(f)(1)(vi) (emphasis added).

¹¹¹ See, e.g., *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-15-21, 82 NRC 295, 306 (2015) (holding that “a petition [that] does not identify any specific portion of the application that it seeks to challenge a . . . lacks the specificity that [NRC] contention admissibility rules require”).

reasonable” to conclude that an airplane crash “could result in a release of radioactive material in both the atmosphere and the subsurface of the Site.”¹¹² Citing its ruling on Contention 3, the Board properly rejected this aspect of Contention 4 due to Petitioners’ failure to support their assertion that an aircraft crash is a credible event.¹¹³ For the reasons discussed above (*see* discussion of Contention 3, *supra*), the Board’s rationale for rejecting that argument is legally sound and amply supported by the record. Petitioners’ emphasis on NUREG-1567, Section 2.5.2 is misplaced, as the non-binding guidance contained in it is not even relevant to the issues raised in Contentions 3 and 4. Indeed, to say that NUREG-1567, Section 2.5.2 requires the treatment of postulated aircraft crashes as “credible events” for assessing CISF impacts to groundwater quality in an environmental report plainly contradicts NEPA’s rule of reason.¹¹⁴ From a NEPA perspective, such a crash constitutes a “worst-case” scenario that does not require analysis as a reasonably foreseeable environmental impact of normal (or even off-normal) CISF operations.¹¹⁵

Petitioners’ final argument on appeal is that “[t]he Board inappropriately ignored a legitimate issue of fact regarding whether aquifers and water formations are located below the site.”¹¹⁶ Petitioners argue, rather confusingly, that the Board’s ruling “is flawed because an applicant’s ability to satisfy 10 C.F.R. § 51.45 and NUREG-1567 Section 2.4.5 has nothing to do

¹¹² Petition at 15-16.

¹¹³ *ISP*, LBP-19-7, 90 NRC at __ (slip op. at 103).

¹¹⁴ *See S. Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-7, 69 NRC 613, 719 (2009) (noting that NEPA’s “hard look” is subject to a “rule of reason,” such that the consideration of environmental impacts must address only those impacts “that are reasonably foreseeable or have some likelihood of occurring”).

¹¹⁵ *See id.* (noting that an agency has broad discretion over the thoroughness of the analysis, and may decline to examine issues the agency in good faith views as “remote and speculative” or “inconsequentially small”); *see also Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 352 (2002) (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 354-55 (1989)) (holding that NEPA does not call for a “worst-case” inquiry because it “creates a distorted picture of a project’s impacts and wastes agency resources”).

¹¹⁶ Petition at 16.

with whether a petitioner proves that a facility's design precludes a pathway to groundwater.”¹¹⁷

Petitioners further assert that there is a genuine issue of fact because they “have shown with reasonable scientific certainty that the Ogallala aquifer and water from the hydrological units and formations associated with the aquifer underlie the construction site of the proposed CISF.”¹¹⁸

In making this argument, Petitioners identify no error or abuse discretion in the Board's ruling. As relevant to this issue, the Board stated as follows in LBP-19-7:

Because Fasken has not challenged ISP's determination that the facility's design precludes a pathway to groundwater contamination, Fasken's claims about ISP's characterization and evaluation of groundwater formation do not raise a genuine dispute on a material issue, as required by 10 C.F.R. § 2.309(f)(1)(vi). Absent a pathway to groundwater contamination, Fasken's claims are not material because their resolution would make no difference in the outcome of the licensing proceeding.¹¹⁹

The Board's reasoning is both logically sound and consistent with controlling Commission case law. In the *Private Fuel Storage* dry storage facility licensing proceeding, the Commission held that “[t]o show a genuine material dispute, [a petitioner's] contention would have to give the Board reason to believe that contamination from a defective canister could find its way outside of the cask.”¹²⁰ Based on its review of the record, the Board found no such reason and, accordingly, also properly rejected Contention 4 on that basis.

Although the Board did not need to reach the issue for the reasons discussed above, ISP's and the NRC Staff's Answers to the Petition demonstrate that Petitioners failed to provide

¹¹⁷ *Id.* at 17. Section 2.4.5 (“Subsurface Hydrology”) of NUREG-1567 pertains to certain required contents of an applicant's SAR, as prescribed in 10 C.F.R. § 72.122, and thus has no apparent relevance to an applicant's compliance with 10 C.F.R. § 51.45 or the required contents of its ER.

¹¹⁸ *Id.* at 19.

¹¹⁹ *ISP*, LBP-19-7, 90 NRC at __ (slip op. at 103).

¹²⁰ *PFS*, CLI-04-22, 60 NRC at 138-39..

adequate support (*i.e.*, substantiated facts and/or credible expert opinion) for their claim that a postulated radiological release could contaminate groundwater beneath the CISF site.¹²¹ In short, the SAR and ER reflect multiple, independent bases for concluding that the WCS CISF will not lead to contamination of groundwater; *viz.*, the method of storage (dry cask), the nature and design of the canisters, the extremely low permeability of the red bed clays beneath the site, and the depth to groundwater beneath the site.¹²² ISP explained, among other things, why there is no credible basis for Mr. Pachlhofer's claims that the Ogallala Aquifer extends beneath the CISF site, or that "cross-formational flow" between the Antler and Ogallala Formations could lead to groundwater contamination.¹²³ Indeed, as ISP explained, Petitioners' claims overlook relevant information in the SAR and ER, and are directly contradicted by conclusions reached by the Texas Water Development Board and the Texas Commission on Environmental Quality.¹²⁴

* * *

For the foregoing reasons, the Commission should reject Petitioners' Appeal of the Board's well-founded ruling that Contention 4 is inadmissible.

V. CONCLUSION

For the reasons set forth above, the Commission should deny Petitioners' Appeal.

¹²¹ See ISP Answer at 58-64; NRC Staff Answer at 23-25.

¹²² See ISP Answer at 55-56, 58-59; NRC Staff Answer at 24-25.

¹²³ See ISP Answer at 59-62.

¹²⁴ See *id.* at 58-64.

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

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Dated in Washington, D.C.
this 15th day of October 2019

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of:)	Docket No. 72-1050-ISFSI
INTERIM STORAGE PARTNERS LLC)	ASLBP No. 19-959-01-ISFSI-BD01
(Consolidated Interim Storage Facility))	October 15, 2019

CERTIFICATE OF SERVICE

I hereby certify that, on this date, a copy of “Interim Storage Partners LLC’s Answer Opposing Fasken’s and PBLRO’s Appeal of LBP-19-7” was filed through the E-Filing system.

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