December 20, 2021

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Executive Director for Operations United States Nuclear Regulatory Commission
Washington, DC 20555-0001

PETITION PURSUANT TO 10 C.F.R. § 2.206 SEEKING REVOCATION OF MATERIALS LICENSE NO. SNM-2515 FOR THE INTERIM STORAGE PARTNERS LLC ("ISP") CONSOLIDATED INTERIM STORAGE FACILITY ("CISF") - (*EXPEDITED RELIEF REQUESTED*)

On behalf of the State of New Mexico, the New Mexico Attorney General, Hector Balderas ("Petitioner" or "New Mexico"), submits this petition pursuant to 10 C.F.R. § 2.206, requesting that the United States Nuclear Regulatory Commission ("NRC") institute a proceeding under 10 C.F.R. § 2.202 to revoke NRC's Record of Decision and issuance of ISP CISF Materials License No. SNM-2515 ("ISP CISF License") (See Attachments 1 and 2) to construct and operate a facility to store high-level radioactive nuclear waste until the agency is in accordance with the law. Specifically, Petitioner requests revocation of, and a stay or suspension of all activities relating to, the ISP CISF License in the interim. Petitioner seeks this stay until the agency complies with mandatory requirements under the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.* ("NEPA"), including but not limited to 42 U.S.C. §§ 4332 (C), (D), (E), and (G), and until the agency conducts a comprehensive and appropriate evaluation of the cumulative impacts of the ISP/WCS CISF on the human environment and on the State of New Mexico. A thorough examination of such long-term impacts and reasonably foreseeable consequences of its licensing decision for the construction and operation of the ISP CISF is not only good policy, but required by law. New Mexico requests expedited treatment of this Petition seeking revocation and an immediate stay or suspension of the ISP CISF License in the interim.

New Mexico has a vested interest in the long-term construction and operation of the ISP CISF due to its close proximity to, and inevitable reliance on, New Mexico's infrastructure and resources, as well as its inevitable impacts on regional industries, economies, and environments. The ISP CISF is situated approximately 0.6 kilometers (km) [0.37 mile (mi)] east of the Texas and New Mexico state boundary, with the nearest resident located approximately 6 km [3.8 mi] to the west of the ISP location in Eunice, New Mexico. Because the New Mexico side of the 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. Accordingly, New Mexico petitions the NRC to revoke the ISP CISF License and comply with existing law and its own regulations, including but not limited to, 10 C.F.R. § 51.10 and 51.91.

I. NRC HAS FAILED TO ADEQUATELY CONSIDER FACTORS TO ENSURE THE SAFETY AND PROTECTION OF NEW MEXICO'S CITIZENS, REGIONAL ECONOMIES, AND NATURAL RESOURCES

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, NRC failed to: (1) recognize ISP's submission of an unreasonable site selection process locating a CISF where there is little to no political support for the project; (2) evaluate the unfounded assumption that a permanent repository would be established by 2048; (3) consider how the *de facto* permanent storage of high-level radioactive nuclear waste at the ISP facility increases the risk of contamination and radiation exposure; (4) acknowledge the instability and unsuitability of seismological and geological characteristics in the area that render long-term suitability and storage at the ISP facility ill-advised; (5) conduct any evaluation as to potential impacts of a terrorist attack at the ISP facility or during transportation of spent nuclear fuel ("SNF"); (6) evaluate the need for improvements to rail access, infrastructure, and transportation to and from the ISP facility; and (7) evaluate the potential impact of the ISP CISF on regional water resources.[1]

A. NRC'S RELIANCE ON AN UNREASONABLE AND FLAWED SITE SELECTION PROCESS

i. NRC Cannot Ignore Failures to Obtain Backing and Necessary Permitting from Host Communities

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.

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.[2] Yet, the ISP EIS 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. *See e.g.*, Letter from New Mexico Governor Michelle Lujan-Grisham to U.S. Nuclear Regulatory Commission, November 3, 2020 ("Grisham 2020") (See Attachment 3). ("opposition includes both myself and Governor Abbott of Texas, who similarly recognizes the risk [of] a CISF in this region poses to Texas residents").

[1] ISP CISF Final Environmental Impact Statement ("EIS") (Sept. 2021) at 2-24, *available at:* https://www.nrc.gov/docs/ML2120/ML21209A955.pdf.
[2] Id.

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 and to a similar project in New Mexico proposed by Holtec International." Grisham 2020. New Mexico has lodged numerous objections to the ISP site due to the potential impact on the State's economic resources. The New Mexico Governor has emphatically stated: "[a]ny disruption of agricultural or oil and gas activities as a result of a perceived or actual nuclear incident would be catastrophic to New Mexico, and even taking steps toward siting a CISF in the area could cause a decrease in investment in two of our state's biggest industries.." Grisham 2020. Any incident or radiological contamination in the Permian Basin, one of the world's top producing oil and gas regions, would be catastrophic to one of New Mexico's key economic engines, and "[d]espite the proximity to New Mexico and the City of Eunice, multiple letters and comments from myself and other state officials and community representatives, there has been a lack of involvement with New Mexico's state agencies and local communities regarding the proposed action." Letter from New Mexico State Senator Jeff Steinborn to NRC, September 13, 2021 ("Steinborn, 2021") (See Attachment 8).

Moreover, 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 (operated by its joint venture business partner Waste Control Specialist ("WCS") (See Attachment 10). As a permit requirement, WCS is required to amend its permit at any point when there is a material change to the operations, and the ISP EIS does not even recognize the need for this required permit amendment. In this case, the limited discharge permit initially issued for low-level radioactive waste related discharges does not cover the activities licensed by the NRC, nor does it contemplate discharges of high-level radioactive or Greater-Than-Class C radioactive waste under the ISP CISF License. Without such amendment(s), ISP and WCS will be in violation of NEPA and NRC NEPA implementing regulations contained in 10 C.F.R. Part 51, and New Mexico's Water Quality Act, NMSA 1978, §§ 74-6-1 *et seq.* (1978). Regular groundwater monitoring reports will be absolutely necessary to ensure the protection of New Mexico's groundwater resources from any SNF leaks and other contaminants.

In addition to opposition from New Mexico, the ISP facility has a complete lack of local consent in Andrews County, with countless communities passing resolutions opposing CISFs and/or banning transportation of high-level radioactive nuclear waste. Further, the NRC lacks authority to build the proposed CISF in the State of Texas.[3] The State of Texas, Governor Greg Abbott, and the Texas Commission on Environmental Quality filed a Petition for Review in the United States Court of Appeals for the Fifth Circuit challenging the licensure of the ISP facility.[4] Governor Abbott has clearly expressed concerns regarding the impact of forcing states with low-level radioactive waste to accept more highly radioactive waste and its accompanying hazards without the consent of the state. Letter from Texas Governor Greg Abbott to NRC, November 3, 2020 ("Abbott 2020") (See Attachment 5).

[3] The NRC made a contrary assumption and relies on Texas to mitigate risk. HB 7 was passed unanimously in the Texas state senate in September 2021, sending a crystal-clear message of Texas's opposition to the ISP CISF project. https://legiscan.com/TX/bill/HB7/2021/X2. See Attachment 9.

[4] *State of Texas, et al. v. NRC,* Case No. 21-60743 (5th Cir. 2021).

In sum, the ISP facility has no support from local communities at the current site, and NRC's ISP EIS fails to address all of the necessary permitting and authorization requirements in Texas, as well as in New Mexico.

ii. NRC's Flawed Assumptions and Likelihood of a *De Facto* Permanent Nuclear Waste Storage Facility

Beyond the crucial criteria of community support sorely lacking here, secondary considerations of ISP's site selection process would further preclude selection of Andrews County given the unsuitability of placing what will become a *de facto* permanent nuclear waste storage facility amidst valuable mineral resources and the potentially devastating adverse impacts it could have on extensive and ongoing extraction operations that serve as the cornerstones of regional economies. Given the NRC's shortcomings in licensing and budgetary limitations, the NRC has no reasonable basis to assume in the ISP EIS that a permanent repository will be established by 2048.[5] Grisham 2020.

"The proposed storage poses significant and unacceptable risks to New Mexicans, [its] environment and [its] economy, with risks and uncertainty that are elevated in the absence of a permanent repository." Grisham 2020. Of concern is, "[o]ver time, it is likely that the casks storing spent nuclear fuel and high-level waste will lose integrity and will require repackaging. Any repackaging of spent nuclear fuel and high-level waste increases the risk of accidents and radiological health risks" as well as risks to communities along regional transportation routes. *Id.* Presently, the ISP CISF does not have and has not proposed the capability to repackage or retrieve the nuclear waste after initial packaging. This is a grave concern of the State. New Mexico does not "have the luxury of assuming the canisters will not fail before a permanent SNF storage location is constructed because there is no presumable end date to the proposed interim storage. The proposed action unacceptably puts New Mexico communities at risk without a permanent storage site plan and without a long-term study on SNF canister durability." Steinborn 2021.

iii. NRC's Selection of a Geologically Unsuitable Location

The ISP site is in a region that is geologically unsuitable. The site is "in an area that is underlain by concerns for sinkhole development and shallow groundwater[,] does not provide deep geologic isolation for indefinite [SNF] storage[,]" and is unsuitable for storage over a period of decades. Letter from New Mexico Governor Michelle Lujan-Grisham to the NRC, September 13, 2021 ("Grisham, 2021") (See Attachment 4). Furthermore, the proposed ISP surface level storage "over an area with shallow groundwater contradicts well-established scientific recommendations for radioactive wastes to be stored in deep, geologically stable formations." New Mexico Environment Department Letter to U.S. NRC, November 3, 2020 ("NMED 2020") (See Attachment 6).

[5] ISP CISF Final EIS (Sept. 2021) at 2-2, *available at:* https://www.nrc.gov/docs/ML2120/ML21209A955.pdf.

The ISP EIS acknowledges the presence and existence of subsidence, sinkholes and karst fissures in the region but unjustifiably claims the ISP site will not be impacted, ignoring the 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.[6] Similarly, 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. NMED 2020.

Additionally, seismicity concerns at and around the ISP site are not adequately addressed, with the ISP site selection process glossing over the recent March 2020 magnitude 5.0 earthquake and the potential for more frequent and more powerful earthquakes in the region in the future.[7] See also, Letter from New Mexico Environment Secretary James Kenney, September 14, 2021("Kenney 2021") (See Attachment 7). 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. Steinborn 2021.

Such lack of adequate assessments violates NRC regulations for siting evaluation. *See, e.g.*, 10 C.F.R. §§ 72.90 –108.

iv. Potential for Terrorist Attacks and Sabotage

NRC's failure to conduct any terrorist risk assessment is inconsistent with the United States Department of Energy's ("DOE's") policy requiring evaluation of same and further ignores NRC's requirement for such evaluations for NRC licenses operating in the Ninth Circuit, where many shipments to the ISP CISF will originate.[8] Instead, NRC has chosen to arbitrarily assess such risks differently in different regions of the country and maintains that evaluation of potential acts of sabotage and terrorism is only required in the Ninth Circuit.[9] The NRC's unjustifiable position that multiple rounds of transport across the nation will result in absolutely zero possibility of a release, as well as its refusal to conduct any assessment at all for potential terrorist or sabotage attacks relating to the ISP CISF, is unacceptable and unsupportable. As the New Mexico and Texas Governors have repeatedly objected, the NRC's lack of analyses poses unacceptable risks and puts the Permian Basin at grave risk. *See e.g.*, Abbott 2020; Grisham 2020.

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. *See also* Section III below.

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[6] ISP CISF Final EIS (Sept. 2021) at 3-20, *available at:* https://www.nrc.gov/docs/ML2120/ML21209A955.pdf.
[7] *See Id.* (citing USGS website).
[8] Memorandum from Carol S. Borgstrom, Director, DOE Office of NEPA Policy and Compliance, to DOE NEPA Community, "Need to Consider Intentional Destructive Acts in NEPA Documents" (Dec. 1, 2006), available at http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-DOE-intentdestructacts.pdf; *See San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2006) (finding analysis required); *c.f. N.J. Dept. of Envt'l Protection v. NRC*, 561 F.3d 132 (3d Cir. 2009).
[9] *See* NUREG-2157 (Sept. 2014), *available at:* https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr2157/index.html.

v. Precious Water and Ecological Resources

Because the ISP site is "an area that is underlain by concerns for sinkhole development and shallow groundwater that does not provide deep geologic isolation for indefinite SNF storage," and because the flow of groundwater from the ISP site is "predominately southwest towards New Mexico. . . if there is any discharge of SNF" or any other non-radiological contaminant, New Mexico's water resources will be directly impacted. Grisham 2021. 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.

Examples of NRC's failure to assess impacts to New Mexico's water resources include: the misleading characterization of shallow groundwater aquifers below and in the vicinity of the ISP CISF site; misrepresentations as to the source and potential contamination of nearby playas; disregard of known competition for limited water resources and impacts on those resources both from overlapping ISP CISF sites and climate change; and failure to consider the adequacy of groundwater monitoring and NMED or TPDES permitting requirements.

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.

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

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. This is yet another example of NRC shirking its mandatory responsibilities, claiming that another party or entity will mitigate the risk without evaluating the impacts in violation of NEPA or addressing the lack of community support detailed above. At the same time, the costs incurred by New Mexico and its political subdivisions are not considered in ISP EIS, either in its "No Action" scenario or in its reasonable alternatives analyses.

Similar to the overwhelming opposition from host communities, 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. Indeed, New Mexico and its political subdivisions are tasked with responding to any accident or disaster without any funding or analysis of New Mexico's resources and training needs. Steinborn 2021. The NRC did not even attempt to investigate or analyze the substantial strain that the ISP CISF's reliance would have on the limited resources of those communities within the region.

Instead, 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. Steinborn 2021 ("transportation of SNF creates risk anywhere along the transportation routes, but transportation was not considered as a connected activity by the EIS, and improvements to rail lines and rail infrastructure were not evaluated").

In terms of unanalyzed impacts to New Mexico, the ISP CISF will undeniably rely on New Mexico roads and rails. *See e.g.*, ISP EIS at 3-6 (regional access to proposed CISF project area is by New Mexico State Route 18); *Id.* at 2-11 (shipments of SNF will be transported from locations across U.S. to Monahans, Texas and then transported north to Eunice, New Mexico, on existing rail that the Texas New Mexico Railroad owns and operates).But, NRC failed to conduct an independent investigation into the regional risks of transporting the SNF through New Mexico and *sub silentio* outsourced the responsibility for emergency response to New Mexico without properly analyzing the risks of permanent storage or of waste repackage or retrieval..[10] In fact, the ISP CISF License expressly states that the ISP facility does not have repackaging or retrievability capabilities. So, there is incongruity between NRC's assumptions regarding repackaging and irretrievability capabilities at the ISP CISF site and what the ISP CISF site is actually capable of doing. This issue is of paramount significance to the regional communities and local industries, further ignores the acknowledged regional leg of transport into New Mexico.

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").

NRC cannot ignore impacts of regional transportation in its site-specific ISP EIS or the associated costs and impacts thrust upon New Mexico to mitigate and accommodate transport of SNF. Because the proposed action involves extensive use of New Mexico rails and roads, the NRC must consider the "need for improved infrastructure along railway lines and funding for emergency personnel and equipment to respond to emergency spills." Grisham 2021. Nor can NRC ignore that a permanent repository does not exist, "there is no existing plan to build one," and there is no "guarantee that a permanent repository for SNF in the [U.S.] will be developed in the foreseeable future." Steinborn 2021. Such disregard for reasonable and relevant opposing viewpoints violate NEPA and NRC implementing regulations, including but not limited to, 10 C.F.R. § 51.91(b).

As acknowledged in the ISP EIS, but left unanalyzed by the NRC in its licensing decision, the CISF has serious and substantial implications for the State:

- "NRC staff also recognize that the presence of a facility that stores nuclear materials may require additional preparedness of first responders in the event of an incident requiring fire, law enforcement, and health service support. . . detailed analysis of the costs associated with these potential additional resources are not evaluated in detail. . . States are recognized

[10] NUREG-2125 (Jan. 2014), *available at:* https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr2125/index.html.

as responsible for protecting public health and safety during transportation accidents involving radioactive materials."

