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April 23, 2018

FOIA Officer  
Mail Stop T-2 F43  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
Posted to FOIAonline

cc: Jose Cuadrado, NRC Project Manager  
jose.cuadrado@nrc.gov

Re: Freedom of Information Act Request (Holtec International HI–STORE  
Consolidated Interim Storage Facility Project, Docket No. 72-1051)

Dear FOIA Officer:

On behalf of Don't Waste Michigan ("DWM") and the Sierra Club, two organizations we represent, and pursuant to the Freedom of Information Act (5 U.S.C. § 552 *et seq.*) and NRC FOIA regulations (10 C.F.R. Part 9), we hereby request that certain records related to the Holtec International application to NRC for a license to build and operate a consolidated interim spent fuel storage facility in Lea County, New Mexico be released to us as public records, and further, that they be identified as FOIA releases at the NRC's portal for the Holtec licensing case and be made available there.<sup>1</sup>

Within the NRC FOIA regulations, 10 C.F.R. § 9.13 defines "agency record" as "a record in the possession and control of the NRC that is associated with Government business." But according to § 9.13(1), "Agency record does not include records such as . . . [p]ublicly-available books, periodicals, or other publications that are owned or copyrighted by non-Federal sources. . . ." It is of concern to us that each of Holtec's application-related documents bears a copyright notice with a stern warning against infringement<sup>2</sup> on their covers. Additionally, each separate

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<sup>1</sup>The NRC portal is <https://www.nrc.gov/waste/spent-fuel-storage/cis/hi/hi-app-docs.html>

<sup>2</sup>A typical example appears on the cover of Holtec's Environmental Report: "NOTICE OF PROPRIETARY & COPYRIGHTED STATUS - This document is a copyrighted intellectual property of Holtec International. All rights reserved. Proprietary information in this document is highlighted by gray shading. Excerpting any part of this document, except for public domain citations included herein, by any

page of those documents bears a notation that it is copyrighted. Since only “agency records” are retrievable under FOIA, the insertion of copyright notices appears to possibly be an attempt by Holtec to exclude all Holtec documents from FOIA coverage by making them other than “agency records.” Perhaps by having its documents handled as non-agency records, Holtec intends to rely on pre-FOIA NRC regulations to preserve redactions and inhibit the public from gaining protected details on the CISF plan. Possibly Holtec is reserving the right to pull or delete records from the NRC website as later editions are published, or to withdraw their filings from official NRC archives based on the definition that copyrighting disqualifies them as “agency records.”

Besides clouding the issue of whether its filings are “agency records,” Holtec’s copyright warnings cause a chilling effect on public participation. Some members of the public wonder if their very reading of Holtec’s copyrighted documents for purposes of citizen participation might open them up to liability. The deterrent effect on public participation is genuine.

To resolve the confusion arising from Holtec’s having saturated its documents with claims of copyright, we request that the documents presently posted at the NRC portal all be reviewed by the NRC and declared to be agency records according to the 10 C.F.R. § 9.13 definition as records “in the possession and control of the NRC” that are “associated with Government business.” We further request that they be continuously released to the public through the NRC portal with an indication that they are FOIA releases. In this way, we are signifying our intention to preserve rights and remedies available under FOIA.

Accordingly, pursuant to FOIA, DWM and the Sierra Club request that the documents described in Section 1 below be provided through the NRC portal as released under FOIA. Sections 2 and 3 below request a waiver of search and copy fees and expedited consideration.

## **1. Document request**

DWM and Sierra Club specifically request the following documents be released and identified as FOIA disclosures by the NRC:

- Application Cover Letters:
  - Initial Submittal dated March 30, 2017
  - RSI Response dated October 7, 2017
  - RSI Response dated December 21, 2017
  - RSI Response dated December 22, 2017
  - Supplement dated February 23, 2018
- Safety Analysis Report Rev. 0, Rev. 0A, Part 1, Rev. 0A, Part 2, Rev. 0B
- Environmental Report Rev. 0, Rev. 0A, Rev. 1
- Proposed License and Technical Specifications Rev. 0, Rev. 0A

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person or entity except the USNRC, a Holtec User Group (HUG) member company, or a foreign regulatory authority with jurisdiction over a Holtec client’s nuclear facility is unlawful without written consent of Holtec International.”

