

No. _____

**In the United States Court of Appeals
for the Fifth Circuit**

FASKEN LAND AND MINERALS, LTD.; and
PERMIAN BASIN LAND AND ROYALTY OWNERS,

Petitioners,

versus

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

Respondents.

PETITION FOR REVIEW

Pursuant to 42 U.S.C. §§ 2239(b), 10139(a)(1)(D) and (a)(2), and Rule 15(a) of the Federal Rules of Appellate Procedure, Fasken Land and Minerals, Ltd. (“Fasken”) and Permian Basin Land and Royalty Owners (“PBLRO”) (collectively Petitioners), hereby petition the Court for review of the following order entered by the United States Nuclear Regulatory Commission (“NRC”) in Docket No. 72-1051 on May 9, 2023: Holtec International HI-STORE Consolidated Interim Storage Facility (“CISF”); Issuance of Materials License and Record of Decision, 88 Fed. Reg. 30,801 (May 12, 2023) (issuing Materials License No. SNM-2516). In accordance with Fifth Circuit Rule 15.1(b), copies of the license materials in Docket

No. 72-1051 and of the Federal Register notice of the issuance of the license, record of decision, and related materials are attached hereto as Exhibits A through O.

This Court has jurisdiction, including but not limited to, jurisdiction to review the agency's actions under 5 U.S.C. § 702 and jurisdiction to review the order and record of decision pursuant to 28 U.S.C. § 2342(4). Venue is appropriate in this Court because Petitioners reside in and have their principal offices in this judicial circuit. 28 U.S.C. § 2343.

Petitioners pray that, upon review, the Court will hold unlawful and set aside the order issuing Materials License No. SNM-2516 and record of decision, vacate the license, and find the NRC's actions to be arbitrary, capricious, an abuse of discretion and otherwise not in accordance with the law in violation of the Administrative Procedures Act, 5 U.S.C. § 706(2).

Dated: July 7, 2023

Respectfully submitted,

KANNER & WHITELEY, LLC

/s/ Allan Kanner

Allan Kanner, Esq.

Annemieke M. Tennis, Esq.

701 Camp Street

New Orleans, LA. 70130

a.kanner@kanner-law.com

a.tennis@kanner-law.com

(504) 524-5777

*Counsel for Fasken Land and
Minerals, Ltd. and Permian Basin
Land and Royalty Owners*

CERTIFICATE OF SERVICE

I, Allan Kanner, hereby certify that I caused a true and correct copy of Petitioners' Petition for Review to be served this 7th day of July, 2023, by U.S. mail or email on the parties listed below. This certificate is intended to serve as compliance with Fed. R. App. P. 15(c)(1) and (2), and with 28 U.S.C. § 2344.

Krishna P. Singh
President and CEO
Holtec International
Krishna P. Singh Technology Campus
1 Holtec Blvd.
Cambden, NJ 08104

Marian Zobler, General Counsel
Andrew Averbach, Solicitor
United States Nuclear Regulatory Commission
Office of General Counsel
OWFN Mail Stop 14A44
11555 Rockville Pike
Rockville, MD 20852
Marian.zobler@nrc.gov
Andrew.averbach@nrc.gov

Hon. Annette Vietti-Cook, Secretary
United States Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852-2738
Annette.vietti-cook@nrc.gov

Merrick Garland, Attorney General
United States Department of Justice
Environment and Natural Resources Division
950 Pennsylvania Avenue N.W.
Washington, D.C. 20530-001

Dated: July 7, 2023

/s/Allan Kanner
Allan Kanner

*Counsel for Fasken Land and
Minerals, Ltd. and Permian Basin
Land and Royalty Owners*

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

July 11, 2023

Mr. Merrick Garland, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Ms. Kristine L. Svinicki
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852-2738

No. 23-60377 Fasken Land and Minerals v. NRC
Agency No. 72-1051

Dear Mr. Garland and Ms. Svinicki,

You are served with the following document(s) under Fed. R. App. P. 15:

Petition for Review.

Special Guidance for Filing the Administrative Record: Pursuant to 5th Cir. R. 25.2, Electronic Case Filing (ECF) is mandatory for all counsel. Agencies responsible for filing the administrative record with this court are requested to electronically file the record via CM/ECF using one or more of the following events as appropriate:

Electronic Administrative Record Filed;
Supplemental Electronic Administrative Record Filed;
Sealed Electronic Administrative Record Filed; or
Sealed Supplemental Electronic Administrative Record Filed.

