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SCOTUS Evades Illegality of Nuclear Waste Dumps; Reinstates Dangerous Storage Scheme with Decades of Massive Radioactive Transport across U.S.

6-3 decision rules that a federal agency can exclude a state and company from impacting decisions that affect them if they don't jump through extensive agency hoops (without the agency's OK)

Court says parties did not participate enough in the NRC licensing process to be allowed to challenge the decision and that parties must "successfully intervene," which requires the agency's approval.

The licenses for supposedly "interim" storage sites for deadly radioactive waste, would affect communities in most of the lower 48 states—triggering transport by rail, barge and massive trucks throughout the U.S. for decades

WASHINGTON (June 18, 2025) - The Supreme Court ruled, in a split decision today, *not to address or decide* on whether the Nuclear Regulatory Commission (NRC) has the authority to license privately owned, Consolidated 'Interim' Storage (CIS) sites. Instead, the Supreme Court ruled that the State of Texas (Texas) and Fasken Land and Minerals, LLC (Fasken) did not "jump through enough hoops" (paraphrasing the dissent pg 16) within the NRC licensing process to be eligible to challenge the licenses.

The dissenting opinion states, **"Without any persuasive argument on the merits, the NRC urges the Court to dismiss Texas's and Fasken's claims on jurisdictional grounds. Ultimately, the Court ... paves the way for the agency to issue its misbegotten license. As the Court sees it, Texas and Fasken cannot challenge the NRC's decision in court because they failed to jump through the right hoops before the agency."** Justice Gorsuch in his dissent added, **"radioactive waste poses risks to the state, its citizens, its lands, air, and waters, and it poses dangers as well to a neighbor and its employees."**

"We are disappointed. As a result of the Supreme Court decision new, allegedly-temporary nuclear waste dumps can proceed that are not designed to store waste forever, but will end up keeping it forever," said Wally Taylor, attorney for Sierra Club who provided oral arguments on behalf of the organizations in the federal DC Circuit.

"The supposedly 'interim' sites would most likely become permanent and unnecessarily trigger decades of dangerous nuclear waste moving through communities and states," said Dave Kraft of the National Radioactive Waste Coalition, and Nuclear Energy Information Service in Chicago.

With the NRC as the gatekeeper, it is questionable whether any party will be able to challenge the NRC on important health and safety issues at any level," said Karen Hadden of Texas Nuclear Watchdogs. **"The proposed plans to consolidate the nation's nuclear reactor waste put the public in danger, both with transportation and at the storage site. Opponents will continue to fight efforts to dump on Texas and New Mexico."**

"The State of Texas does not consent to being the nation's nuclear waste storage site," said former State Representative Lon Burnam. **"In 2021 all but three legislators voted to ban storage of high-level**

radioactive waste in Texas.” Despite clear opposition from the Texas Governor and Legislature, the NRC issued the license to Interim Storage Partners in September 2021.

“If this dangerous waste comes to Texas or New Mexico, it will likely never leave, creating de facto permanent dumps, at sites not designed for long term disposal. The waste must be isolated from living things for a million years, but it may never move to a permanent repository if storage containers corrode or leak,” said Tom “Smitty” Smith, former director of Public Citizen’s Texas Office.

“A single rail car would carry as much plutonium as was in the bomb dropped on Nagasaki. Shipments would continue for 40 years or more. Waste that remains deadly for millennia would move from nuclear reactor sites across the country, creating accident and contamination risks along the way. Exposure to radiation is known to cause cancers, genetic damage, birth defects and deaths,” said Diane D’Arrigo of Nuclear Information and Resource Service.

“In the Dallas/Ft. Worth area, trains carrying dangerous high-level radioactive waste would travel past numerous downtown buildings and the Texas State Fair Grounds. An accident could have huge health impacts,” said Susybelle Gosslee, a long-time opponent of radioactive waste transport and storage.

“We don’t want the nation’s nuclear reactor waste here. It would be a recipe for disaster. The proposed Texas and New Mexico sites are in the oil-producing Permian Basin area. The Texas/ New Mexico border region is prone to wildfires, flooding, and increasing sinkhole and earthquake activity,” said Rose Gardner of Eunice, NM. Rose lives 5 miles from the WCS low-level radioactive waste site in Andrews County, Texas, where high-level radioactive waste storage is proposed and 30 miles from the proposed New Mexico site in Eddy and Lea counties.

“Through widespread opposition from Indigenous nations and the public and a subsequent 2023 state law, New Mexico stands firm that we don’t want to be made a national sacrifice zone! We don’t want more radioactive waste stored or transported here, and we will continue to fight any attempts to do so,” said Diné anti-nuclear activist Leona Morgan.

The Supreme Court indirectly reinstated a nuclear waste license that many still argue is illegal. The court did not address the merits of the case, the legality of Consolidated “Interim” Storage (CIS) licenses. Instead they determined that the State of Texas (Texas) and Fasken Land and Minerals, LLC (Fasken), were not eligible to challenge it. The majority ruled that the Nuclear Regulatory Commission (NRC)’s rejection of Texas and Fasken as intervenors means they cannot challenge the licenses. Thus the Interim Storage Partners license could be restored, dismissing the 5th Circuit decision to overturn it.