- ". . .NRC staff recognize that if SNF is shipped to a CISF, some States, Tribes, or municipalities along [*largely undisclosed] transportation routes may incur costs for emergency response training and equipment that would otherwise likely be eligible for funding under NWPA Section 180(c) provisions if the SNF were shipped by DOE from existing sites to a repository. Because needs of individual municipalities . . . and the costs of this training and equipment vary widely, quantification of such would be speculative." State's distribution of "funding for first-responder training and equipment to local municipalities is not within NRC's authority [and it][] is beyond the scope."
- "The impacts of using these other modes to supplement rail transportation of SNF was previously evaluated by DOE (DOE, 2008; 2002) and found to not significantly change the minor radiological impacts from a national mostly-rail SNF transportation campaign and therefore are not evaluated further in this impact analysis."
- "[M]itigation measures for the avoidance of potential adverse impacts that . . . would be required under . . .State permits or processes."

III. FLAWED ANALYSIS OF ENVIRONMENTAL JUSTICE CONCERNS

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. Moreover, 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 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. Disparate impacts on populations residing in so-called "Nuclear Alley" will only be compounded by the proposed action. *See* NMED 2020 ("the Proposed Action [ISP CISF] threaten[s] human health and the environment in New Mexico where minority and low-income populations have already suffered disproportionately high adverse human health and environmental effects from nuclear energy and weapons programs of the United States.") *See also,* Lone Star Legal Aid Joint Comments on Draft EIS for ISP CISF (Nov. 3, 2020); Texas Rio Grande Legal Aid Comments on Final EIS for ISP CISF (Sept. 10, 2021).

CONCLUSION

Based on the foregoing, the State of New Mexico requests the ISP CISF License be revoked and the licensing action be stayed or suspended until (i) NRC's assessment of cumulative and environmental impacts and unfunded mandates imposed on the State are adequately analyzed, and (ii) NRC can demonstrate compliance with reasonable siting evaluation factors, NEPA and NRC implementing regulations.

Respectfully submitted by:
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U.S. NUCLEAR REGULATORY COMMISSION
RECORD OF DECISION
INTERIM STORAGE PARTNERS LLC LICENSE APPLICATION FOR A CONSOLIDATED INTERIM STORAGE FACILITY, ANDREWS COUNTY, TEXAS

Introduction

The U.S. Nuclear Regulatory Commission (NRC) staff prepared this record of decision (ROD) for the proposed Interim Storage Partners LLC (ISP) consolidated interim storage facility (CISF) in Andrews County, Texas. This ROD satisfies Section 51.102(a) of Title 10 of the *Code of Federal Regulations* (10 CFR), which states that "[a] Commission decision on any action for which a final environmental impact statement has been prepared shall be accompanied by or include a concise public record of decision."

In July 2021, the NRC staff issued a final Environmental Impact Statement (FEIS) (NRC, 2021b) for ISP's license application to construct and operate a proposed Waste Control Specialists (WCS) CISF (ISP, 2018a, 2018b, 2020a, 2020b, and 2021). In the FEIS, the NRC staff, in accordance with 10 CFR 51.91(d), sets forth its recommendation, pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), regarding the proposed action. The NRC staff recommended that, subject to the determinations in the staff's safety review of the application, the proposed license be issued to ISP to construct and operate a CISF at the proposed location to temporarily store up to 5,000 metric tons of uranium (MTUs) [5,500 short tons] of spent nuclear fuel (SNF) for a licensing period of 40 years (NRC, 2021b). The NRC staff has prepared this ROD in accordance with NRC regulations at 10 CFR Sections 51.102(b) and 51.103(a)(1)-(4). In addition, in accordance with 10 CFR Section 51.103(c), this ROD incorporates by reference the materials contained in the FEIS (NRC, 2021b).

The Decision

This ROD documents the NRC staff's decision to issue a license to ISP for the proposed WCS CISF in Andrews County, Texas (NRC, 2021a). The license authorizes ISP to construct and operate its facility as proposed in its license application and under the conditions in its NRC license.

After weighing the impacts of the proposed action and comparing them to the No-Action alternative, the NRC staff, in accordance with 10 CFR 51.91(d), set forth its NEPA recommendation regarding the proposed action. The NRC staff recommended that, subject to the determinations in the staff's safety review of the application, the proposed license be issued to ISP to construct and operate a CISF at the proposed location to temporarily store up to 5,000 MTUs [5,500 short tons] of SNF for a licensing period of 40 years. The staff based its conclusion on (i) review of the ISP license application, which includes the Environmental Report (ER) and supplemental documents (ISP, 2018a, 2018b, 2020a, 2020b, and 2021), and ISP's responses to the NRC staff's requests for additional information (RAIs) (ISP, 2019a and 2019b); (ii) consultation with Federal, State, tribal, and local agencies and input from other stakeholders, including public comment on the draft EIS; (iii) independent NRC staff review; and (iv) the assessments provided in the FEIS.

In its safety and security review, the NRC staff determined that the application met the applicable NRC regulations in 10 CFR Part 72, "Licensing Requirements for the Independent

Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste." In issuing a materials license to ISP for the WCS CISF, the NRC determined that there is reasonable assurance that: (i) the activities authorized by the license can be conducted without endangering the health and safety of the public; and (ii) these activities will be conducted in compliance with the applicable regulations of 10 CFR Part 72. The NRC further determined that issuance of the license will not be inimical to the common defense and security.

Background

In accordance with the NRC's NEPA-implementing regulations in 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," the NRC staff prepares a site-specific EIS for the issuance of a license pursuant to 10 CFR Part 72 for the storage of spent fuel in an independent spent fuel storage installation (ISFSI) at a site not occupied by a nuclear power reactor (10 CFR 51.20(b)(9)). In this instance, the NRC's major Federal action is to decide whether to issue a license authorizing ISP to construct and operate the WCS CISF for a 40-year license term.

The WCS CISF would store up to 5,000 MTUs [5,500 short tons] of SNF and Greater-Than-Class-C (GTCC) waste, along with a small quantity of mixed oxide (MOX) fuel (collectively referred to as SNF in the FEIS and in this ROD), which would originate from commercial nuclear reactor facilities in the United States, for a 40-year period at the site in Andrews County, Texas. During operation, the WCS CISF would receive SNF from decommissioned and decommissioning reactor sites, as well as from operating reactors prior to decommissioning (NRC, 2021b).

The WCS CISF would be built and operated on an approximately 130-hectare (ha) [320-acre (ac)] project area within a 5,666-ha [14,000-ac] parcel of land that is controlled by ISP joint venture member WCS in Andrews County, Texas. In addition, construction of the rail sidetrack, site access road, and construction laydown area would contribute an additional area of disturbed soil such that the total disturbed area for construction of the WCS CISF would be approximately 133 ha [330 ac]. The project area would be located north of WCS's existing waste management facilities and controlled by ISP through a long-term lease from WCS (NRC, 2021b).

ISP would store SNF in six existing dual-purpose canister-based dry cask storage systems (DCSS) designed by TN Americas or NAC International. The 6 DCSS (3 from TN Americas and 3 from NAC International) consist of 11 different SNF canisters and 5 different GTCC waste canisters stored in 5 overpacks. SNF is stored horizontally in the TN Americas systems and vertically in the NAC International systems. The TN Americas and NAC International DCSS listed in the FEIS have been previously approved by the NRC for independent storage of SNF, GTCC, and a small amount of MOX fuel, pursuant to requirements in 10 CFR Part 72. In addition, the NRC approved both the TN Americas and NAC International systems for storage of SNF transported in canisters pursuant to the requirements in 10 CFR Part 71, "Packaging and Transportation of Radioactive Material."

Public Comments

On November 14, 2016 (81 FR 79531), the NRC staff published in the *Federal Register* a notice of intent to prepare an EIS and to conduct an environmental scoping process. The NRC staff invited potentially affected Federal, State, tribal, and local governments; organizations; and

members of the public to provide comments in the environmental scoping process and review. The initial scoping period closed on April 28, 2017. During this time, the NRC staff hosted four public scoping meetings, one in Hobbs, New Mexico, on February 13, 2017; a second in Andrews, Texas, on February 15, 2017; and two in Rockville, Maryland, on February 23, 2017 and April 6, 2017. Following a suspension of NRC's review at the applicant's request, ISP submitted a revised license application in June and July 2018 (ISP, 2018a). On September 4, 2018 (83 FR 44922), the NRC staff reopened the scoping period for the ISP license application. The reopened scoping period closed on November 19, 2018. The NRC staff issued a scoping summary report in October 2019 (NRC, 2019).

On May 4, 2020, the NRC staff issued the draft "Environmental Impact Statement for Interim Storage Partners LLC's License Application for a Consolidated Interim Storage Facility for Spent Nuclear Fuel in Andrews County, Texas" (NRC, 2020).

A 120-day comment period began on May 8, 2020, when the U.S. Environmental Protection Agency (EPA) published a Notice of Availability in the *Federal Register* (85 FR 27412) of the draft EIS to allow members of the public and agencies time to comment on the results of the draft EIS. On July 22, 2020. the NRC staff extended the comment period an additional 60 days to close on November 3, 2020 (85 FR 44330). Additionally, the NRC staff held public meetings on October 1, 6, 8, and 15, 2020, to discuss the preliminary findings in the draft EIS, with transcripts of these meetings available at the NRC public project webpage: https://www.nrc.gov/waste/spent-fuel-storage/cis/waste-control-specialist.html.

Responses to all public comments received during the draft EIS comment period are included in Appendix D to the FEIS.

Alternatives Considered

In its environmental review, the NRC staff evaluated the environmental consequences of the proposed action (i.e., authorizing the construction and operation of the WCS CISF), and the environmental consequences of the No-Action alternative (i.e., not licensing the WCS CISF). FEIS Chapter 2, "Proposed Action and Alternatives," and Chapter 4, "Environmental Impacts," present the NRC staff's evaluation and analysis of the environmental impacts of the proposed action and the No-Action alternative that were considered, as well as those alternatives that were eliminated from detailed study (NRC, 2021b). The NRC staff discusses the reasons for eliminating these alternatives in Section 2.3 of the FEIS. These alternatives included (1) storage of SNF at a government-owned CISF operated by the U.S. Department of Energy (Section 2.3.1); (2) alternative design or storage technologies (Section 2.3.2); and (3) alternative CISF locations (Section 2.3.3).

After weighing the impacts of the Proposed Action, comparing them to the No-Action alternative, and conducting a safety and security review of the Proposed Action, the NRC staff determined that the NRC should issue a license for the proposed WCS CISF project. The NRC staff based its decision on: (i) review of ISP's license application (ISP, 2018a, 2018b, 2020a, 2020b, and 2021), which includes the ER and supplemental documents, and ISP's responses to the NRC staff RAIs (ISP, 2019a and 2019b); (ii) consultation with Federal, State, tribal, and local agencies and input from other stakeholders, including public comment on the draft EIS (see Appendix D in the FEIS); (iii) independent NRC staff review; (iv) the assessments in the FEIS (NRC, 2021b); and (v) the NRC staff's assessments in the Final Safety Evaluation Report (NRC, 2021c) for the WCS CISF.

Mitigation Measures

The NRC has taken all practicable measures within its jurisdiction to avoid or minimize environmental harm from the proposed action (license issuance). The applicant has committed to a number of mitigation measures as described in Table 6.3-1 of the FEIS (NRC, 2021b). As documented in the FEIS, the NRC determined that impacts to most resource areas would be SMALL (i.e., not detectable or minor), with SMALL to MODERATE beneficial impacts for local finance and MODERATE impacts (i.e., sufficient to alter noticeably, but not to destabilize, important attributes of the resource) for vegetation, population growth, and employment (NRC, 2021b). The NRC is not imposing any license conditions in connection with mitigation measures for the licensing of the WCS CISF. ISP is subject to requirements including permits, authorizations, and regulatory orders imposed by other Federal, State, and local agencies governing facility construction and operation. ISP's monitoring programs for the proposed project are described in Chapter 7 of the FEIS (NRC, 2021b).

References

10 CFR Part 51. Code of Federal Regulations, Title 10, Energy, Part 51, "Environmental Protection Regulation for Domestic Licensing and Related Regulatory Functions." Washington, DC: U.S. Government Publishing Office.

10 CFR Part 71. Code of Federal Regulations, Title 10, *Energy*, Part 71, "Packaging and Transportation of Radioactive Material." Washington, DC: U.S. Government Publishing Office.

10 CFR Part 72. Code of Federal Regulations, Title 10, *Energy*, Part 72. "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste." Washington, DC: U.S. Government Publishing Office.

85 FR 44330. *Federal Register.* Vol. 85, No. 141, pp. 44,330–44,332. "Interim Storage Partners Consolidated Interim Storage Facility Project." July 22, 2020.

85 FR 27412. *Federal Register*. Vol. 85, No. 90, pp. 27,412–27,413. "Environmental Impact Statements: Notice of Availability." May 8, 2020.

83 FR 44922. *Federal Register*. Vol. 83, No. 171, pp. 44,922–44,923, "Interim Storage Partners LLC's Consolidated Interim Spent Fuel Storage Facility." September 4, 2018.

82 FR 8771. *Federal Register*. Vol. 82, No. 18, pp. 8,771–8,773, "Waste Control Specialists LLC's Consolidated Interim Spent Fuel Storage Facility Project." January 30, 2017.

81 FR 79531. *Federal Register*. Vol. 81, No. 219, pp. 79,531–79,534, "Waste Control Specialists LLC's Consolidated Interim Spent Fuel Storage Facility Project." November 14, 2016.

ISP. "Interim Storage Partners, LLC, Submittal of Revision 5 of the Safety Analysis Report and Revision 4 of the License Application for the WCS CISF." ADAMS Accession No. ML21105A766. Andrews, Texas: Interim Storage Partners LLC. 2021.

ISP. “WCS Consolidated Interim Spent Fuel Storage Facility Environmental Report, Docket No. 72-1050, Revision 3.” ADAMS Accession No. ML20052E144. Andrews, Texas: Interim Storage Partners LLC. 2020a.

ISP. “Supplemental Information in Support of NRC’s Environmental Review, Docket 72-1050 CAC/EPID 001028/L-2017-NEW-0002.” ADAMS Accession No. ML20071F153. Andrews, Texas: Interim Storage Partners LLC. 2020b.

ISP. “Interim Storage Partners, LLC., Submission of Draft Responses for Several RAIs and Associated Document Markups from First Request for Additional Information, Part 2.” ADAMS Accession No. ML19252A132 Package. 2019a.

ISP. “Submission of RAIs and Associated Document Markups from First Request for Additional Information, Part 3, Docket 72-1050 CAC/EPID 001028/L-2017-NEW-0002, Part 3.” ADAMS Accession No. ML19337B502. Andrews, Texas: Interim Storage Partners LLC. 2019b.

ISP. “Subject: Submittal of License Application Revision 2 and Request to Restart Review of Application for Approval of the WCS CISF, Docket 72-1050.” ADAMS Accession No. ML18206A482. Letter from J.D. Isakson, Interim Storage Partners LLC to Director, Division of Spent Fuel Management, U.S. Nuclear Regulatory Commission. Andrews, Texas: Interim Storage Partners LLC. 2018a.

ISP. “Interim Storage Partners LLC License Application, Docket No. 72-1050, Revision 2.” ADAMS Accession No. ML18206A483. Andrews, Texas: Interim Storage Partners LLC. 2018b.

NRC. “Materials License SNM-2515, Interim Storage Partners, WCS Consolidated Interim Storage Facility ISFSI.” ADAMS Accession No. ML21188A099. September 13, 2021; Washington, DC: U.S. Nuclear Regulatory Commission. 2021a.

NRC. NUREG-2239, “Environmental Impact Statement for Interim Storage Partners LLC’s License Application for a Consolidated Interim Storage Facility for Spent Nuclear Fuel in Andrews County, Texas – Final Report.” ML21209A955. July 2021; Washington, DC: U.S. Nuclear Regulatory Commission. 2021b.

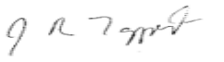
NRC. “Final Safety Evaluation Report for the WCS Consolidated Interim Storage Facility Independent Spent Fuel Storage Installation Specific Materials License No. SNM-2515.” ML21188A101. September 2021; Washington, DC: U.S. Nuclear Regulatory Commission. 2021c.