Electronic records must meet the requirements listed below. Records that do not comply with these requirements will be rejected.

- Max file size 20 megabytes per upload.
- Where multiple uploads are needed, describe subsequent files as "Volume 2", "Volume 3", etc.
- Individual documents should remain intact within the same file/upload, when possible.

- Supplemental records must contain the supplemental documents only. No documents contained within the original record should be duplicated.

Electronic records are automatically paginated for the benefit of counsel and the court and provide an accurate means of citing to the record in briefs. A copy of the paginated electronic record is provided to all counsel at the time of filing via a Notice of Docket Activity (NDA). Upon receipt, counsel should save a copy of the paginated record to their local computer.

Agencies unable to provide the administrative record via docketing in CM/ECF may instead provide a copy of the record on a flash drive or CD which we will use to upload and paginate the record.

If the agency intends to file a certified list in lieu of the administrative record, it is required to be filed electronically. Paper filings will not be accepted. See Fed. R. App. P. 16 and 17 as to the composition and time for the filing of the record.

ATTENTION ATTORNEYS: Attorneys are required to be a member of the Fifth Circuit Bar and to register for Electronic Case Filing. The "Application and Oath for Admission" form can be printed or downloaded from the Fifth Circuit's website, www.ca5.uscourts.gov. Information on Electronic Case Filing is available at www.ca5.uscourts.gov/cmecf/.

We recommend that you visit the Fifth Circuit's website, www.ca5.uscourts.gov and review material that will assist you during the appeal process. We especially call to your attention the Practitioner's Guide and the 5th Circuit Appeal Flow Chart, located in the Forms, Fees, and Guides tab.

Counsel who desire to appear in this case must electronically file a "Form for Appearance of Counsel" within 14 days from this date. You must name each party you represent, see Fed. R. App. P. and 5th Cir. R. 12. The form is available from the Fifth Circuit's website, www.ca5.uscourts.gov. If you fail to electronically file the form, we will remove your name from our docket.

Special guidance regarding filing certain documents:

General Order No. 2021-1, dated January 15, 2021, requires parties to file in paper highly sensitive documents (HSD) that would ordinarily be filed under seal in CM/ECF. This includes documents likely to be of interest to the intelligence service of a foreign government and whose use or disclosure by a hostile foreign government would likely cause significant harm to the United States or its interests. Before uploading any matter as a sealed filing, ensure it has not been designated as HSD by a district court and does not qualify as HSD under General Order No. 2021-1.

A party seeking to designate a document as highly sensitive in the first instance or to change its designation as HSD must do so by motion. Parties are required to contact the Clerk's office for guidance before filing such motions.

Sealing Documents on Appeal: Our court has a strong presumption of public access to our court's records, and the court scrutinizes

any request by a party to seal pleadings, record excerpts, or other documents on our court docket. Counsel moving to seal matters must explain in particularity the necessity for sealing in our court. Counsel do not satisfy this burden by simply stating that the originating court sealed the matter, as the circumstances that justified sealing in the originating court may have changed or may not apply in an appellate proceeding. It is the obligation of counsel to justify a request to file under seal, just as it is their obligation to notify the court whenever sealing is no longer necessary. An unopposed motion to seal does not obviate a counsel's obligation to justify the motion to seal.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in black ink, appearing to read "W. M. Jett", written over a horizontal line.

By: _____
Whitney M. Jett, Deputy Clerk
504-310-7772

Enclosure(s)

cc w/encl:

Mr. Andrew Paul Averbach
Mr. Allan L. Kanner
Ms. Annemieke Monique Tennis

P.S. to Respondents: The Petition for Review includes over 1,300 pages of Exhibits/Attachments; therefore, the Court will only include the petition as part of this mailing. The Exhibits/Attachments are available for viewing on the public docket available via [Pacer.gov](https://pacer.gov).

Provided below is the court's official caption. Please review the parties listed and advise the court immediately of any discrepancies. If you are required to file an appearance form, a complete list of the parties should be listed on the form exactly as they are listed on the caption.

Case No. 23-60377

Fasken Land and Minerals, Limited; Permian Basin Land and
Royalty Owners,

Petitioners

v.

Nuclear Regulatory Commission; United States of America,

Respondents