Interim Storage Partners (ISP) in Texas received a license to store 40,000 tons of high-level radioactive waste above ground in Andrews County, Texas. Holtec in New Mexico wants to bring in up to 173,600 metric tons to store partly below grade in New Mexico at a site between Carlsbad and Hobbs.

This decision impacts Texas, New Mexico and most of the lower 48 states if the sites open, against Texas and New Mexico state laws, because it will result in at least 40 years of moving intensely, long-lasting, deadly radioactive waste from nuclear power sites across the country to locations that are purportedly temporary and from which the waste would move again once a permanent repository is located and opened.

Over the past decade, states, companies, organizations and individuals have opposed the Nuclear Regulatory Commission (NRC) licenses for Consolidated 'Interim' Storage (CIS), supposedly 'temporary' centralized sites for the most intensely radioactive, long-lasting radioactive waste which is generated by every nuclear power reactor. Opposition has been clear from the proposal stage, through the NRC licensing process and into the federal appeals courts. Both Texas and New Mexico passed laws against the sites. Texas, Fasken, and public interest groups contend that federal law, including the Nuclear Waste Policy Act, does not authorize or allow the NRC to license such facilities—they are illegal. The court did not directly address this key objection, ruling that Texas and Fasken were not “parties” to the NRC’s licensing proceeding, and have no right to challenge the legality of NRC’s licensing of CIS facilities.

Texas and Fasken won in the 5th circuit, which overturned two NRC licenses for so-called 'interim' facilities in Texas (Interim Storage Partners) and New Mexico (Holtec International). The Supreme Court danced around the argument that licenses are illegal and rather determined that Texas and Fasken did not participate enough in the licensing process to be eligible to challenge for the Interim Storage Partners (ISP) Consolidated 'Interim' Storage facility for irradiated ('spent') nuclear power waste. In fact, the NRC, at an early stage, rejected Fasken’s efforts to intervene, and both Texas and Fasken filed comments in the environmental review NRC conducted in its licensing proceeding.

All nuclear power reactors unavoidably create waste as they make nuclear electricity. If the re-licensed consolidated “interim” storage (CIS) sites in Texas and New Mexico open, this decision will impact those states AND most of the lower 48 states as the intensely radioactive shipments would move continuously for at least four decades on rails, roads and waterways from nuclear power reactors. Once there, it could stay for the 40 year license period but it could also remain at those sites indefinitely, despite the plan to move it all again to a permanent site, which has yet to be determined.

The merits of the case were not addressed but by default, the licenses are being reinstated.

The Nuclear Waste Policy Act (NWPA) does not allow privately owned offsite, supposedly temporary facilities. As Justice Gorsuch points out in his dissenting opinion, the NWPA only allows irradiated (“spent”) nuclear fuel to be stored in two types of locations: at a commercial nuclear reactor site; or at a federally owned interim storage site for up to 1,900 tonnes of irradiated fuel. (There are over 90,000 tonnes of irradiated fuel at commercial reactor sites today.) If these private CIS sites open, deadly high-level radioactive waste from nuclear power can be moved to and stored for decades in West Texas or New Mexico, or consolidated at other supposedly temporary locations.

Strong opposition to high-level radioactive waste storage came from Texas Governor Greg Abbott, the Texas Legislature, major Texas cities and counties, Andrews County, state, local and national organizations, oil companies, ranchers, and environmentalists. The state legislature voted in 2021 to ban high level waste storage or disposal and prohibit needed state permits for such a facility.

In New Mexico, the governor opposed the dump, the legislature passed a law prohibiting state permits for such a facility, and local governments passed resolutions against it.

The Fifth Circuit Court of Appeals ruled that the NRC has no authority to license consolidated interim storage sites for irradiated (“spent”) fuel and overturned the ISP license. They subsequently overturned the Holtec license for an even larger facility in New Mexico. In separate but similar cases filed previously by public interest organizations (Beyond Nuclear, Sierra Club, Don’t Waste Michigan, San Luis Obispo

Mothers for Peace, SEED Coalition, Citizens Environmental Coalition and Leona Morgan) and Fasken, the U.S. Court of Appeals for the District of Columbia Circuit ruled differently than the Fifth, rejecting the challenges to the licenses. Beyond Nuclear is appealing that decision. On March 5, 2025, the U.S. Supreme Court heard the case in which the State of Texas and Fasken Land and Minerals Ltd. opposed the NRC and Interim Storage Partners.

A [Texas law](#) passed in 2021 banned storage or disposal of imported high level radioactive waste and prohibited state permits for such a site. Similarly, [New Mexico passed a law](#) in March 2023 that prohibits related state permits.

Related Supreme Court documents can be found at <https://www.scotusblog.com/cases/case-files/nuclear-regulatory-commission-v-texas/>

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