NRC. NUREG-2239, “Environmental Impact Statement for Interim Storage Partners LLC’s License Application for a Consolidated Interim Storage Facility for Spent Nuclear Fuel in Andrews County, Texas – Draft Report for Comment.” ML20122A220. May 2020. Washington, DC: U.S. Nuclear Regulatory Commission. 2020.

NRC. “Environmental Impact Statement Scoping Process Summary Report, the ISP CISF Environmental Impact Statement Public Scoping Period.” ADAMS Accession No. ML19161A150. Washington, DC: U.S. Nuclear Regulatory Commission. 2019.

Dated at Rockville, MD, this 13th day of September 2021,

APPROVED BY:



Signed by Tappert, John
on 09/13/21

John R. Tappert, Director
Division of Rulemaking, Environmental, and
Financial Support
Office of Nuclear Material Safety
and Safeguards

INTERIM STORAGE PARTNERS, LIMITED LIABILITY COMPANY
DOCKET NO. 72-1050
WCS CONSOLIDATED INTERIM STORAGE FACILITY
INDEPENDENT SPENT FUEL STORAGE INSTALLATION
MATERIALS LICENSE NO. SNM-2515

1. The Nuclear Regulatory Commission (the Commission) has found that:

   A. The application filed by Interim Storage Partners, Limited Liability Company (the applicant), for a materials license to receive, store, transfer, and possess power reactor spent fuel, associated radioactive material, and greater-than-Class-C radioactive waste at the WCS Consolidated Interim Storage Facility (CISF) Independent Spent Fuel Storage Installation (ISFSI) in Andrews County, TX, meets the standards and requirements of the Atomic Energy Act of 1954, as amended (Act), and the Commission's regulations set forth in 10 CFR Chapter I, "Nuclear Regulatory Commission";

   B. The WCS CISF ISFSI will operate in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission;

   C. The applicant's proposed ISFSI design complies with the criteria in 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste," Subpart F, "General Design Criteria";

   D. The proposed site complies with the criteria in 10 CFR Part 72, Subpart E, "Siting Evaluation Factors";

   E. The proposed ISFSI would not pose an undue risk to the safe operation of the WCS radioactive material disposal facilities;

   F. The applicant is qualified by reason of training and experience to conduct the operations covered by the regulations in 10 CFR Part 72;

   G. The applicant's operating procedures to protect health and to minimize danger to life and property are adequate;

   H. The applicant is financially qualified to engage in the activities in accordance with the regulations in 10 CFR Part 72, subject to the conditions specified in the license;

   I. The applicant's quality assurance plan complies with 10 CFR Part 72, Subpart G, "Quality Assurance";

   J. The applicant's physical protection provisions comply with 10 CFR Part 72, Subpart H, "Physical Protection";

   K. The applicant's personnel training program complies with 10 CFR Part 72, Subpart I, "Training and Certification of Personnel";

L. The applicant's decommissioning plan and its financing pursuant to 10 CFR 72.30 provide reasonable assurance, subject to the conditions specified in the license, that the decontamination and decommissioning of the WCS CISF ISFSI at the end of its useful life will provide adequate protection to the health and safety of the public;

M. The applicant's emergency plan complies with 10 CFR 72.32;

N. The applicant has satisfied the applicable provisions of 10 CFR Part 170, "Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended";

O. There is reasonable assurance that (i) the activities authorized by this license can be conducted without endangering public health and safety, and (ii) such activities will be conducted in compliance with the Commission's regulations;

P. The issuance of this license will not be inimical to the common defense and security; and

Q. The issuance of this license is in accordance with 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," of the Commission's regulations and all applicable requirements have been satisfied.

2. This license is effective as of the date of its issuance and shall expire at midnight on September 13, 2061.

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Shana R. Helton, Director
Division of Fuel Management
Office of Nuclear Material Safety
and Safeguards

Enclosure: License SNM-2515

Date of Issuance: September 13, 2021

State of New Mexico

Michelle Lujan Grisham
Governor

November 3, 2020

Office of Administration
Mail Stop: TWFN-7-A60M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Program Management, Announcements and Editing Staff

Submitted by email to: WCS_CISF_EIS@nrc.gov

Dear Sir or Madam,

As the Governor of the State of New Mexico, I write to express my opposition to the proposed action to issue a license in response to the Interim Storage Partners (ISP) LLC's License Application for a Consolidated Interim Storage Facility (CISF) for Spent Nuclear Fuel (SNF) in Andrews County, Texas. The May 2020 draft Environmental Impact Statement (EIS) is significantly flawed and does not adequately address significant threats to the health and safety of New Mexicans, impacts to our economy, and protection of our environment.

The U.S. Nuclear Regulatory Commission (NRC) proposed approval of the ISP license application to construct and operate a CISF for SNF and Greater-Than-Class C waste and spent mixed oxide fuel at the existing Waste Control Specialists (WCS) site in Andrews County, Texas. If licensed, the facility could store up to 5,000 metric tons of uranium (MTUs) for a license period of 40 years. ISP has indicated that they will seek amendments and extensions of the license to store an additional 5,000 MTUs for each of seven expansion phases over 20 years, resulting in an expanded facility with total storage of up to 40,000 MTUs of spent nuclear fuel.

New Mexicans have a vested interest in this proposed action due to the proximity of the site to the Texas-New Mexico border; the facility is located just .37 miles east of the border and five miles east of Eunice, New Mexico. Additionally, the New Mexico side of the border is more densely populated, meaning that the proposed action would disproportionately impact New Mexicans in the immediate area.

The draft EIS does not adequately address the many safety concerns that siting a CISF in Andrews County, Texas raises. With no active planning for a permanent repository for SNF underway, there is significant risk that this and other facilities proposed as interim storage

facilities become de facto permanent repositories. Over time, it is likely that the casks storing spent nuclear fuel and high-level waste will lose integrity and will require repackaging. Any repackaging of spent nuclear fuel and high-level waste increases the risk of accidents and radiological health risks. The consequences of a release of radiation due to accidental events (such as fire, flood, earthquakes, ruptures of fuel rods, explosion, lightning, extreme temperatures and more), potential acts of terrorism or sabotage, and the risks associated with aging spent nuclear fuel canisters all pose unacceptable health, safety, and environmental risks that the draft EIS fails to address.

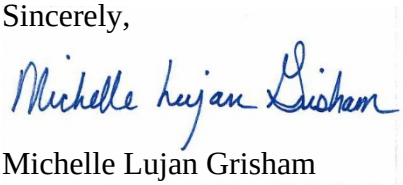
Further, the ISP project would place unfunded safety mandates on local communities. Transporting spent nuclear fuel across the nation is complex and extremely dangerous. Safe transportation of spent nuclear fuel requires both well-maintained infrastructure and highly specialized emergency response equipment and personnel that can respond quickly to an incident at the facility or on transit routes. New Mexico residents cannot afford and should not be expected to bear the costs associated with transporting material to the proposed CISF or responding to an accident on transport routes or near the facility.

The proposed CISF also poses unacceptable economic risk to New Mexicans, who look to southeastern New Mexico as a driver of economic growth in our state. New Mexico's agricultural industry contributes approximately $3 billion per year to the state's economy, $300 million of which is generated in Eddy and Lea Counties, adjacent to the West Texas site. Further, the site is located in the Permian Basin, which is the largest inland oil and gas reservoir and the most prolific oil and gas producing region in the world. New Mexico's oil and natural gas industry contributed approximately $2 billion to the state last year, driven by production in Lea and Eddy County. Any disruption of agricultural or oil and gas activities as a result of a perceived or actual nuclear incident would be catastrophic to New Mexico, and even taking steps toward siting a CISF in the area could cause a decrease in investment in two of our state's biggest industries.

Recognizing the risks outlined above, a broad range of businesses, state, local, and tribal leaders have expressed their opposition to this project and to a similar project in New Mexico proposed by Holtec International. That opposition includes both myself and Governor Abbott of Texas, who similarly recognizes the risk a CISF in this region poses to Texas residents.

The ISP proposal poses unacceptable risk to New Mexico's citizens, communities, and economy, and I urge you to deny the ISP license application.

Sincerely,



Michelle Lujan Grisham
Governor

State of New Mexico

Michelle Lujan Grisham
Governor

September 13, 2021

The Honorable Christopher T. Hanson, Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Letter in support of the State of New Mexico's letter opposing the Nuclear Regulatory Commission's final environmental impact statement's recommendation to grant interim storage partner LLC's license to store spent nuclear fuel

Dear Chairman Hanson,

My Office supports the New Mexico Attorney General's Office in its opposition to the U.S. Nuclear Regulatory Commission's (the Commission's) recommendation to grant the Interim Storage Partners, LLC's (ISP's) license application to construct and operate a consolidated interim storage facility (the Facility) to store up to 40,000 metric tons of uranium and other waste in Andrews County, Texas.

New Mexicans have a vested interest in this proposed action due to the proximity of the ISP site to the Texas/New Mexico border, which is just .37 miles east of the border and four miles east of the City of Eunice, New Mexico. Notably, the New Mexico side of the border is more densely populated than the Texas side of the border—meaning that the proposed action would disproportionately impact New Mexicans in the immediate area. However, there has been a complete absence of coordination with our state government and inadequate consideration of the lack of a permanent repository site for spent nuclear fuel (SNF), the site's geology and seismicity, the cost of emergency response and cleanup, and the risks of transporting the SNF through New Mexico. Accordingly, the New Mexico Governor's Office strongly objects to granting ISP a license to store SNF, as recommended by the Commission.

After review of the Commission's July 29, 2021, final environmental impact statement (EIS) published in support of its environmental review, my Office has found that it does not adequately address many safety and social concerns, including:

Attachment 4

1. There is no permanent storage facilities planned in the United States

The proposed action is the issuance of a Commission license authorizing a consolidated interim storage facility to store up to 5,000 metric tons of uranium (MTUs) (5,500 short tons) for a license period of 40 years at the WCS site that can be renewed at the end of every term. ISP plans to subsequently request amendments to the license that, if approved, would authorize ISP to store an additional 5,000 MTUs (5,500 short tons) for each of seven planned expansion phases of the Facility (a total of eight phases) to be completed over the course of 20 years, to expand the facility to eventually store up to 40,000 MTUs (44,000 short tons) of SNF.

The likelihood that the canisters storing spent nuclear fuel and high-level waste will lose integrity and will require repackaging over time is particularly concerning. The potential SNF storage is nearly enough for the entire United States' existing SNF. Significantly, there is no plan for a permanent repository for SNF underway, and the Commission cannot guarantee that a permanent repository for SNF in the United States will be developed within the foreseeable lifespan of the proposed storage canisters or that the Facility will not become the *de facto* permanent repository. Further, any inevitable repackaging of spent nuclear fuel and high-level waste increases the risk of accidents and radiological health risks and contamination to surface and groundwater resources.

2. There is potential for contamination to New Mexico resources

The consequences of a release of radiation due to accidental events (e.g., fire, flood, earthquakes, ruptures of fuel rods, explosion, lightning, extreme temperatures, etc.), potential acts of terrorism or sabotage, and the risks associated with aging spent nuclear fuel canisters all pose unacceptable health, safety, and environmental risks to New Mexico's citizens and environment.

The EIS's seismic hazard analysis was deficient and failed to account for a magnitude 5.0 earthquake that struck in West Texas recently near the New Mexico border. The geologic formation in the area is heavily faulted and poses a seismic hazard to the ISP site, as there is a possibility that more powerful earthquakes may occur. Yet the EIS fails to account for the potential for geologic activity to impact the Facility.

The proposed site is also in an area underlain by concerns for sinkhole development and shallow groundwater that does not provide deep geologic isolation for indefinite SNF storage. This is especially troubling because groundwater flow beneath the existing waste cells at ISP site is predominantly to the southwest towards New Mexico, and surface water flow from the ISC site is directed through outfalls that flow directly into New Mexico. Accordingly, any discharge of SNF at the Facility site would directly impact New Mexico's groundwater and surface water.

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3. The approval of the license would create unfunded mandates to New Mexico

New Mexico and its communities will unfairly shoulder the burden and responsibility for providing services to the Facility located along the border through the imposition of unfunded federal mandates left unaccounted for in the EIS. The storage and transportation of spent nuclear fuel requires both well-maintained infrastructure and highly specialized emergency response equipment and personnel that can respond quickly to an incident at the Facility or on transit routes. However, the proposed action did not address how the emergency response personnel, equipment, and training, as well as necessary infrastructure upgrades, would be funded.

4. The risk of transporting nuclear waste through New Mexico has not been thoroughly investigated

The SNF that will be stored at ISP will be transported to and from the site by railroads within New Mexico and on New Mexico state roads. New Mexico residents cannot afford and should not be expected to bear the costs associated with transporting material to the Facility or responding to a nuclear fuel spill along the hundreds of miles of railway lines in New Mexico.

Transporting SNF across the nation is complex and extremely dangerous. Yet the transportation of SNF was not considered a connected activity in the EIS. The EIS did not account for the amount of waste that will be coming from nuclear reactor sites all over the country (and eventually transported off of the ISP site to a permanent storage at some unforeseeable time in the future). The amount of SNF transported to and from the ISP site requires considerable use of New Mexico roads and railways. There is also a need for improved infrastructure along railway lines and funding for emergency personnel and equipment to respond to emergency spills. The failure to consider transportation issues creates an unacceptable risk of an environmental catastrophe while the SNF is in transit.

5. The storage of nuclear waste in New Mexico poses economic risk

The proposed action poses an unacceptable economic risk to New Mexicans, who look to southeastern New Mexico as a driver of economic growth. New Mexico's agricultural industry contributes approximately $3 billion per year to the state's economy, $300 million of which is generated in Eddy and Lea County, which are adjacent to the site. The proposed site is located in the Permian Basin, which is the largest inland oil and gas reservoir and the most prolific oil and gas producing region in the world. New Mexico's oil and natural gas industry contributed billions of dollars to the state last year, driven by production in Lea and Eddy County. Any disruption of agricultural or oil and gas activities as a result of a perceived or actual nuclear incident would harm New Mexico's economy, and even taking steps toward siting a consolidated interim storage facility in the area could cause a decrease in investment in two of New Mexico's biggest industries.

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6. There is strong community opposition

A broad range of businesses, state, local, and tribal leaders have expressed their opposition to this project and to a similar project in New Mexico proposed by Holtec International. That opposition includes both myself and Governor Abbott of Texas, who similarly recognizes the risk a consolidated interim storage facility in this region poses to nearby residents.

New Mexico is already home to uranium mining and milling, legacy contamination at national laboratories, and disposal of defense waste at the Waste Isolation Pilot Plant (WIPP), which have long created risks to public health and the environment in the State of New Mexico. The proposed action threatens minority and low-income populations in New Mexico that have already suffered disproportionally high adverse human health and environment effects from nuclear energy and weapons programs of the United States.

For the above reasons, the ISP proposal poses an unacceptable risk to New Mexico's citizens, communities, and economy. My Office, therefore, strongly opposes granting the ISP license application and suggests that the Commission should, at the very least, stay its decision the license until new environmental justice protocols are in place.

Sincerely,

Michelle Lujan Grisham

Michelle Lujan Grisham
Governor of New Mexico

State Capitol • Room 400 • Santa Fe, New Mexico 87501 • 505-476-2200

GOVERNOR GREG ABBOTT

November 3, 2020

Office of Administration
Mail Stop TWFN-7-A60M
U.S. Nuclear Regulatory Commission (NRC)
Washington, D.C. 20555-0001
ATTN: Program Management, Announcements, and Editing Staff

Re: Interim Storage Partners (ISP) Consolidated Interim Storage Facility Project,
Docket ID NRC-2016-0231

Dear Office of Administration Staff:

As Governor of Texas, I strongly oppose ISP's application for a license to construct and operate a consolidated interim storage facility in Andrews County, Texas. Having consulted with numerous state agencies, including the Texas Department of Public Safety, the Texas Commission on Environmental Quality, and the Texas Department of Transportation, I urge the NRC to deny ISP's license application.

