

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

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

Petitioners,

v.

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

Respondents.

Case No. 21-1048

Consolidated with Case Nos.  
21-1055, 21-1056, 21-1179

**PETITIONERS' NON-BINDING STATEMENT OF ISSUES**

Petitioners in Case No. 21-1179, Fasken Land and Minerals, Ltd. (“Fasken”) and Permian Basin Land and Royalty Owners (“PBLRO”) hereby submits the following non-binding statement of issues for review:

- Whether the Order of the United States Nuclear Regulatory Commission (“NRC”) Secretary (unpublished), issued on October 29, 2018, violates the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. §§ 10101, *et seq.* (“NWPA”), and/or the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A) and (C) (“APA”), by refusing to dismiss an administrative proceeding and instead accepting and processing a license application under conditions permitting federal ownership of spent nuclear fuel (“SNF”) and contracting with a private commercial fuel interim storage

facility before a permanent repository is available that disregard and directly conflict with unambiguous provisions of the NWPA, 42 U.S.C. §§ 10222(a)(5)(A) and 10143.

- Whether the NRC violated the NWPA and/or the APA in CLI-20-14 by ruling that the license application under its review in the proceeding was lawful, that the NRC had jurisdiction to accept and process the license application, and by refusing to grant Petitioners a hearing on the question of whether the NRC is prohibited by the APA from issuing a license that contains provisions that would directly violate the NWPA if implemented.
- Whether the NRC acted arbitrarily and capriciously, failed to engage in reasoned decision-making, acted without substantial evidence, abused its discretion, and/or acted otherwise contrary to law, including but not limited to in violation of the NWPA, the APA, the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321, *et seq.* (“NEPA”) and/or its own regulations, when it denied Petitioners’ the required opportunity for a hearing and ruled that Petitioners’ contentions were inadmissible in CLI-20-14 and/or CLI-21-09.

The foregoing is a preliminary listing of issues that Petitioners may raise. Petitioners respectfully reserve the right to modify the list of issues addressed in its brief, as well as to address these and other issues in more detail in future pleadings.

Dated: November 8, 2021

Respectfully submitted by:

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