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TO:

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemakings and Adjudications Staff
HearingDocket@nrc.gov

Associate General Counsel for Hearings
Enforcement and Administration
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
RidsOgcMailCenter.Resource@nrc.gov

January 16, 2020

Request for Sensitive Unclassified Non-Safeguards Information (SUNSI) regarding Interim Storage Partner's Waste Control Specialist Consolidated Interim Storage Facility

Dear NRC:

The above-listed individuals request access to Sensitive Unclassified Non-Safeguards Information (SUNSI) as parties who have submitted a petition and who have standing in the case regarding Interim Storage Partner's Waste Control Specialist Consolidated Interim Storage Facility in accordance with 10 CFR 2.309 and the Federal Register notice of hearing and opportunity to petition for leave to intervene (83 Fed. Reg. 44,070, 44,070–75, Wednesday, August 29, 2018).

Tommy Taylor is the Director of Oil and Gas Development for Fasken Oil and Ranch, Ltd (Fasken), address 6101 Holiday Hill Road, Midland TX 79707. Fasken is seeking access to SUNSI documents. Fasken has many oil, gas, and other property interests located near the proposed site. Fasken is concerned that the construction and implementation of Interim Storage Partner's CISF will negatively impact the health and safety of Fasken employees who regularly monitor the company's oil, gas, and other property interests near the proposed site. Furthermore, Fasken's second contention has criticized Interim Storage Partner's (ISP's) analysis of unstable geological characteristics surrounding the site. Specifically, Contention Two criticized ISP for failing to properly identify the abundance of oil and gas activity within the region and for failing to address the integrity concerns of old, abandoned and orphan oil and gas wells within the region. Pursuant to 10 CFR 72.103, applicants seeking a license from the NRC for a CISF are required to analyze the region surrounding the proposed site for unstable geological characteristics. NRC Staff originally supported Contention Two's admissibility, but later retracted their support of this contention after ISP submitted responses to RAIs. Access to SUNSI is also sought for Stonnie Pollock, Petroleum Geologist for Fasken Oil and Ranch, Ltd, at the same address, 6101 Holiday Hill Road, Midland TX 79707, also on behalf of Fasken.

Also seeking SUNSI access is attorney Timothy J. Laughlin, of Laughlin Law Office, LLC, as legal counsel for Fasken and Permian Basin Land and Royalty Owners (PBLRO). His mailing address is PO Box 481582, Kansas City, MO 64148.

Attorney Monica Perales is also seeking SUNSI access as legal counsel for the organizations referenced above. Her address is 6101 Holiday Hill Road, Midland, TX 79707.

Also seeking SUNSI access are attorneys Allan Kanner, Conlee Whiteley, Cynthia St. Amant, and Elizabeth Peterson, of Kanner & Whiteley, LLC, as legal counsel for the organizations referenced above. Their address is 701 Camp Street, New Orleans, LA 70130.

All the individuals seeking SUNSI access have good cause to file this request after the September 10, 2018 deadline because the folder titled "Interim Storage Partners Submission of Responses for RAIs and Associated Document Markups from First Request for Additional Information, Part 3" (ML19337B502) was not uploaded to NRC's ADAMS Public Library until January 6, 2020.

All the individuals seeking SUNSI access have the technical competence, knowledge and skills to evaluate and use the information that would be made available. If need be, we agree to be bound by the terms of a Non-Disclosure Agreement or Affidavit and protective order setting

forth terms and conditions to prevent unauthorized or inadvertent disclosure of SUNSI information.

The information provided in “Interim Storage Partners Submission of Responses for RAIs and Associated Document Markups from First Request for Additional Information, Part 3” (ML19337B502) is insufficient for us to meaningfully participate in the intervention process. For example, information involving ecological, geological, and geophysical information and data – including maps – concerning location of wells, ecological resources, and other geophysical features are withheld for alleged proprietary reasons, citing that the information is likely to cause substantial harm to the “competitive position” of ISP. Given the relevance to Contention Two, without viewing this information, there is no way to determine if the information withheld could have significant bearing on our second contention. We believe our case could be harmed without access to this information because the information provided could provide a means for us to amend our second contention.

Figures 3.1-5, 3.1-6, and 3.1-7 allegedly show oil and gas wells within a 10 km radius of the CISF.¹ Figure 3.1-8 allegedly shows current oil and gas leases within a 10 km radius of the CISF. Detailed information on the subject oil and gas wells is also provided in Attachment LU-2-1, and as a native (spreadsheet) file format in Enclosure 13.² These figures, attachments, and spreadsheets are all examples of necessary information left out of the original environmental report. The public versions of these documents are not helpful, citing that the information is “Withheld Pursuant to 10 CFR 2.390.” Access to this information is critically needed for us to fully review the license application and to adequately support our second contention. It is our right to know whether ISP’s well information correctly identifies oil and gas wells within the region and adequately assesses the impact these wells may have on the proposed CISF. We are trustworthy and reliable leaders in our community.

Additionally, Jeffery Isakson’s affidavit likely mischaracterizes a matter of public information as proprietary. Contrary to Isakson’s rationale, details on oil and gas wells, including the name, location, depth, orientation, perforations, taking point and production from the well, among other

¹ These figures apparently include: 1) a summary figure with the Texas Land Survey overlay, showing the well locations, or cluster in the case of several wells, 2) well locations on a topographic overlay, and 3) well locations on a current aerial imagery overlay. Map information includes well or cluster location, well type (oil, oil/gas), dry hole, plugged oil, plugged gas, plugged oil/gas, permitted location, shut-in oil, shut-in gas, sidetrack surface location, horizontal drain hole, directional drilling surface location, injection/disposal well, injection/disposal from oil, injection disposal from gas, injection/disposal from oil/gas, canceled/abandoned location.

² The information in the spreadsheet apparently includes map well identification number, latitude/longitude, state (Texas or New Mexico), operator, well name and number (per operator filing), total depth (ft), production type (oil/gas, salt water injection (SWD), injection, injection/disposal, water storage, horizontal drain hole), American Petroleum Institute (API) number, status (active, plugged, approved/expired temporary abandonment, new-not drilled/completed, cancelled Application for Permit to Drill (APD) (approved permit to deepen/re-enter), dry hole, permitted location, completion date, and plugged date.

things, are all a matter of public information under the Texas Government Code (Chapter 552), with few exceptions. This data is required by law to be recorded with and maintained by the Texas Rail Road Commission, whose jurisdiction over this data is established in the Texas Natural Resources Code (Sec. 81.051). Additionally, Isakson fails to disclose whether ecological and archaeological surveys were conducted under either federal or state laws such as the National Historic Preservation Act and the Antiquities Code of Texas which were enacted to protect ecological and archeological sites from damage due to construction and other activities. In the instance of surveys conducted under a lawful requirement, then those surveys are also a matter of public information and subject to release. The affidavit fails to overcome a statutory presumption of openness as the information being withheld is presumed to be public information and, absent a showing that it falls within a statutory exception, the NRC must compel Interim Storage Partners to disclose the withheld information.

While it is difficult to imagine a scenario were the above-mentioned SUNSI information should be withheld, to the extent that the SUNSI information should be withheld, the information is still needed for us to fully understand and effectively research the issue of concern identified in Contention Two and to effectively participate in the intervention process.

Thank you.

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