If ISP's license application were approved, its proposed facility would store spent nuclear fuel and Greater-Than-Class-C waste, both of which present a greater radiological risk than Texas is prepared to allow. This deadly radioactive waste — up to 40,000 metric tons of uranium — would sit right on the surface of the facility in dry cask storage systems. Spent nuclear fuel is so dangerous that it belongs in a deep geologic repository, not on a concrete pad above ground in Andrews County. *See, e.g.*, 42 U.S.C. § 10101(18); *Nevada v. DOE*, 457 F.3d 78, 81 (D.C. Cir. 2006). This location could not be worse for storing ultra-hazardous radioactive waste.

Andrews County lies within the Permian Basin Region, which has surpassed Saudi Arabia's Ghawar Field as the largest producing oilfield in the world. There are approximately 250,000 active oil-and-gas wells in Texas's portion of the Permian Basin. In 2019, oil production in the Permian Basin exceeded 1.5 billion barrels, and the oil-and-gas industry directly employed 87,603 individuals in the region. Also in 2019, the Permian Basin was responsible for $9 billion in severance taxes and royalties to the State of Texas. In 2018, the Permian Basin produced more than 30 percent of total U.S. crude oil and contained more than 40 percent of proved oil reserves. In short, the Permian Basin is a significant economic and natural resource for the entire country.

The proposed ISP facility imperils America's energy security because it would be a prime target for attacks by terrorists, saboteurs, and other enemies. Spent nuclear fuel is currently scattered across the country at various reactor sites and storage installations. Piling it up on the surface of the Permian

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Basin, as ISP seeks to do, would allow a terrorist with a bomb or a hijacked aircraft to cause a major radioactive release that could travel hundreds of miles on the region's high winds. Such an attack would be uniquely catastrophic because, on top of the tragic loss of human life, it would disrupt the country's energy supply by shutting down the world's largest producing oilfield. The Permian Basin is already a target for America's enemies, and granting ISP's license application would paint an even bigger bullseye.

Under the National Environmental Policy Act of 1969, the NRC has an obligation to consider the environmental effects of a terrorist attack on the proposed ISP facility. *See Mothers for Peace v. NRC*, 449 F.3d 1016, 1028–35 (9th Cir. 2006); *but see N.J. Dep't of Envtl. Prot. v. NRC*, 561 F.3d 132, 136–43 (3d Cir. 2009) (creating circuit split on issue); *New York v. NRC*, 589 F.3d 551, 554 n.1 (2d Cir. 2009) (per curiam) (avoiding circuit split because "the NRC did sufficiently take into account acts of terrorism"). Perhaps recognizing as much, the NRC addressed the risk of terrorism in section 4.19 of its Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel. *See* 10 C.F.R. § 51.23 (cross-referencing NUREG-2157). The Generic Environmental Impact Statement determined (at page 4-97) that terrorism's "environmental risk is SMALL" during the period beyond a facility's license term. *But see* 42 U.S.C. § 2210e (reflecting Congress's judgment that the risk of a terrorist attack on a nuclear facility warrants the NRC's careful attention).

Now, in sections 1.4.4 and 5.1.3 of the Draft Environmental Impact Statement for the license application in Andrews County, the NRC apparently seeks to apply its generic terrorism determination to ISP. The proposed ISP facility, however, would be a uniquely provocative target: The probability of a terrorist attack is higher than for a generic reactor site, because the consequences are higher when a terrorist can disrupt the country's energy supply with a major radioactive release. So the Generic Environmental Impact Statement does not adequately assess terrorism risk as to ISP in particular, while the Draft Environmental Impact Statement does not speak to that issue at all. Indeed, the word "terrorism" appears just once, in a mere citation, in the Draft Environmental Impact Statement (at page 2-31).

Although the Draft Environmental Impact Statement repeatedly refers to ISP's construction and operation of a "consolidated *interim* storage facility," it would be naïve to believe the highlighted word. ISP's application seeks a 40-year license, with the possibility of a 20-year renewal. The Draft Environmental Impact Statement simply assumes (at pages xix, 1-3, 2-2, 8-1, 9-16) that a permanent geologic repository will be developed and licensed before those 60 years are up, without addressing any contingency for the spent nuclear fuel if such a repository is not ready when ISP's license expires. Those rosy assumptions are unsound: Radioactive waste has "the capacity to outlast human civilization as we know it," *Nuclear Energy Inst., Inc. v. EPA*, 373 F.3d 1251, 1257 (D.C. Cir. 2004) (per curiam), and any spent nuclear fuel that comes to the proposed ISP facility will be there to stay.

Congress began working on a lasting solution to the spent nuclear fuel problem by passing the Nuclear Waste Policy Act of 1982, which set standards for a permanent geologic repository, and the NWPA Amendments Act of 1987, which designated Yucca Mountain as the only site for it. Today, 38 years later, there is still no permanent geologic repository, with Yucca Mountain effectively having been abandoned. *See, e.g.*, *New York v. NRC*, 824 F.3d 1012, 1014–15 (D.C. Cir. 2016); *In re Aiken County*, 645 F.3d 428, 430–33 (D.C. Cir. 2011). Once again, then, "[t]he [NRC] apparently has no long-term plan other than hoping for a geologic repository. If the government continues to fail in its quest to establish one, then [spent nuclear fuel] will seemingly be stored on site at nuclear plants on a permanent

basis. The [NRC] can and must assess the potential environmental effects of such a failure." *New York v. NRC*, 681 F.3d 471, 479 (D.C. Cir. 2012).

The Generic Environmental Impact Statement concedes (at page 4-95) that "additional security requirements may be necessary in the future if spent fuel remains in storage for a substantial period of time. Under those circumstances, it is reasonable to assume that, if necessary, the NRC will issue orders or enhance its regulatory requirements for ISFSI and DTS security, as appropriate, to ensure adequate protection of public health and safety and the common defense and security." This approach to future terrorist threats — essentially, a promise of *I'll tell you later* — is not good enough and does not protect Texas and its citizens.

Finally, safe transportation of spent nuclear fuel would require specialized emergency response equipment and trained personnel, as well as significant infrastructure investments. Texas currently has four counties (Bexar, Dallas, Midland, and Nueces) and one city (San Antonio) that have passed resolutions prohibiting the transportation of spent nuclear fuel and high-level waste. According to the Draft Environmental Impact Statement (at page 3-8), the cargo currently shipped on rail lines through the Permian Basin consists primarily of "oilfield commodities such as drilling mud, hydrochloric acid, fracking sand, pipe, and petroleum products, including crude oil, as well as iron and steel scrap." There are also significant agricultural commodities. In the event of a rail accident or derailment, even absent a radiological release, the resources and logistics required to address such an accident would severely disrupt the transportation of oilfield and agricultural commodities, to the detriment of the entire country.

In light of the grave risks associated with the proposed ISP facility, the absence of a permanent geologic repository, and the importance of the Permian Basin to the country's energy security and economy, I respectfully and emphatically request that the NRC deny ISP's license application.

Sincerely,

Greg Abbott
Governor

GA:jsk

cc: The Honorable Dan Brouillette, Secretary, U.S. Department of Energy
The Honorable Chad F. Wolf, Acting Secretary, U.S. Department of Homeland Security
Colonel Steven C. McCraw, Director, Texas Department of Public Safety
Mr. Toby Baker, Executive Director, Texas Commission on Environmental Quality
Ms. Ashley Forbes, Director, Radioactive Materials Division, TCEQ
Mr. James M. Bass, Executive Director, Texas Department of Transportation
Mr. Wei Wang, Executive Director, Texas Railroad Commission

NEW MEXICO
ENVIRONMENT DEPARTMENT

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Michelle Lujan Grisham
Governor

Howie C. Morales
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James C. Kenney
Cabinet Secretary

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Deputy Secretary

November 3, 2020

Office of Administration
Mail Stop: TWFN-7-A60M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Program Management, Announcements and Editing Staff

Submitted by email to: WCS_CISF_EIS@nrc.gov

Dear Sir or Madam,

On behalf of the New Mexico Environment Department (NMED), attached please find comments on the May 2020 draft Environmental Impact Statement (EIS) for the Interim Storage Partners LLC's (ISP's) License Application for a Consolidated Interim Storage Facility for Spent Nuclear Fuel in Andrews County, Texas.

As discussed in our attached technical comments, the ISP site is on the New Mexico-Texas border, and NMED is very concerned that contaminants released to air and water at the site will migrate into New Mexico and create threats to human health and the environment.

Please do not hesitate to contact me to discuss further.

Sincerely,

James C. Kenney
Cabinet Secretary
Environment Department

Attachment (1)

cc: Courtney Kerster, Director of Federal Affairs, Office of Governor Michelle Lujan Grisham
Sara Cottrell Propst, Cabinet Secretary, Energy Minerals and Natural Resources Department
Sandra Ely, Director, NMED Environmental Protection Division
Rebecca Roose, Director, NMED Water Protection Division
Stephane Stringer, Director, NMED Resource Protection Division

Attachment 6

Comments

Introduction

The U.S. Nuclear Regulatory Commission (NRC) proposes approval of the Interim Storage Partners, LLC (ISP) license application to construct and operate a consolidated interim storage facility (CISF) for spent nuclear fuel (SNF) and Greater-Than-Class C waste and spent mixed oxide fuel at the existing Waste Control Specialists (WCS) site in Andrews County, Texas, very close to the New Mexico state line. The NRC proffers a draft environmental impact statement (EIS)[1] to support the proposed action, which would authorize storage of up to 5,000 metric tons of uranium (MTUs) for a license period of 40 years. The ISP admits it will seek amendments and extensions of the license to store an additional 5,000 MTUs for each of seven expansion phases over 20 years, resulting in an expanded facility with total storage of up to 40,000 MTUs of SNF. New Mexico opposes the proposed action as the EIS is significantly flawed, and the proposed action presents threats to the health and environment of New Mexico and its citizens.

The New Mexico Environment Department (NMED) has considerable experience and interaction with the WCS facility, due to its location along the Texas-New Mexico border, and is familiar with the operations and environmental issues of this site. Furthermore, prevailing wind direction is generally from the proposed site towards New Mexico, groundwater flow beneath the existing waste cells at the site is predominantly to the southwest towards New Mexico, and surface water flow from the site is directed through outfalls that flow directly into New Mexico.

Contaminants released to air and water at the ISP site, therefore, have the potential to migrate into New Mexico and create threats to human health and the environment. As a result of the potential for existing operations at the WCS site to affect groundwater quality in New Mexico, NMED required WCS to obtain a Groundwater Discharge Permit (DP-1817) for WCS's waste disposal operations in Texas. WCS submits groundwater monitoring reports to NMED as required by DP-1817 and is currently in compliance with DP-1817.

Overall, the technical analysis in the draft EIS is inadequate and does not support the proposed alternative. The EIS fails to properly characterize the site, which is geologically unsuitable. Similarly, the numerous technical site deficiencies preclude thorough evaluation of the site or the proposed project. Furthermore, the draft EIS lacks all applicable state regulatory oversight and environmental impact controls. Additionally, the draft EIS omits a full assessment of environmental justice concerns or analysis of the effects of the proposed project. These deficiencies all contribute to a draft EIS that fails to meet the requirements of Section 102(2)(c) of the National Environmental Policy Act (NEPA). New Mexico disagrees strongly with the recommended action of approving the Interim Storage Partners LLC's License and recommends the No Action Alternative.

1. Moving SNF multiple times creates unnecessary risks to public health, safety, and the environment.

The NRC stated in its Waste Confidence Decision[2] that SNF can be stored safely beyond the operating life of a power reactor, at current locations, until a national repository for SNF is established. Moreover, states and regional groups have consistently supported moving fuel only once – from current locations to a national repository. As this project proposes a temporary solution

1 EIS download: https://www.nrc.gov/docs/ML2012/ML20122A220.pdf.
2 SECY-14-0072: Final Rule: Continued Storage of Spent Nuclear Fuel (RIN 3150-AJ20) https://www.nrc.gov/docs/ML1417/ML14177A474.pdf.

to a permanent problem, the SNF of concern may need to be moved multiple times until a permanent solution is established. Ultimately, moving SNF multiple times increases the likelihood of accidents within the State of New Mexico and elsewhere.

2. The proposed ISP CISF site is geologically unsuitable.

Given that a permanent repository for high-level radioactive waste does not exist in the United States and there is no existing plan to build one, any "interim" storage facility will be an indefinite storage facility, including ISP's CISF. The license life for the application ISP submitted to the NRC is for forty (40) years, and the license life can be extended at every license renewal date. The design life for the storage facility and cask, canisters, and assemblies is for eighty (80) years. The service life for the SNF storage site is one hundred and twenty (120) years. At this time, the NRC cannot guarantee that a permanent repository for SNF in the United States will be developed in 40, 80, or 120 years, or that the proposed ISP CISF facility will not become a permanent repository. Even 80 years of storage at the ISP CISF amounts to impacts beyond the lifetimes of everyone involved in this environmental review and licensing decision.

As early as the 1950s, the National Academy of Sciences recommended disposal of long-lived radioactive wastes in deep, geologically stable formations.[3] ISP, however, proposes to store highly radioactive and toxic SNF at the surface in an area that is underlain by shallow groundwater. ISP's proposed CISF site does not provide deep geologic isolation for indefinite SNF storage, and the proposed site is unsuitable for SNF storage over a period of decades. Therefore, the No Action Alternative is recommended.

3. The draft EIS contains numerous technical deficiencies that preclude a thorough evaluation of the radiological and non-radiological environmental impacts of the proposed ISP facility.

Resolving technical deficiencies in the draft EIS and properly evaluating, with all available data, the description of the affected environment, waste transportation, waste characterization, potential contaminant release mechanisms and exposure pathways, potential risks from aging SNF canisters, and site monitoring will further support the No Action Alternative.

a. Deficiencies Related to Hydrogeologic Characterization

The draft EIS does not contain a comprehensive and internally consistent hydrologic conceptual site model that includes precipitation, recharge, surface water, groundwater and springs. Moreover, the draft EIS fails to identify and characterize all groundwater zones that underlie the site with regard to background water and sediment quality, potentiometric surfaces, and directions of groundwater flow. Of particular concern is that the draft EIS does not identify the source of water in Baker Springs in New Mexico, and whether these springs could be affected by contaminant discharges at the proposed ISP site.

These deficiencies preclude the complete and thorough evaluation of contaminant release scenarios, the resulting migration and exposure pathways, and the resulting risks to human and ecological health.

3 National Research Council. 1957. The Disposal of Radioactive Waste on Land. Washington, DC: The National Academies Press. Available at https://doi.org/10.17226/10294.

b. Deficient Evaluation of Potential Contaminant Release Scenarios and Exposure Pathways

Prevailing wind direction is generally from the proposed site towards New Mexico. Groundwater flow beneath the existing waste cells at the site is predominantly to the southwest towards New Mexico. Surface water flow from the site is directed through outfalls that flow directly into New Mexico. The draft EIS fails to evaluate how contaminant releases to these pathways could directly migrate into, and impact public health and the environment in, New Mexico.

i. The draft EIS fails to evaluate the impacts of a radiological release from a proximal facility.

ISP's Environmental Report, in a section titled Proximity of Hazardous Operations/High-Risk Facilities, erroneously states *"there are no facilities handling large quantities of hazardous materials, chemicals, or other material in proximity to the site."* (See § 2.3.4, Criterion 13, page 2-27). Numerous radiological materials operations are currently occurring in the vicinity of the CISF and are likely to continue or expand in the future. These operations include the Federal Facilities Waste Disposal site, the Compact States Waste Disposal Facility, the By-Products Waste Disposal Facility, and the uranium enrichment occurring at URENCO. A radiological release from one of these proximal facilities could render the ISP CISF unmanageable, at loss of capability to function safely, and at risk for accidents and release of contaminants to the environment.

ii. The draft EIS fails to evaluate the potential impacts of a hydrogen sulfide release from a proposed oil-field waste disposal facility near the site.