- Emergency Response Plan (non-proprietary) Rev. 0
- Decommissioning Plan Rev. 0
- Decommissioning Cost Estimate and Funding Plan Rev. 0
- Financial Assurance & Project Life Cycle Cost Estimate Rev. 0

DWM and Sierra Club further request, on a continuing basis, that any future revisions or editions of the aforementioned documents be made available to DWM and the Sierra Club as well as the public pursuant to FOIA, also through the NRC portal. We are, obviously, asking that the requested documents be provided in electronic, digital, format through the portal.

As required by FOIA, responsive documents should be produced in their entirety if their content is non-exempt pursuant to FOIA. Also, as required by FOIA and 10 C.F.R. § 9.19, documents containing exempt information must be redacted to disclose all non-exempt material. NRC may withhold only those limited portions that are exempt from disclosure under FOIA.

## **2. Fee waiver request**

Pursuant to 10 C.F.R. § 9.41, DWM and Sierra Club ask that any searching and copying fees incurred as a result of this search be waived for two reasons: (1) DWM and the Sierra Club have directed the NRC to the digital location of all requested documents, so there should be little search effort needed; and (2) DWM and the Sierra Club satisfy the NRC's criteria in 10 C.F.R. § 9.41(b) for a fee waiver.

DWM and Sierra Club seek the requested information in order to properly investigate all aspects of the Holtec Consolidated Interim Storage Facility application, for the purposes of commenting and possibly intervening formally in the anticipated NRC licensing proceeding. The information will assist DWM and Sierra Club in formulating contentions in support of an intervention petition. The availability of the documents under the auspices of FOIA will allow DWM to seek public disclosure of redacted information and to have FOIA standards applied to the agency decision to release. That will promote DWM's and Sierra Club's respective interests, as well as the public's interest, in preserving due process in the licensing case, along with promoting the safety and environmental protection aims of the Atomic Energy Act, the National Environmental Policy Act, and NRC regulations and procedures. Without this information being made available pursuant to FOIA, DWM's and Sierra Club's members, and members of the public, will be placed at a serious disadvantage in participating effectively in the licensing process.

NRC has given official notice that the public has only until May 29, 2018, to submit comments concerning the scope of the environmental impact statement that NRC must prepare. DWM and Sierra Club will also make the information freely available to the public, without charge, through listserves on which its members participate so that the public can be informed and participate in the licensing process. DWM is a nonprofit incorporated Michigan group, which communicates with its members through news bulletins. Sierra Club is a national organization with a membership of over 700,000 people. Its Rio Grande Chapter, which includes the state of New Mexico and the city of El Paso, Texas, has over 10,000 members. Both the national organization and the Rio Grande Chapter maintain websites and send out periodic

communications to Sierra Club members and supporters. Neither organization has a commercial interest in this FOIA request.

By making the information available pursuant to FOIA, the NRC will allay public concerns that the copyright wording creates possible legal barriers to public participation.

### 3. Request for expedited consideration

Pursuant to 10 C.F.R. § 9.25(e), DWM requests expedited consideration of this FOIA request because there is a compelling need for prompt disclosure of the requested information. The Federal Register notice commencing the 60-day time period for intervention in the Holtec licensing proceeding is imminent. The information requested is necessary and essential in order for DWM to intervene and properly support its contentions. The NRC strictly enforces intervenor deadlines and requires a high degree of technical specificity in the drafting of contentions. Taken as a whole, these circumstances comprise a compelling need for immediate disclosure of the requested information. **We therefore request timely processing of the within requests, followed by a 60-day period deferral of the deadline for filing of intervention petitions.**

We look forward to receiving your response as quickly as possible on an expedited basis, and at the very latest within 10 working days, given the short time period for filing a petition to intervene. If you have any questions, please contact either of us via phone or email as indicated.

Thank you for your prompt attention to this request.

Sincerely,

/s/ Terry J. Lodge  
Terry J. Lodge  
Counsel for Don't Waste Michigan

/s/ Wallace L. Taylor  
Wallace L. Taylor  
4403 1st Ave. S.E.  
Suite 402  
Cedar Rapids, Iowa 52402  
Counsel for Sierra Club

### CERTIFICATION OF NEED FOR EXPEDITED PROCESSING

I, Terry J. Lodge, certify that the statements in this letter regarding the timing of the Holtec licensing proceeding and the need of Don't Waste Michigan and the Sierra Club and other organizations and individuals for a reasonable time to review the documents sought in this FOIA request in order to participate meaningfully in the proceeding are true and correct to the best of my knowledge. Further, I certify that in my judgment, these circumstances establish a compelling need for immediate disclosure of the requested information.

April 23, 2018

/s/ Terry J. Lodge  
Terry J. Lodge  
Counsel for Don't Waste Michigan