

FOR IMMEDIATE RELEASE:

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AG Balderas and Environment Secretary Kenney Ask U.S. Court of Appeals to Review Nuclear Regulatory Commission Decision

Santa Fe, NM—Yesterday, New Mexico Attorney General Hector Balderas and Environment Secretary James Kenney asked the U.S. Court of Appeals for the Tenth Circuit to review the decision of the Nuclear Regulatory Commission (NRC) to grant a license to build a “Consolidated Interim Storage Facility” (CISF) in Andrews County, Texas. The facility, known as the Waste Control Specialists (WCS) CISF, would be located just a quarter of a mile from the New Mexico Border, 5 miles east of Eunice, New Mexico, and 45 miles east of the proposed Holtec CISF for which a license is also pending before the NRC. New Mexico previously filed a separate lawsuit challenging aspects of that licensing procedure. Yesterday’s filing in the 10th Circuit is a part of New Mexico’s multi-pronged challenge to NRC’s approval of both these high level nuclear waste storage facilities.

Although the CISFs are labeled “interim” facilities, the WCS license is for a period of 40 years, and given the ongoing failure of NRC to license a permanent repository, the WCS is likely to become a de facto permanent resting place for up to 5,500 tons of spent nuclear fuel from nuclear generators from around the country. The facility itself, and the transportation of the spent nuclear waste to and from the facility, pose an unacceptable risk of accidental release of highly radioactive material and imposes unfunded mandates upon the state for emergency response and remediation. The license was granted despite the protests of both Texas and New Mexico and despite the absence of the requisite conditions for the NRC to take title to the waste, and was based on a flawed and inadequate Environmental Impact Statement.

“The NRC has rammed through this approval of a nuclear waste dump just outside of New Mexico’s border in violation of the clear intent of Congress and without due regard to the risks and expenses it would impose on our State,” said Attorney General Hector Balderas. “I will continue to fight to protect our state’s natural resources.”

“New Mexicans deserve a fully transparent and scientifically-complete environmental review prior to licensing a radioactive waste storage facility in West Texas,” said Cabinet Secretary James Kenney of the New Mexico Environment Department. “It is unconscionable to short-circuit this legal process and impose the associated public

health and environmental risks on our communities. Today, New Mexico stands against the southwest becoming a dumping ground for the nation's radioactive waste.”

A copy of the petition for review is attached.

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**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

STATE OF NEW MEXICO, *ex rel.*
HECTOR H. BALDERAS,
Attorney General and the NEW
MEXICO ENVIRONMENT
DEPARTMENT,

Petitioners,

v.

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

Respondents.

Case No. _____

PETITION FOR REVIEW

Pursuant to 42 U.S.C. §§ 2239(b), 4370m-6, 10139(a)(1)(D) and (a)(2), and Rule 15(a) of the Federal Rules of Appellate Procedure, the State of New Mexico, by and through its Attorney General, Hector Balderas, *ex rel.*, and the New Mexico Environment Department (“NMED”), (collectively the “State” or “New Mexico”), hereby petition the Court for review of the following order and record of decision entered by the U.S. Nuclear Regulatory Commission (“NRC”) in Docket No. 72-1050 on September 13, 2021: *Interim Storage Partners, LLC [“ISP”]* (WCS

[Waste Control Specialists] Consolidated Interim Storage Facility) [*ISP/WCS CISF*]; *Issuance of Materials License and Record of Decision*, 86 Fed. Reg. 51,926 (Sept. 17, 2021) (related to NRC’s issuance of Materials License No. SNM-2515 on Sept. 13, 2021). In accordance with Fed. R. App. P. Rule 15 and Tenth Circuit Rule 15.1, copies of the record of decision and license materials in Docket No. 72-1050 and related Federal Register Notice are attached hereto as Exhibits A-H.

Section 102 of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*, (“NEPA”), requires federal agencies, like the NRC, to prepare “a detailed statement . . . on the environmental impact” of any proposed major federal action that “significantly affect[s] the quality of the human environment.” *See* 42 U.S.C. § 4332(1)(C)(i). The ISP/WCS CISF, located on the border of west Texas and southeast New Mexico, will undeniably and significantly impact surrounding human environments and mandates agency completion of an appropriate environmental impact statement (“EIS”). The NRC has satisfied neither statutory nor regulatory requirements and its record of decision eschews reasonable consideration of environmental impacts of the ISP/WCS

CISF, failing on both the information-gathering and the public participation functions vital to NEPA.

This Court has jurisdiction to review the EIS pursuant to 42 U.S.C. § 10139(a)(1)(D), and jurisdiction to review the order granting the license 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; 42 U.S.C. § 10139(a)(2).

Petitioners pray that, upon review, this Court will find the NRC's conclusions and determinations in the challenged record of decision, and more specifically, the NRC's ISP/WCS CISF final EIS, to be arbitrary and capricious and in violation of NEPA, 42 U.S.C. §§ 4321 *et seq.*, and / or otherwise not in accordance with the law (and thus in direct violation of NEPA) and the Administrative Procedures Act under 5 U.S.C. § 706(2) ("APA"). Petitioners further respectfully request that this Court set aside and vacate the NRC's record of decision and issuance of Materials License No. SNM-2515 until the agency is in accordance with the law and complies with mandatory NEPA requirements, including but not limited to 42 U.S.C. §§ 4332(C), (D), (E), and (G), and conducts a comprehensive

and appropriate evaluation of the environmental impacts of the ISP/WCS CISF on the human environment and on the State of New Mexico.

This petition challenging the actions of the NRC is protective in nature as New Mexico intends to file a petition to modify, suspend and/or revoke the ISP license with the NRC, pursuant to 10 C.F.R. § 2.206, based on the above-referenced NEPA and APA violations. In order to protect New Mexico's right to judicial review against any assertion of defenses relating to untimeliness, or in the event that the NRC is found to lack jurisdiction, is otherwise incapable of administratively resolving, or refuses to adjudicate New Mexico's forthcoming filing under 10 C.F.R. § 2.206, the State files this Petition protectively.

Dated: November 12, 2021

Respectfully submitted by:

HECTOR H. BALDERAS
NEW MEXICO ATTORNEY GENERAL

/s/William G. Grantham

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CERTIFICATE OF SERVICE

I, William G. Grantham, hereby certify that I caused a true and correct copy of Petitioners' Petition for Review to be served this 12th day of November, by U.S. mail on the following parties listed below. This certificate is intended to serve as compliance with FED. R. APP. P. 15(c)(1) and (2), as well as 28 U.S.C. § 2344.

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