ISP's Environmental Report, in a section titled Land Use, erroneously states that "there are no other know current, future, or proposed land use plans, including staged plans, for the proposed CISF or immediate vicinity." (See § 3.1, page 3-3). CK Disposal, however, has proposed to construct an oil field waste disposal facility near the ISP site. The draft EIS does not evaluate how releases of hydrogen sulfide from the CK Disposal facility could render the ISP CISF unmanageable, at loss of capability to function safely, and at risk for accidents and release of contaminants to the environment.

iii. The draft EIS fails to evaluate the potential impacts of numerous boreholes on the ISP property that could act as pathways for contaminants to reach groundwater.

Some 600 boreholes are known to be on the WCS property, and the draft EIS does not provide information on how many boreholes have been improperly abandoned. Improperly plugged or cased boreholes could cause a migratory pathway for contaminant migration to groundwater.

c. Seismicity not Adequately Addressed

The draft EIS asserts that operation of the proposed CISF project would not be expected to impact or be impacted by seismic events. The draft EIS provides general information about the history of earthquakes in the region, including earthquakes caused by fluid injection by the oil and gas industry, and asserts that CISF infrastructure will be designed to withstand seismic events, but does not provide specific information about these safeguards. On March 26, 2020, a

magnitude 5.0 earthquake struck West Texas near the New Mexico border.[4] Since earthquakes of magnitude 5 or greater have already occurred in this area, there is the possibility that more powerful earthquakes may occur, and the ISP facility must be designed to withstand these more powerful seismic events.

d. Deficient Waste Characterization

The draft EIS fails to provide details of the radionuclides and activities in the spent fuel rods, and only references metric tons of uranium (MTU) in the fuel rods that were originally placed in the nuclear reactors. Spent fuel rods can be much more radioactive than the original fuel rods due to the presence of a mixture of byproducts from uranium fission. Radionuclide activities in spent fuel rods can depend on age, uranium burnup and decay, and the type of reactor that was used.

Furthermore, the draft EIS does not adequately address the differences in SNF storage (pool storage, dry storage or both) at the commercial reactor sites. These differences are important as they may present challenges for SNF processing and storage at the proposed ISP facility.

The draft EIS fails to discuss non-radiological contaminants that may potentially be discharged to soil, water and air during operation of the site.

e. Deficiencies Regarding Cannisters and CISF Infrastructure

i. SNF cannisters

Some of the SNF cannisters that would be shipped to the proposed ISP facility have already been stored for decades. As fuel rods age they are subject to corrosion, damage or cladding, and the potential for explosive levels of hydrogen to build up inside the cannisters. The draft EIS does not adequately address these issues.

The SNF cannisters will be stored on concrete pads on the ground surface exposed to the elements. The draft EIS does not address the temperature rating of the SNF cannisters and if maximum summer temperatures at the site are within this temperature rating.

ii. SNF Concrete Pad

The draft EIS does not discuss how the concrete pads used to store SNF cannisters will be protected or repaired from cracking and spalling due to exposure to the elements of the arid Southwest.

4. The draft EIS is significantly incomplete without inclusion of all applicable state regulatory oversite and environmental impact controls.

The draft EIS fails to identify New Mexico water quality regulatory requirements that apply to the proposed ISP facility. As discussed above, contaminants discharged by existing WCS operations, as well as by proposed ISP operations, have the potential to affect water quality in New Mexico. Discharges onto or below the ground surface at the site, and surface water emanating from the site that flows toward New Mexico, have the potential to infiltrate into the subsurface and into groundwater. Consequently, NMED required WCS to obtain a Groundwater Discharge Permit (DP-1817) for WCS's waste disposal operations. WCS submits groundwater monitoring reports to NMED as required by DP-1817 and is currently in compliance with DP-1817.

The existing Texas Pollutant Discharge Elimination System (TPDES) Permit, and monitoring conducted pursuant to that permit, is not an adequate substitute for New Mexico's groundwater permitting and monitoring requirements. Therefore, ISP must submit a Notice of Intent to Discharge

4 https://www.usgs.gov/news/m50-earthquake-hits-west-texas-new-mexico-border.

to NMED in accordance with 20.6.2.1201 New Mexico Administrative Code (NMAC) for proposed CISF operations. The final EIS, and specifically Table 1.6-1, must identify DP-1817, and ISP's requirement to submit a Notice of Intent to Discharge.

Since surface water discharges from the proposed ISP site in Texas may affect surface water quality in New Mexico, the final EIS should include a requirement that the Texas Commission on Environmental Quality consults with NMED as a downstream state during the TPDES Permit process.

The draft EIS fails to commit the NRC to a comprehensive environmental oversight role during operation of the CISF. The final EIS must address possible licensing conditions and the NRC's obligation to evaluate and respond to adverse impacts to environmental media, e.g., soil, surface water, groundwater.

5. **The proposed action threatens minority and low-income populations in New Mexico that have already suffered disproportionally high adverse human health and environment effects from nuclear energy and weapons programs of the United States. The Proposed Action must comply with Executive Order 12898 requiring that all federal agencies achieve environmental justice for vulnerable populations that would be disproportionately affected by programs of the United States.**

The proposed action for indefinite storage of commercial SNF joins the ranks of uranium mining and milling, legacy contamination at national laboratories, and disposal of defense waste at the Waste Isolation Pilot Plant (WIPP), all of which have long presented risks to public health and the environment in the State of New Mexico that are disproportionately greater than such risks to the general population of the United States.

The draft EIS identifies 58.8 percent of the population in Lea County, New Mexico as Hispanic or Latino (Table 1). New Mexico's general percentages of minority (Hispanic or Latino and American Indian) and low-income populations are significantly greater than in the United States' general population (Table 1).

Table 1. New Mexico and United States Demographics.

Demographic	**United States [a]**	**New Mexico [a]**	**Lea County, NM [b]**
Hispanic or Latino	18.3%	49.1%	58.8%
American Indian	1.3%	10.9%	0.7
Persons in poverty	11.8%	19.5%	
Sources: [a] U.S. Census Bureau QuickFacts: https://www.census.gov/quickfacts/fact/table/US/PST045219 [b] Draft EIS, Table 3.11-2, https://www.nrc.gov/docs/ML2012/ML20122A220.pdf.			

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority and Low-Income Populations, February 11, 1994, stated that *"…. each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionally high and adverse human health or environmental effects of its programs, policies,*

and activities on minority populations and low-income populations of the United States."[5] On August 24, 2004, the NRC issued a Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions that stated *"NRC believes that an analysis of disproportionately high and adverse impacts needs to be done as part of the agency's NEPA obligations to accurately identify and disclose all significant environmental impacts associated with a proposed action."*[6]

The draft EIS fails to demonstrate that the Proposed Action will achieve environmental justice for the high percentage of minority and low-income populations in the State of New Mexico who have already suffered disproportionately high adverse human health and environmental effects from nuclear energy and weapons programs of the United States. In fact, the draft EIS (pp. 2-28, 2-29) makes repeated, yet unsubstantiated, assertions that the Proposed Action will result in *"no disproportionately high and adverse human health and environmental effects."* Environmental justice deficiencies in the draft EIS include:

a. Failure to identify and evaluate the cumulative history of adverse human health and environmental effects on New Mexico's vulnerable populations; and

b. Failure to quantify specific impacts and health consequences to vulnerable populations in New Mexico that might occur from the various accidents and release scenarios considered in the draft EIS.

The environmental justice deficiencies in the draft EIS must be corrected by preparation of a proper risk assessment that evaluates all potential release scenarios and that quantifies incident-specific and cumulative impacts to vulnerable populations in New Mexico. In accordance with Executive Order 12898, with Council on Environment Quality guidance, and with NRC policy, every aspect of the proposed action must provide the highest level of protection to New Mexico citizens, including use of Best Available Technology in these safeguards. Our concerns about disproportionate impacts are another reason why NMED supports the No Action Alternative.

5 https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf
6 https://www.govinfo.gov/app/details/FR-2004-08-24/04-19305

SECRETARY OF THE NEW MEXICO ENVIRONMENT DEPARTMENT JAMES C. KENNEY

LETTER IN SUPPORT OF THE STATE OF NEW MEXICO'S LETTER OPPOSING THE NUCLEAR REGULATORY COMMISSION'S FINAL ENVIRONMENTAL IMPACT STATEMENT'S RECOMMENDATION TO GRANT INTERIM STORAGE PARTNER LLC'S LICENSE TO STORE SPENT NUCLEAR FUEL

_____♦_____

As the Secretary for NMED, I am responsible for preventing and remediating contaminants released to land, air and water that have the potential to migrate into New Mexico and create threats to human health and the environment. I join the New Mexico' Attorney General's Office in opposing the U.S. Nuclear Regulatory Commission's (NRC) recommendation in its July 29, 2021, final environmental impact statement (EIS) to approve the Interim Storage Partners, LLC (ISP) license application to construct and operate a consolidated interim storage facility (CISF) for spent nuclear fuel (SNF) and Greater-Than-Class C waste, along with a small quantity of spent mixed oxide fuel at the Waste Control Specialists (WCS) site in Andrew County, Texas.

It is my understanding that the NRC's proposed action is the issuance of a license authorizing a CISF to store up to 5,000 metric tons of uranium (MTUs) (5,500 short tons) for a license period of 40 years at the WCS site that can be renewed at the end of every term. The license would allow ISP to subsequently request amendments to the license, that, if approved, would authorize ISP to store an additional 5,000 MTUs (5,500 short tons) for each of seven planned expansion phases of the proposed CISF (a total of eight phases) to be completed over the course of 20 years, to expand the facility to eventually store up to 40,000 MTUs (44,000 short tons) of SNF. This is more than the previously proposed Yucca Mountain site.

NMED is familiar with the WCS site due to its location along the Texas-New Mexico border, and because WCS already submits groundwater monitoring reports to NMED as part of its Groundwater Discharge Permit for WCS's waste disposal operations in Texas. NMED has previously submitted comments on the Draft Environmental Impact Statement (DEIS) and they are incorporated by reference herein. In addition, NRC never contacted my office or staff to discuss the DEIS concerns or any other matter. After review, NMED has concerns with the evaluation and findings of the EIS. NMED's concerns are set out below.

1. **Seismic Activity**: The geologic formation (Central Basin Platform) is heavily faulted, and the proposed seismic hazard analysis was deficient. On March 26, 2020, a magnitude 5.0 earthquake struck West Texas near the New Mexico border. More powerful earthquakes may occur and the proposed action fails to account for the potential for geologic activity to impact the proposed facility. See FEIS Section 3.4. The EIS provides general information about the history of earthquakes in the region, including earthquakes caused by fluid injection by the oil and gas industry, and asserts that CISF infrastructure will be designed to withstand seismic events, but

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does not provide specific information about these safeguards. Further, the proposed SNF canisters will be stored on concrete pads on the ground surface exposed to the elements directly above shallow groundwater sources in an area with recent seismic activity. Seismic activity could pose a threat to SNF canisters and pads over time, putting New Mexico's groundwater at risk.

2. **Contaminant Migration**: NMED informed the NRC that the draft EIS lacked complete and thorough evaluation of contaminant release scenarios, the resulting migration and exposure pathways, and the resulting risks to human and ecological health, but no changes were made in the final EIS to address these issues. The EIS's limited spatial scale in a region of obvious seismic risk, and the evaluation of cumulative impacts to groundwater resources is inadequate and the existing Texas Pollutant Discharge Elimination System (TPDES) Permit, and monitoring conducted pursuant to that permit, is not an adequate substitute for New Mexico's groundwater permitting and monitoring requirements.

   The proposed site is in an area that is underlain by concerns for sinkhole development and shallow groundwater that does not provide deep geologic isolation for indefinite SNF storage. Groundwater flow beneath the existing waste cells at the WCS site is predominantly to the southwest towards New Mexico, and surface water flow from the WCS site is directed through outfalls that flow directly into New Mexico. So, if there is any discharge of SNF at the CISF site, New Mexico's groundwater and surface water will be directly impacted.

   Additionally, some 600 boreholes that could cause a migratory pathway for contaminant migration to groundwater are known to be on the WCS property, and the EIS does not provide information on how many boreholes have been improperly abandoned.

3. **Transportation**: Most, if not all, of the SNF that will be stored at the ISP site will be transported to the site by railroads within New Mexico and on New Mexico roads from nuclear reactor sites all over the country and then transported to a permanent storage site (assuming one is ever created) by the same routes. Moving SNF multiple times through New Mexico only increases the unnecessary risk to public health, safety, and the environment and increases the likelihood of accidents within the State of New Mexico and elsewhere. Moreover, states and regional groups have consistently supported moving spent nuclear fuel only once – from current locations to a national repository.

   The transportation of SNF using railways creates risk anywhere along the transportation routes, but transportation was not considered as a connected activity by the EIS, and improvements to rail lines and rail infrastructure were not evaluated. The result is the ISP CISF will rely on New Mexico's limited resources to mitigate any risks of harm from a transportation accident. This avoidable risk was not considered in the no action alternative.

4. **Storage Lifespan**: The lifespan for the storage facility and cask, canisters, and assemblies is for eighty (80) years and the lifespan for the SNF storage site is one hundred and twenty (120) years. However, a permanent repository for high-level radioactive waste does not exist in the

United States and there is no existing plan to build one, so the NRC cannot guarantee that a permanent repository for SNF in the United States will be developed in the foreseeable future, or that the ISP site will not become a permanent repository.

Further, the EIS does not address the temperature rating of the SNF canisters and if maximum summer temperatures at the site are within this temperature rating, and the EIS does not discuss how the concrete pads used to store SNF canisters will be protected or repaired from cracking and spalling due to exposure to the elements of the arid Southwest. New Mexico does not have the luxury of assuming the canisters will be removed or replaced before the canisters have eroded or degraded and contamination is occurring.

In addition, the EIS fails to provide details of the radionuclides and activities in the spent fuel rods, and only references metric tons of uranium (MTU) in the fuel rods that were originally placed in the nuclear reactors. Spent fuel rods can be much more radioactive than the original fuel rods due to the presence of a mixture of byproducts from uranium fission. Radionuclide activities in spent fuel rods can depend on age, uranium burnup and decay, and the type of reactor that was used. As fuel rods age they are subject to corrosion, damage or cladding, and the potential for explosive levels of hydrogen to build up inside the canisters. As the storage lifespan of the canisters and storage site come to an end, the risk to the environment rises dramatically. All issues not discussed in the EIS.

5. **Environmental Justice**: Failure to identify and evaluate the cumulative history of adverse human health and environmental effects on New Mexico's vulnerable populations and failure to quantify specific impacts and health consequences to vulnerable populations in New Mexico that might occur from the various accidents and release scenarios considered in the EIS are two examples of the insufficiency of the NRC's evaluation of environmental justice. New Mexico is already home to contaminated former uranium mining and milling sites on and near tribal lands, legacy contamination at national laboratories, and disposal of defense waste at the Waste Isolation Pilot Plant (WIPP), which have long created risks to public health and the environment in the State of New Mexico. The proposed action threatens minority and low-income populations in New Mexico that have already suffered disproportionally high adverse human health and environment effects from nuclear energy and weapons programs of the United States.

For the above reasons, NMED disagrees strongly with the recommended action of approving the Interim Storage Partners LLC's License and recommends the No Action Alternative.

Dated: September 14, 2021

James C. Kenney

Cabinet Secretary

New Mexico State Senate
State Capitol
Santa Fe

SENATOR JEFF STEINBORN
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COMMITTEES:

MEMBER:
• Finance

INTERIM COMMITTEES:

CHAIR:
• Radioactive & Hazardous Materials Committee

MEMBER:
• Water & Natural Resources Committee

September 13, 2021

NEW MEXICO SENATOR JEFF STEINBORN

LETTER IN SUPPORT OF THE STATE OF NEW MEXICO'S LETTER OPPOSING THE NUCLEAR REGULATORY COMMISSION'S FINAL ENVIRONMENTAL IMPACT STATEMENT'S RECOMMENDATION TO GRANT INTERIM STORAGE PARTNER LLC'S LICENSE TO STORE SPENT NUCLEAR FUEL

I am a member of both the Radioactive and Hazardous Materials and Water and Natural Resources Committee. Part of my duties are to monitor issues and policies pertaining to radioactive waste in the state of New Mexico. As such, I have taken a lead role to help my colleagues and I understand and evaluate the proposal to store high level nuclear waste in New Mexico.

I am concerned with the final recommendation of the U.S. Nuclear Regulatory Commission (NRC) in its July 29, 2021 final environmental impact statement (EIS) documenting the NRC's environmental review of the Interim Storage Partners, LLC (ISP) license application to construct and operate a highly radioactive nuclear waste site at the Waste Control Specialists (WCS) site in Andrew County, Texas. Against opposition from the New Mexico governor's office, various New Mexico agencies, and local communities, the NRC has recommended granting licensure for ISP to store up to 40,000 metric tons of uranium of spent nuclear fuel (SNF) and other waste less than a mile from the New Mexico state line for an initial license period of 40 years with an option to renew an additional 40 years at the end of each term.

Despite the proximity to New Mexico and the City of Eunice, multiple letters and comments from state officials and community representatives, there has been a lack of involvement with New Mexico's state agencies and local communities regarding the proposed action. The NRC and ISP's engagement with New Mexico and the surrounding communities have fallen short of meaningful participation essential to environmental justice. There has been no consent-based siting for this proposal or any proactive interviews with the affected communities about its potential impacts, and the

public engagement webinars failed to reach the public who lack internet service. It is no surprise the proposed action has met with opposition from the Texas and New Mexico legislatures.

I strongly oppose any action that would place New Mexico citizens at risk and place the liability of emergency response on local communities without consent-based siting and without the provision of corresponding resources to respond to an emergency. The EIS accepts the risk that spent nuclear fuel canisters will be shipped multiple times using railways in New Mexico. Each shipment of nuclear waste through New Mexico creates the risk of an environmental accident, yet transportation was not evaluated. The proposed action does not include funding for a comprehensive emergency response capability for a nationwide plan to transport and store spent nuclear fuel through New Mexico and West Texas, or explain how a local response will avert or mitigate a disaster. In some locations there would also be insufficient medical personnel with radiation expertise along the railroads in New Mexico. As recommended by the NRC, the proposed action would leave the burden of emergency cleanup on the local communities.

Lastly, the NRC has recommended granting ISP a license for an *interim* nuclear waste storage location, not a permanent location. However, there is no plan for a permanent disposal site for the nation's high-level radioactive waste, and the NRC cannot provide any assurances that a permanent SNF storage site will be completed within the next century, and that the ISP site (and the pending Holtec site in New Mexico) will not become the de facto permanent storage sites for the nation's nuclear waste. Also of concern, the NRC and ISP cannot predict with complete assurance the safety and performance of the dry casks and canisters that will be used to hold the SNF for an indefinite period of time. The current performance history of the canisters is less than the initial 40-year license period for the proposed ISP facility, and the EIS does not address the possibility of having to repackage the spent nuclear fuel on-site if the canisters are cracked during transportation or delivery or become corroded during storage. New Mexico doesn't have the luxury of assuming the canisters will not fail before a permanent SNF storage location is constructed because there is no presumable end date to the proposed interim storage. The proposed action unacceptably puts New Mexico communities at risk without a permanent storage site plan and without a long term study on SNF canister durability.

For the above reasons, I urge the NRC to deny the issuance of a license to store spent nuclear fuel at the ISP facility or at least stay a decision on the license until new environmental justice protocols are in place.

Senator Jeff Steinborn

By: Landgraf H.B. No. 7

A BILL TO BE ENTITLED

AN ACT

relating to the transportation, storage, or disposal of high-level radioactive waste.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 401.003, Health and Safety Code, is amended by adding Subdivision (12-b) to read as follows:

(12-b) "High-level radioactive waste" has the meaning assigned by 42 U.S.C. Section 10101(12) and includes spent nuclear fuel as defined by 42 U.S.C. Section 10101(23).

SECTION 2. Section 401.0525, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) With the exception of a permit for a facility located at the site of currently or formerly operating nuclear power reactors and currently or formerly operating nuclear research and test reactors located on university campuses, the commission may not under the authority given to the agency under Section 301, 304, or 401 of the Clean Water Act (33 U.S.C. Sections 1311, 1314, and 1341) issue a general construction permit or approve a Stormwater Pollution Prevention Plan under Section 26.040, Water Code, or issue a permit under the Texas Pollutant Discharge Elimination System Program under Section 26.027, 26.028, or 26.121, Water Code, for the construction or operation of a facility that is licensed for the storage of high-level radioactive waste by the United States Nuclear Regulatory Commission under 10 C.F.R. Part 72. Section

401.005 does not apply to this subsection.

SECTION 3. Subchapter C, Chapter 401, Health and Safety Code, is amended by adding Sections 401.072 and 401.073 to read as follows:

Sec. 401.072. TRANSPORTATION OF HIGH-LEVEL RADIOACTIVE WASTE. A person may not transport, or arrange for the transportation of, high-level radioactive waste on the highways or railways in this state.

Sec. 401.073. DISPOSAL OR STORAGE OF HIGH-LEVEL RADIOACTIVE WASTE. With the exception of storage at the site of currently or formerly operating nuclear power reactors and currently or formerly operating nuclear research and test reactors located on university campuses, a person, including the compact waste disposal facility license holder, may not dispose of or store high-level radioactive waste in this state.

SECTION 4. Section 401.0525(c), Health and Safety Code, as added by this Act, applies only to an application for a permit or permit amendment submitted on or after the effective date of this Act.

SECTION 5. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this

Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day after the last day of the legislative session.

GROUND WATER DISCHARGE PERMIT
Waste Control Specialists LLC, DP-1817

I. INTRODUCTION

The New Mexico Environment Department (NMED) issues this Discharge Permit, DP-1817, to Waste Control Specialists LLC (WCS) (permittee) pursuant to the New Mexico Water Quality Act (WQA), NMSA 1978 §§74-6-1 through 74-6-17, and the New Mexico Water Quality Control Commission (WQCC) Regulations, 20.6.2 NMAC.

NMED's purpose in issuing this Discharge Permit, and in imposing the requirements and conditions specified herein, is to monitor the discharge of water contaminants from the WCS facility, in Andrews County, Texas into ground and surface water, so as to protect ground and surface water in New Mexico for present and potential future use as domestic and agricultural water supply and other uses and protect public health. In issuing this Discharge Permit, NMED has determined that the requirements of Subsection C of 20.6.2.3109 NMAC have been or will be met. Pursuant to Section 20.6.2.3104 NMAC, it is the responsibility of the permittee to comply with the terms and conditions of this Discharge Permit; failure may result in an enforcement action(s) by NMED (20.6.2.1220 NMAC).

WCS's facility is located on property that spans the New Mexico-Texas border. The licensed and permitted commercial waste management portion of the facility occupies approximately 1,338 acres in Texas and will hereafter be referred to as the "Waste Management Facility." WCS conducts the following commercial waste management operations within the Waste Management Facility:

1. The Hazardous Waste Facility (HWF) is permitted as a RCRA Subtitle C facility by the State of Texas to treat, store and dispose of hazardous waste. The U.S. Environmental Protection Agency (EPA) has authorized WCS to store and land dispose Toxic Substances Control Act (TSCA) wastes, including polychlorinated biphenyls and asbestos at the HWF.
2. The Texas Compact Waste Disposal Facility (CWDF) is owned and licensed by the State of Texas to dispose of Class A, B and C Low-level Radioactive Waste (LLRW) from Texas and 35 other states. WCS operates the CWDF.
3. The Federal Waste Disposal Facility (FWDF) is licensed to dispose of Class A, B and C low-level radioactive waste (LLW) and mixed low-level waste (MLLW) that is the responsibility of the Federal Government.
4. The Byproduct Material Disposal Facility (BMDF) is licensed by the State of Texas to dispose of uranium metal products, or byproducts, from the decommissioned Fernald nuclear arms facility near Cincinnati, Ohio.
5. WCS is licensed to store and process LLW pursuant to a license issued by the State of Texas.

WCS owns approximately 850 contiguous acres in New Mexico, the majority of which is unused, undeveloped, desert shrub land. Approximately 65 of these acres are used for stockpiling soils excavated from the landfill cells. WCS does not manage waste material in New Mexico. The New Mexico portion of the Facility will hereafter be referred to as the "New Mexico portion of the

Facility." The Waste Management Facility and the New Mexico portion of the Facility will jointly be referred to as the "Facility."

The activities which produce the discharge, the location of the discharge, and the quantity, quality and flow characteristics of the discharge are briefly described as follows:

WCS is authorized by the State of Texas to discharge water from the HWF and the BMDF under two Texas Pollutant Discharge Elimination System (TPDES) permits, WQ0004038000 ("4038") and WQ0004857000 ("4857") (collectively "TPDES Permits"). To control the discharge of pollutants to receiving waters, Texas authorizes these discharges only in accordance with the effluent limitations, monitoring requirements, and other conditions set forth in the TPDES permits. The HWF and the BMDF discharge includes: non-contaminated stormwater, stormwater associated with construction activities, non-contact industrial stormwater, non-contact cooling water, and landfill wastewaters and contaminated stormwater. Each of these discharges are subject to specific effluent limitations and monitoring requirements at specific "outfalls" listed in the TPDES permits. Permit 4038 regulates five outfalls, including numbers 101, 001, 002, 003 and 004 (never constructed). It is at Outfalls 001 and 002 that non-contact stormwater and other water is last monitored before it enters the State of New Mexico. Permit 4857 regulates three outfalls, including numbers 004, 005, and 103. Landfill wastewaters, i.e., contact water, from the HWF and the BMDF is collected and stored. When these wastewaters are demonstrated to meet TPDES permit discharge standards they are discharged from Outfalls 101 and 103 respectively. Non-contact stormwater associated with the BMDF has the potential to flow through Outfall 002. These TDPES permits may be viewed at WCS's web site at:

http://www.wcstexas.com/facilities/licenses-permits/

The volume of TPDES compliant water passing through Outfalls 001 and 002 into New Mexico varies dependent upon rainfall amounts. Because the Facility is located in an arid environment with approximately 12 inches of annual rainfall, and because a large portion of the flow infiltrates and evapotransporates, the average discharge during the years 2012, 2013, 2014, 2015 and 2016 through Outfall 002 was approximately 300,000 gallons per year. During the same period, there was zero calculated actual discharge through Outfall 001. A theoretical maximum (calculated for a 100-year storm event as required to be included in the permit application) of 170,500,000 gallons per day (gpd) of stormwater runoff may be discharged via Outfalls 001 and 002. WCS has never observed an actual discharge event approaching the theoretical maximum.

WCS procedure prohibits discharge of wastewater from Outfalls 101 and 103 during storm events, thus those waters do not reach Outfalls 001 and 002. Fluids passing through the Outfalls 001 and 002 is predominately non-contact stormwater runoff from areas of the Waste Management Facility not managing waste, however that stormwater flows on the same route as wastewater originating at Outfalls 101 and 103.

Leachate, leak detection system water, and contact stormwater from the FWDF landfill and the CWDF landfill is collected and pumped into storage tanks. These waters are then treated to meet standards identified in Texas Land Application Permit (TLAP) WQ0004948000 prior to discharge to double lined evaporative impoundments located in Texas equipped with leak detection for

disposal. WCS domestic wastewater is stored in above ground storage tanks prior to analysis and is then transferred offsite to the City of Andrews (Texas) publicly owned treatment works (POTW) for disposal.

Surface water at or near the Facility is characterized by ephemeral drainages, sheet flow, minor gullies, and internally-drained playas. The Facility surface slopes southwest in Texas and New Mexico at about 15 feet per mile.

The geologic formations encountered at or near surface near the Facility comprise, from oldest to youngest and from deepest to shallowest, the Triassic Dockum Group, the undifferentiated Ogallala/Antlers/Gatuna (OAG) alluvium, and recent windblown sands. The Facility is located over a geologic feature referred to as the red bed ridge. The red bed ridge is prominent buried ridge developed on the erosional upper surface of the Triassic Dockum Group trending northwest-southeast beneath the site. The Dockum Group red beds are encountered below the site at depths ranging from 8 to 80 feet, have a significant influence on the overlying alluvial material creating shallow groundwater saturation and groundwater flow direction.

The Dockum Group consists of a series of fluvial and lacustrine mudstone, siltstone, sandstone, and silty dolomite deposits. The Dockum Group is over 1,000 feet thick beneath the Facility. The upper part of the Dockum Group is described in boring logs as red to purple, dry, very firm to consolidated clay or claystone with very low permeability ranging from about 10^{-8} to 10^{-10} cm/s. The erosional upper surface of the Dockum acts as the lower aquitard of the OAG unit.

The shallowest laterally continuous groundwater bearing zone below the Facility is a siltstone/sandstone lens within the Dockum Group at a depth of approximately 225 feet below ground level (bgl). WCS's Hazardous Waste Permit, Number 50358, issued by the TCEQ, considers the 225-foot zone of groundwater to be the uppermost aquifer. WCS's 2013 and 2014 Annual [groundwater] Detection Monitoring Reports to TCEQ associated with the HWF describe the 225-foot zone as having a very low horizontal hydraulic conductivity, ranging from 10^{-8} to 10^{-9} cm/s, an average hydraulic gradient of 0.027 ft/ft, and a general groundwater flow direction of south-southwest.

Perched lenses of shallow groundwater below the Facility are occasionally found at the interface between the Dockum and the OAG units. Because of the relative differences in hydraulic conductivity and porosity of the Dockum claystone and the OAG alluvial material, water infiltrating from the surface is found to accumulate in distinct and separate pockets at this interface. It is this interface that is the focus of the groundwater detection monitoring in this Discharge Permit.

The Waste Management Facility is located in Texas at 9998 West State Highway 176, approximately six miles east of Eunice, New Mexico. The New Mexico portion of the Facility is located in Sections 28 and 33, Township 21 South, Range 38 East, Lea County, New Mexico. Groundwater most likely to be affected is at a depth of between 19 and 35 feet. The application (i.e., discharge plan) consists of the materials submitted by the permittee dated July 17, 2013 and materials contained in the administrative record prior to issuance of this Discharge Permit. The

discharge shall be managed in accordance with all conditions and requirements of this Discharge Permit.

Pursuant to Section 20.6.2.3109 NMAC, NMED reserves the right to require a Discharge Permit Modification in the event NMED determines that the requirements of 20.6.2 NMAC are being violated or the standards of Section 20.6.2.3103 NMAC are being violated. This may include a determination that structural controls and/or management practices approved under this Discharge Permit are not protective of groundwater quality and that more stringent requirements to protect groundwater quality may be required by NMED. The permittee may be required to implement abatement of water pollution and remediate groundwater quality.

Issuance of this Discharge Permit does not relieve the permittee of the responsibility to comply with the WQA, WQCC Regulations, and any other applicable federal, state, and/or local laws, regulations, zoning requirements, and nuisance ordinances.

The following acronyms and abbreviations may be used in this Discharge Permit:

Abbreviation	Explanation
EPA	United States Environmental Protection Agency
gpd	gallons per day
mg/L	milligrams per liter
mL	milliliters
NMAC	New Mexico Administrative Code
NMED	New Mexico Environment Department
NMSA	New Mexico Statutes Annotated

Abbreviation	Explanation
TCEQ	Texas Commission on Environmental Quality
TLAP	Texas Land Application Permit
WQA	New Mexico Water Quality Act
WQCC	Water Quality Control Commission

II. FINDINGS

In issuing this Discharge Permit, NMED finds:

1. The permittee is discharging non-contact storm water and other water authorized by TPDES Permits to be discharged in Texas from Outfalls 001 and 002 so that such water may move directly or indirectly into groundwater in New Mexico within the meaning of Section 20.6.2.3104 NMAC.

2. The permittee is discharging non-contact storm water and other water authorized by TPDES Permits to be discharged in Texas from Outfalls 001 and 002 so that such water may move into groundwater of the State of New Mexico which has an existing

concentration of 10,000 mg/L or less of TDS within the meaning of Subsection A of 20.6.2.3101 NMAC.

3. The discharge from the Waste Management Facility is not subject to any of the exemptions of Section 20.6.2.3105 NMAC.

III. CONDITIONS

Pursuant to 20.6.2.3104 NMAC, it is the responsibility of the permittee to ensure that discharges authorized by this Discharge Permit are consistent with the terms and conditions herein. NMED issues this Discharge Permit for the discharge of water contaminants subject to the following conditions.

A. OPERATIONAL PLAN

#	**Terms and Conditions**
1.	The permittee shall implement the following operational plan to ensure compliance with Title 20, Chapter 6, Parts 1 and 2 NMAC. [Subsection C of 20.6.2.3109 NMAC]
2.	The permittee shall operate in a manner such that standards and requirements of Sections 20.6.2.3101 and 20.6.2.3103 NMAC are not violated. [20.6.2.3101 NMAC, 20.6.2.3103 NMAC, Subsection C of 20.6.2.3109 NMAC]
3.	The permittee is authorized to discharge non-contact storm water and other water authorized by TPDES Permits via monitored Outfalls 001 and 002 in Texas. [20.6.2.3104 NMAC, Subsection C of 20.6.2.3106 NMAC, Subsection C of 20.6.2.3109 NMAC]
4.	The permittee shall maintain 18 to 24-inch berms around the stockpile area to prevent surface water run-on and run-off. The berms shall be inspected on a regular basis, and after any major precipitation event, and be repaired as necessary. [Subsection C of 20.6.2.3109 NMAC]

B. MONITORING, REPORTING, AND OTHER REQUIREMENTS

#	**Terms and Conditions**
5.	The permittee shall conduct the monitoring, reporting, and other requirements listed below. [20.6.2.3107 NMAC]

#	**Terms and Conditions**
6.	METHODOLOGY - Unless otherwise approved in writing by NMED, the permittee shall conduct sampling and analysis in accordance with the applicable and most recent edition of the following documents: a) American Public Health Association, Standard Methods for the Examination of Water and Wastewater (18th , 19th or current); or b) U.S. Environmental Protection Agency, Methods for Chemical Analysis of Water and Waste (SW846); or c) U.S. Geological Survey, Techniques for Water Resources Investigations of the U.S. Geological Survey; or d) American Society for Testing and Materials, Annual Book of ASTM Standards, Part 31.Water; or e) Federal Register, latest methods published for monitoring pursuant to Resources Conservation Recovery Act regulations; or f) U.S. Geological Survey, et al., National Handbook of Recommended Methods for Water Data Acquisition; or g) Methods of Soil Analysis: Part 1. Physical and Mineralogical Methods; Part 2. Microbiological and Biochemical Properties; and Part 3. Chemical Methods, American Society of Agronomy. [20.6.2.3107.B NMAC]
7.	The permittee shall submit semi-annual monitoring reports to NMED by the 1st of February and August each year. A semi-annual monitoring event shall be performed during the following periods: • January 1st through June 30th (first half) – **report due by August 1st**; and • July 1st through December 31st (second half) – **report due by February 1st.** [20.6.2.3107 NMAC]

Groundwater Monitoring Conditions

#	**Terms and Conditions**
8.	The permittee shall perform semi-annual groundwater sampling in the following monitoring wells and shall perform analysis of the sampled groundwater for the contaminants specified in Appendix A: a. NM-1 located in New Mexico hydrologically downgradient and southwest of Outfall 002, if it becomes saturated. b. Existing WCS monitoring well TP-62 located in Texas east-northeast of Outfall 002 and south-southwest of the HWF and the FWDF Evaporation Pond, if it becomes saturated. TP-62 shall be sampled and the results reported to NMED but it is not subject to standards set forth in 20.6.2.3101 NMAC or Subsection WW of 20.6.2.7 NMAC.

#	Terms and Conditions
	A table listing the monitoring wells is set forth at Appendix B and a map depicting the general location of the monitoring wells is set forth at Appendix C. Groundwater sample collection, preservation, transport, and analysis shall be performed according to the following procedures: a) Measure the depth-to-most-shallow groundwater from the top of the well casing to the nearest hundredth of a foot. Well sampling must be conducted whenever it is determined that: (1) water is groundwater and (2) a saturated condition exists. The method for water sampling is intended to assure that well samples are taken from groundwater in the formation and not from condensation in the well. b) For the collection of representative groundwater samples, the permittee shall allow for parameter stabilization during the purging process prior to sample collection. The permittee shall monitor water quality parameters (conductivity, pH, and temperature) according to ASTM D 4448-01 Standard Guide for Sampling Ground-Water Monitoring Wells (2007). Prior to sampling, wells must be pumped down to the point at which the conductivity equilibrates. Samples must then be acquired from the well by a pump or lowering and filling a sample bailer with well water and then transferring the water to a sample container. All parameter readings must be recorded during purging and collected at regular intervals. Stabilization is achieved when at least three consecutive readings are taken at three to five minute intervals and are within tolerances stated in ASTM D 4448-01. When sufficient recharge of water exists, wells will be purged before a sample is collected. If documented insufficient recharge of water exists or other factors make purging and/or sampling impractical, the conditions and reasons must be documented in the semi-annual report. For well-specific conditions (i.e., rate of recharge, water quantity, etc.) where low-flow sampling techniques are appropriate, sampling method ASTM D 6771-02 Standard Practice for Low-Flow Purging and Sampling for Wells and Devices Used for Ground-Water Quality Investigations must be used for sampling methodologies. Parameter readings will be recorded as specified in ASTM 06771-02 for determining stabilization. c) Properly prepare, preserve, and transport samples. d) Analyze samples in accordance with the methods authorized in Condtion 6 in this Discharge Permit or as required in the permittee's Radiological Materials License, R04100. The following groundwater monitoring information shall be submitted to NMED in the semi-annual monitoring reports: • Depth-to-most-shallow groundwater measurements • analytical results, including the laboratory QA/QC summary report If a well designated within this permit does not contain sufficient groundwater to sample, the permittee will document this in the semi-annual monitoring report.

#	**Terms and Conditions**
	After analytical results for two consecutive sampling events have been submitted to NMED, the permittee may propose to revise the list of contaminants required to be analyzed pursuant to Appendix A. [Subsection A of 20.6.2.3107 NMAC]
9.	NMED shall have the option to perform downhole inspections of all New Mexico monitoring wells identified in this Discharge Permit. NMED shall establish the inspection date and provide at least 60 days' notice to the permittee by certified mail. The permittee shall have any existing dedicated pumps removed at least 48 hours prior to NMED inspection to allow adequate settling time of sediment agitated from pump removal. Should a permittee not have existing dedicated pumps, but decide to install pumps in any of the monitoring wells, NMED shall be notified at least 90 days prior to pump installation so that a downhole well inspection(s) can be scheduled prior to pump placement. [20.6.2.3107 NMAC]

Submission of Data Conditions

#	**Terms and Conditions**
10.	The permittee shall submit a copy of reports submitted to TCEQ for monitoring of effluent characteristics at Outfall 101 in accordance with TPDES Permit No. WQ0004038000. Each report shall be submitted to NMED in the next semi-annual monitoring report following submission of the report to TCEQ. [Subsection A of 20.6.2.3107 NMAC, Subsections C and H of 20.6.2.3109 NMAC]
11.	The permittee shall submit a copy of the report submitted to TCEQ for monitoring of effluent characteristics at Outfall 001 if a discharge is observed as required by Other Requirement No. 13 in accordance with TPDES Permit No. WQ0004038000. The report shall be submitted to NMED in the next semi-annual monitoring report following submission of the report to TCEQ. [Subsection A of 20.6.2.3107 NMAC, Subsections C and H of 20.6.2.3109 NMAC]
12.	The permittee shall submit copies of the Quarterly OAG Water Level Report submitted to TCEQ pursuant to its Radioactive Materials License No. 004100. The reports shall be submitted to NMED in the next semi-annual monitoring report following submission of the report to TCEQ.

#	**Terms and Conditions**
	[Subsection A of 20.6.2.3107 NMAC]
13.	The permittee shall submit a copy of the Annual Detection Monitoring Report required pursuant to its RCRA Hazardous Waste Permit No. 50358. The report shall be submitted to NMED in the next semi-annual monitoring report following submission of the report to TCEQ. [Subsection A of 20.6.2.3107 NMAC]
14.	Permittee shall submit a copy of groundwater data for monitoring well TP-31 contained in the Radiological Environmental Monitoring Program submitted annually to TCEQ. The data shall be submitted to NMED in the next semi-annual report following submission of the data to TCEQ.

C. CONTINGENCY PLAN

#	**Terms and Conditions**
15.	In the event that sample results from NM-1 indicate that groundwater in NM-1 exceeds a groundwater quality standard set forth at 20.6.2.3103 NMAC or WW 20.6.2.7 NMAC for any constituent identified in Appendix A, the permittee shall enact the following contingency plan: Within 24 hours following discovery of the possible exceedance of a groundwater standard enumerated above for a constituent listed in Appendix A, the permittee shall verbally notify NMED providing the date the sample was collected, the specific chemical constituent(s) that exceeded the standards, and the measured constituent concentrations. Within 30 days after identifying the exceedance, the permittee shall collect a confirmation sample from the subject groundwater monitoring well to confirm the initial sampling results for the specific constituents that exceeded the standards. Should there be insufficient groundwater in the subject well to collect a confirmation sample, the permittee shall on a weekly basis reevaluate the well for the presence of sufficient water and shall collect a confirmation sample at the earliest possible time. Within 30 days after collecting the confirmation sample, the permittee shall report the results of the analysis of the confirmation sample to NMED. If the confirmation sample confirms the initial sampling results for the specific constituents that exceeded the standards, then the permittee shall submit a workplan within 120 days for NMED's approval proposing to provide historical data from other

#	**Terms and Conditions**
	sources and/or sample a sufficient number of existing and saturated wells located in the OAG over a sufficient amount of time in order to establish existing conditions for the constituents listed on Appendix A that have been confirmed to exceed the standards specified above. After NMED's approval of the workplan and the results of the workplan, which establish the existing conditions for the constituents listed on Appendix A that exceeded the standards specified above, if the results from NM-1 exceed existing conditions, the permittee shall submit a second workplan within 120 days from the date of the determination of the exceedance for NMED's approval addressing the following: a. Construction of a groundwater monitoring well into the uppermost aquifer, i.e., the 225-foot zone, proximal to NM-1. b. Groundwater sampling for those constituents for which the results from NM-1 exceeded existing conditions. c. If the sample results from the 225-foot zone indicate an exceedance above the established existing conditions for NM-1, then permittee will submit a proposal to provide historical data from other sources and/or sample a sufficient number of existing and saturated wells located in the 225-zone over a sufficient amount of time in order to establish existing conditions in the 225-zone for those constituents or propose other actions (including additional ground water sampling) to investigate and control the source. d. Associated completion schedules. Once invoked (whether during the term of this Discharge Permit or after the term of this Discharge Permit and prior to the completion of the Discharge Permit closure plan requirements), this condition shall apply until the permittee has fulfilled the requirements of this condition and groundwater monitoring in the deeper zone confirms for a minimum of two years of consecutive groundwater sampling events that the standards of Section 20.6.2.3103 NMAC or existing conditions determined as set forth above are not exceeded. The permittee may be required to abate water pollution pursuant to Sections 20.6.2.4000 through 20.6.2.4115 NMAC, in the 225-foot zone, should the corrective action plan not result in compliance with the standards of Section 20.6.2.3103 NMAC or existing conditions determined as set forth above. [Subsection A of 20.6.2.3107 NMAC, Subsection E of 20.6.2.3109 NMAC]
16.	In the event that information available to NMED indicates that a well(s) in New Mexico is not constructed in a manner consistent with NMED approved well completion specifications or the guidance titled *Ground Water Discharge Permit Monitoring Well Construction and Abandonment Conditions,* Revision 1.1, March 2011; or is not completed in a manner that is protective of groundwater quality, the permittee may be required to install a replacement well(s) in New Mexico or propose an existing WCS monitoring well within 120 days following notification from NMED. The permittee shall

#	**Terms and Conditions**
	survey the replacement monitoring well(s) within 150 days following notification from NMED. New and existing replacement well location(s) shall be approved by NMED prior to installation or use. New replacement wells in New Mexico shall be completed in accordance with NMED approved well completion specifications or the guidance titled *Ground Water Discharge Permit Monitoring Well Construction and Abandonment Conditions,* Revision 1.1, March 2011. The permittee shall submit construction and lithologic logs, survey data and (if possible, using accepted hydrogeologic principles,) a groundwater elevation contour map to NMED within 60 days following replacement well completion or NMED approval of the use of existing replacement monitoring well(s). Upon completion/approval of the replacement monitoring well(s), New Mexico monitoring well(s) requiring replacement shall be properly plugged and abandoned. Well plugging, abandonment, and documentation of the abandonment procedures shall be completed pursuant to 19.27.4 NMAC as required by the New Mexico Office of the State Engineer or the guidance titled *Ground Water Discharge Permit Monitoring Well Construction and Abandonment Conditions,* Revision 1.1, March 2011, and all applicable local, state, and federal regulations. The well abandonment documentation shall be submitted to NMED within 60 days of completion of well plugging activities. [Subsection A of 20.6.2.3107 NMAC]
17.	In the event that groundwater flow information obtained pursuant to this Discharge Permit indicates that a monitoring well(s) is not located in the groundwater horizon it is intended to monitor, the permittee shall install a replacement well(s) in New Mexico or propose use of an existing WCS monitoring well within 120 days following notification from NMED. The permittee shall survey the replacement monitoring well(s) within 150 days following notification from NMED. Replacement well location(s) shall be approved by NMED prior to installation or use and, if installed in New Mexico, completed in accordance with the guidance titled *Ground Water Discharge Permit Monitoring Well Construction and Abandonment Conditions*, Revision 1.1, March 2011. Within 30 days following well completion, the permittee shall submit construction and lithologic logs, survey data and (if possible, using accepted hydrogeologic principles,) a groundwater elevation contour map. Upon completion/approval of the replacement monitoring well(s), New Mexico monitoring well(s) requiring replacement shall be properly plugged and abandoned. Well plugging, abandonment, and documentation of the abandonment procedures for wells located in New Mexico shall be completed pursuant to 19.27.4 NMAC as required by the New Mexico Office of the State Engineer or the guidance titled *Ground Water Discharge Permit Monitoring Well Construction and Abandonment Conditions,* Revision 1.1, March 2011, and all applicable local, state, and federal regulations. The

#	**Terms and Conditions**
	well abandonment documentation shall be submitted to NMED within 60 days of completion of well plugging activities. [Subsection A of 20.6.2.3107 NMAC]
18.	In the event that a discharge occurs into New Mexico that is not authorized under this Discharge Permit, the permittee shall take measures to mitigate damage from the unauthorized discharge and initiate the notifications and corrective actions required in Section 20.6.2.1203 NMAC and summarized below. Within 24 hours following discovery of the unauthorized discharge into New Mexico, the permittee shall verbally notify NMED and provide the following information: a) The name, address, and telephone number of the person or persons in charge of the Waste Management Facility, as well as of the owner and/or operator of the Waste Management Facility. b) The name and address of the Waste Management Facility. c) The date, time, location, and duration of the unauthorized discharge. d) The source and cause of unauthorized discharge. e) A description of the unauthorized discharge, including its estimated chemical composition. f) The estimated volume of the unauthorized discharge. g) Any actions taken to mitigate immediate damage from the unauthorized discharge. Within one week following verification of the unauthorized discharge into New Mexico, the permittee shall submit written notification to NMED with the information listed above and any pertinent updates. Within 15 days following discovery of the unauthorized discharge into New Mexico, the permittee shall submit a corrective action report/plan to NMED describing any corrective actions taken and/or to be taken relative to the unauthorized discharge into New Mexico that includes the following: a) A description of proposed actions to mitigate damage from the unauthorized discharge into New Mexico. b) A description of proposed actions to prevent future unauthorized discharges of this nature into New Mexico. c) A schedule for completion of proposed actions. In the event that the unauthorized discharge into New Mexico causes or may with reasonable probability cause water pollution in excess of the standards and requirements of Section 20.6.2.4103 NMAC, and the water pollution will not be abated within 180 days after notice is required to be given pursuant to Paragraph (1) of Subsection A of 20.6.2.1203 NMAC, the permittee may be required to abate water pollution pursuant to Sections 20.6.2.4000 through 20.6.2.4115 NMAC.

#	Terms and Conditions
	Nothing in this condition shall be construed as relieving the permittee of the obligation to comply with all requirements of Section 20.6.2.1203 NMAC. [20.6.2.1203 NMAC]
19.	In the event that NMED or the permittee identifies any failures of the discharge plan or this Discharge Permit not specifically noted herein, NMED may require the permittee to submit a corrective action plan and a schedule for completion of corrective actions to address the failure(s). Additionally, NMED may require a Discharge Permit modification to achieve compliance with 20.6.2 NMAC. [Subsection A of 20.6.2.3107 NMAC, Subsection E of 20.6.2.3109 NMAC]

D. CLOSURE PLAN

#	Terms and Conditions
20.	Closure of the Waste Management Facility will be accomplished under Closure Plans and Post-Closure Monitoring Plans approved and administered by the TCEQ. Upon receipt of notification from TCEQ that closure has been completed in compliance with these plans and the Post-Closure Monitoring Plan has been implemented, WCS shall: a) Provide documentation to NMED of satisfaction of TCEQ closure plan obligations. b) Submit proof to NMED that all closure activities set forth under 40 CFR Part 503 have been completed. c) Following completion of the Closure Monitoring Plans approved and administered by the TCEQ, continue groundwater monitoring as required by this Discharge Permit for a minimum of two years of consecutive groundwater sampling events to confirm the absence of groundwater contamination. If monitoring results show that the groundwater standards in Section 20.6.2.3103 NMAC are being violated for the constituents listed on Appendix A, the permittee shall implement the contingency plan required by this Discharge Permit. If an existing pH or concentration of any water contaminant listed on Appendix A can be demonstrated as set forth in paragraph 15, above, to exceed the standard specified in Subsection A, B, or C of 20.6.2.3103 NMAC, the existing pH or concentration shall be the allowable limit. d) Following notification from NMED that post-closure monitoring may cease, the permittee shall plug and abandon the monitoring well(s) located in New Mexico pursuant to 19.27.4 NMAC as required by the New Mexico Office of the State Engineer or the guidance titled *Ground Water Discharge Permit Monitoring Well Construction and Abandonment Conditions*, Revision 1.1, March 2011. When all closure and post-closure requirements have been met, the permittee may submit a written request for termination of the Discharge Permit to NMED. [Subsection A of 20.6.2.3107 NMAC, 20.6.2.3109 NMAC, 40 CFR Part 503]

E. GENERAL TERMS AND CONDITIONS

#	Terms and Conditions
21.	RECORD KEEPING - The permittee shall maintain a written record of: a) Information and data used to complete the application for this Discharge Permit. b) Records of any releases not authorized under this Discharge Permit and reports submitted pursuant to 20.6.2.1203 NMAC. c) Copies of monitoring reports completed and/or submitted to NMED pursuant to this Discharge Permit. d) Groundwater quality and wastewater quality data collected pursuant to this Discharge Permit. e) Copies of construction records (well logs) for all groundwater monitoring wells required to be sampled pursuant to this Discharge Permit. f) Records of the maintenance, repair, replacement, or calibration of any monitoring equipment or flow measurement devices required by this Discharge Permit. g) Data and information related to field measurements, sampling, and analysis conducted pursuant to this Discharge Permit. The following information shall be recorded and shall be made available to NMED upon request: i. The dates, location, and times of sampling or field measurements; ii. The name and job title of the individuals who performed each sample collection or field measurement; iii. The sample analysis date of each sample; iv. The name and address of the laboratory, and the name of the signatory authority for the laboratory analysis; v. The analytical technique or method used to analyze each sample or collect each field measurement; vi. The results of each analysis or field measurement, including raw data; vii. The results of any split, spiked, duplicate, or repeat sample; and viii. A copy of the laboratory analysis chain-of-custody as well as a description of the quality assurance and quality control procedures used. The written record shall be maintained by the permittee at a location accessible during an inspection by NMED for a period of at least five years from the date of application, report, collection, or measurement and shall be made available to the department upon request. [Subsections A and D of 20.6.2.3107 NMAC]
22.	INSPECTION and ENTRY – The permittee shall allow inspection by NMED of the Facility and its operations which are subject to this Discharge Permit and the WQCC regulations. NMED may, upon presentation of proper credentials, enter at reasonable times upon or through any premises in which a water contaminant source is located or in which are located any records required to be maintained by regulations of the federal government or the WQCC.

#	**Terms and Conditions**
	The permittee shall allow NMED to have access to and reproduce for their use any copy of the records and to perform assessments, sampling, or monitoring during an inspection for the purpose of evaluating compliance with this Discharge Permit and the WQCC regulations. Nothing in this Discharge Permit shall be construed as limiting in any way the inspection and entry authority of NMED under the WQA, the WQCC Regulations, or any other local, state or federal regulations. [Subsection D of 20.6.2.3107 NMAC, NMSA 1978, §§ 74-6-9.B and 74-6-9.E]
23.	DUTY to PROVIDE INFORMATION - The permittee shall, upon NMED's request, allow for NMED's inspection/duplication of records required by this Discharge Permit and/or furnish to NMED copies of such records. [Subsection D of 20.6.2.3107 NMAC]
24.	MODIFICATIONS and/or AMENDMENTS – In the event the permittee proposes a change to the Waste Management Facility or the Waste Management Facility's discharge that would result in a change in the volume discharged into New Mexico; the location of the discharge into New Mexico; or in the amount or character of water contaminants received, treated, or discharged by the Waste Management Facility into New Mexico, the permittee shall notify NMED prior to implementing such changes. The permittee shall obtain approval (which may require modification of this Discharge Permit) by NMED prior to implementing such changes. [Subsection C of 20.6.2.3107 NMAC, Subsections E and G of 20.6.2.3109 NMAC]
25.	CIVIL PENALTIES - Any violation of the requirements and conditions of this Discharge Permit, including any failure to allow NMED staff to enter and inspect records or the Facility or any refusal or failure to provide NMED with records or information, may subject the permittee to a civil enforcement action. Pursuant to WQA 74-6-10(A) and (B), such action may include a compliance order requiring compliance immediately or in a specified time, assessing a civil penalty, modifying or terminating the Discharge Permit, or any combination of the foregoing; or an action in district court seeking injunctive relief, civil penalties, or both. Pursuant to WQA 74-6-10(C) and 74-6-10.1, civil penalties of up to $15,000 per day of noncompliance may be assessed for each violation of the WQA 74-6-5, the WQCC Regulations, or this Discharge Permit, and civil penalties of up to $10,000 per day of noncompliance may be assessed for each violation of any other provision of the WQA, or any regulation, standard, or order adopted pursuant to such other provision. In any action to enforce this Discharge Permit, the permittee waives any objection to the admissibility as evidence of any data generated pursuant to this Discharge Permit. [20.6.2.1220 NMAC, NMSA 1978, §§ 74-6-10 and 74-6-10.1]
26.	CRIMINAL PENALTIES – No person shall:

#	**Terms and Conditions**
	1. make any false material statement, representation, certification, or omission of material fact in an application, record, report, plan, or other document filed, submitted, or required to be maintained under the WQA; 2. falsify, tamper with, or render inaccurate any monitoring device, method, or record required to be maintained under the WQA; or 3. fail to monitor, sample or report as required by a permit issued pursuant to a state or federal law or regulation. Any person who knowingly violates or knowingly causes or allows another person to violate the requirements of this condition is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of NMSA 1978, § 31-18-15. Any person who is convicted of a second or subsequent violation of the requirements of this condition is guilty of a third degree felony and shall be sentenced in accordance with the provisions of NMSA 1978, § 31-18-15. Any person who knowingly violates the requirements of this condition or knowingly causes another person to violate the requirements of this condition and thereby causes a substantial adverse environmental impact is guilty of a third degree felony and shall be sentenced in accordance with the provisions of NMSA 1978, § 31-18-15. Any person who knowingly violates the requirements of this condition and knows at the time of the violation that he is creating a substantial danger of death or serious bodily injury to any other person is guilty of a second degree felony and shall be sentenced in accordance with the provisions of NMSA 1978, § 31-18-15. [20.6.2.1220 NMAC, NMSA 1978, §§ 74-6-10.2.A through 74-6-10.2.F]
27.	COMPLIANCE with OTHER LAWS - Nothing in this Discharge Permit shall be construed in any way as relieving the permittee of the obligation to comply with all applicable federal, state, and local laws, regulations, permits or orders. [NMSA 1978, § 74-6-5.L]
28.	RIGHT to APPEAL - The permittee may file a petition for review before the WQCC on this Discharge Permit. Such petition shall be in writing to the WQCC within thirty days of the receipt of postal notice of this Discharge Permit and shall include a statement of the issues to be raised and the relief sought. Unless a timely petition for review is made, the decision of NMED shall be final and not subject to judicial review. [20.6.2.3112 NMAC, NMSA 1978, § 74-6-5.O]
29.	TRANSFER of DISCHARGE PERMIT - Prior to the transfer of any ownership, control, or possession of the Waste Management Facility or any portion thereof, the permittee shall: 1) notify the proposed transferee in writing of the existence of this Discharge Permit; 2) include a copy of this Discharge Permit with the notice; and 3) deliver or send by certified mail to NMED a copy of the notification and proof that such notification has been received by the proposed transferee.

#	**Terms and Conditions**
	Until both ownership and possession of the Waste Management Facility have been transferred to the transferee, the permittee shall continue to be responsible for any discharge from the Waste Management Facility. [20.6.2.3111 NMAC]
30.	PERMIT FEES - Payment of permit fees is due at the time of Discharge Permit approval. Permit fees shall be paid in a single payment or shall be paid in equal installments on a yearly basis over the term of the Discharge Permit. Single payments shall be remitted to NMED no later than 30 days after the Discharge Permit effective date. Initial installment payments shall be remitted to NMED no later than 30 days after the Discharge Permit effective date; subsequent installment payments shall be remitted to NMED no later than the anniversary of the Discharge Permit effective date. Permit fees are associated with issuance of this Discharge Permit. Nothing in this Discharge Permit shall be construed as relieving the permittee of the obligation to pay all permit fees assessed by NMED. A permittee that ceases discharging or does not commence discharging from the Waste Management Facility during the term of the Discharge Permit shall pay all permit fees assessed by NMED. An approved Discharge Permit shall be suspended or terminated if the permittee fails to remit an installment payment by its due date. [Subsection F of 20.6.2.3114 NMAC, NMSA 1978, § 74-6-5.K]

PERMIT TERM & SIGNATURE

EFFECTIVE DATE: December 31, 2018
TERM ENDS: December 31, 2023

[Subsection H of 20.6.2.3109 NMAC, NMSA 1978, § 74-6-5.I]

MICHELLE HUNTER
Chief, Ground Water Quality Bureau
New Mexico Environment Department

Appendix A – Table of Analytes

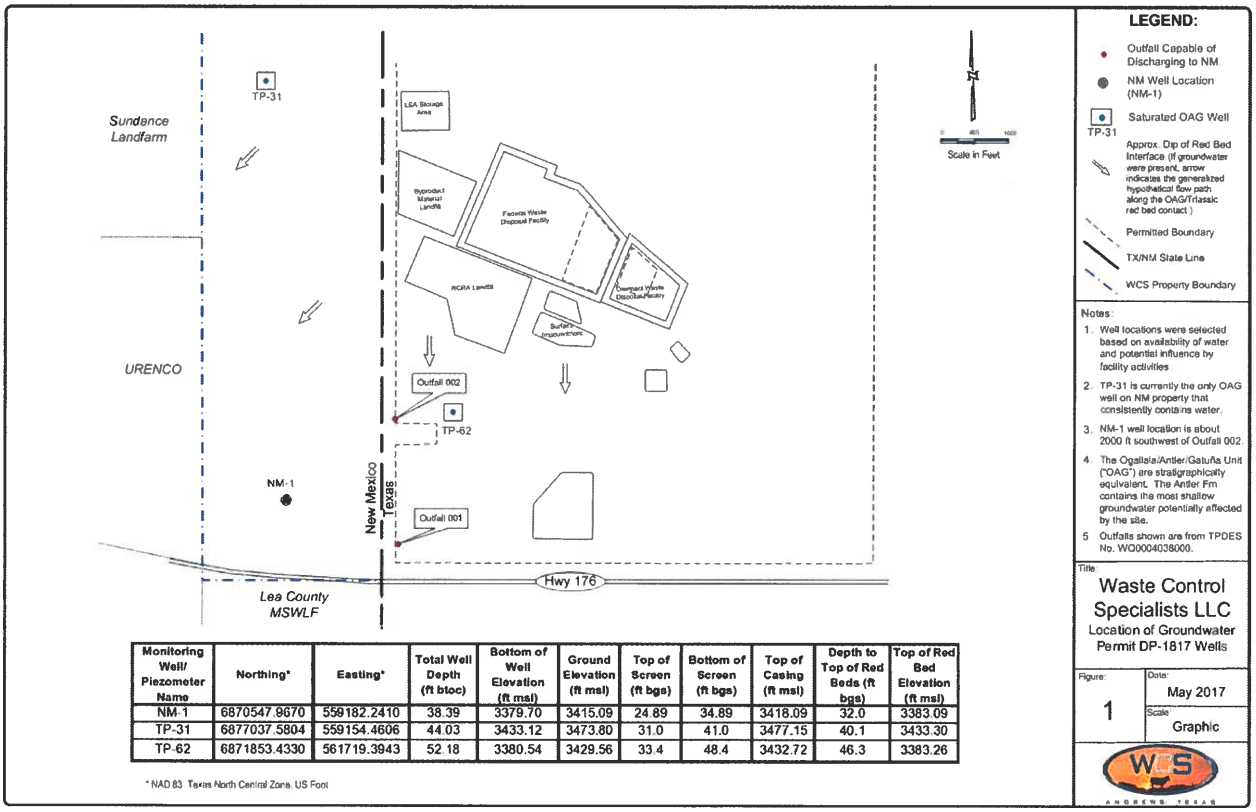
Constituent
Acetone
Benzene
Bromoform (Tribromomethane)
Carbon disulfide
Carbon tetrachloride
Chlorobenzene
Cyanide
Chlorodibromomethane (Dibromochloromethane)
Chloroethane (Ethyl chloride)
Chloroform
1,1-Dichloroethane
1,2-Dichloroethane
Cis-1,3-Dichloropropylene (1,3-Dichloropropene)
Trans-1,3-Dichloropropylene (1,3-Dichloropropene)
1,4-Dioxane
Ethylbenzene
Methyl bromide (Bromomethane)
Methyl chloride (Chloromethane)
Phenol
1,1,2,2-Tetrachloroethane
Tetrachloroethene
Toluene
1,2-trans-Dichloroethylene (trans-1,2-Dichloroethene)
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethylene
Vinyl chloride
Aluminum*
Antimony*
Arsenic*
Barium*
Cadmium*
Chloride
Chromium*
Copper*
Iron*
Lead*
Nickel*
Nitrate-N
Silver*
Selenium*
Sulphate
Uranium*
Vanadium*
Zinc*
Radioactivity (Ra-226 + Ra-228)
pH
TPH

*Samples shall be analyzed for the dissolved portion of the contaminant specified.

Appendix B - Table of Monitoring Wells

Well Identifier	Obligation	Associated Groundwater Zone	Well purpose	Monitored for water level	Contaminant Type	Location
NM-1	sample and report	OAG	monitor downgradient of Outfall 002	yes	Appendix A	NM
TP-62	sample and report	OAG	monitor upgradient of Outfall 002	yes	Appendix A	TX

Appendix C – WCS Facility Map



Monitoring Well/ Piezometer Name	Northing*	Easting*	Total Well Depth (ft btoc)	Bottom of Well Elevation (ft msl)	Ground Elevation (ft msl)	Top of Screen (ft bgs)	Bottom of Screen (ft bgs)	Top of Casing (ft msl)	Depth to Top of Red Beds (ft bgs)	Top of Red Bed Elevation (ft msl)
NM-1	6870547.9670	559182.2410	38.39	3379.70	3415.09	24.89	34.89	3418.09	32.0	3383.09
TP-31	6877037.5804	559154.4606	44.03	3433.12	3473.80	31.0	41.0	3477.15	40.1	3433.30
TP-62	6871853.4330	561719.3943	52.18	3380.54	3429.56	33.4	48.4	3432.72	46.3	3383.26

* NAD 83 Texas North Central Zone, US Foot