



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**Region 6**  
**1445 Ross Avenue, Suite 1200**  
**Dallas, TX 75202-2733**

JUN 11 2018

Ms. May Ma  
Office of Administration (MS: TWFN-7-A60M)  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**Subject: Detailed Scoping Comments regarding the Holtec International HI-STORE Consolidated Interim Storage Facility Project in Lea County, New Mexico (Docket No. 72-1051; NRC-2018-0052)**

Dear Ms. Ma,

The Region 6 office of the U.S. Environmental Protection Agency (EPA) has reviewed the April 6, 2018 Federal Register Notice initiating public scoping for the proposed Holtec International HI-STORE Consolidated Interim Storage Facility Project.

To assist in the scoping process for this project, EPA has identified several issues for your attention in the preparation of an Environmental Impact Statement (EIS) and has enclosed detailed scoping comments for your consideration. Our recommendations are provided pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508) and Section 309 of the Clean Air Act.

We are available to discuss our comments. If you have any questions, please contact Kimeka Price of my staff at (214) 665-7438 or by e-mail at [price.kimeka@epa.gov](mailto:price.kimeka@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl T. Seager".

Cheryl T. Seager  
Director  
Compliance Assurance and  
Enforcement Division

SUNSI Review Complete  
Template = ADM-013  
E-RIDS=ADM-03  
ADD= Antoinette Walker-Smith,  
Jill Caverly (JSC1)

COMMENT (199)  
PUBLICATION DATE: 3/30/2018  
CITATION # 83 FR 13802

Enclosure

**DETAILED SCOPING COMMENTS  
FOR THE PROPOSED  
HOLTEC INTERNATIONAL HI-STORE  
CONSOLIDATED INTERIM STORAGE FACILITY PROJECT  
IN  
LEA COUNTY, NEW MEXICO**

Based on the April 6, 2018 Federal Register Notice, the following recommendations are provided for consideration by U.S. Nuclear Regulatory Commission (NRC) in preparation of the EIS:

**Water Supply and Water Quality**

Public drinking water supplies and/or their source areas exist in many watersheds. Source water is water from streams, rivers, lakes, springs, and aquifers used as a supply of drinking water. Source water areas are delineated and mapped by the state for each federally-regulated public water system. The 1996 amendments to the Safe Drinking Water Act require federal agencies to protect sources of drinking water for communities.

EPA recommends the EIS describe current groundwater conditions in the relevant planning area and fully assess potential impacts to groundwater quality and quantity from reasonably foreseeable activities. EPA also recommends the EIS identify mitigation measures to prevent or reduce adverse impacts to groundwater quality and discuss their effectiveness. EPA recommends NRC work closely with state and local agencies which regulate the protection of groundwater resources.

EPA recommends the EIS describe the original (natural) drainage patterns in the proposed area, as well as the potential impacts to drainage patterns of the area. Also, we recommend the EIS identify whether any areas are within a 50 or 100-year floodplain.

EPA notes that, under the Federal Clean Water Act, any construction project disturbing a land area of one or more acres requires a construction stormwater discharge permit. We recommend the associated requirement to develop a stormwater pollution prevention plan be described as appropriate in the EIS. EPA also recommends the EIS discuss any other practicable, specific mitigation measures that may be necessary or beneficial in reducing adverse impacts from stormwater to water quality and aquatic resources.

**Dredge and Fill Impacts to Waters of the United States**

Clean Water Act (CWA) Section 404 regulates the discharge of dredged or fill material into waters of the United States (WOTUS), including streams, wetlands, some arroyos, and other special aquatic sites. There may be the potential need for placement of fill material into regulated WOTUS, specifically construction of aboveground facilities, access roads, drilling pads, and related facilities. These actions, if in regulated waters, may require a Section 404

permit under the CWA, and coordination with the U.S. Army Corps of Engineers (Corps) may be needed.

If an individual permit is required, the Corps will issue a public notice for the CWA Section 404 permit application, and EPA will review the project for compliance with Federal Guidelines for Specification of Disposal Sites for Dredged or Fill Materials (40 C.F.R. 230), promulgated pursuant to Section 404(b)(1) of the CWA.

EPA recommends the EIS discuss the CWA 404 permit requirements, specifically the requirement to seek the least damaging practicable alternative and to avoid and minimize any required aquatic impacts. The EIS should identify potential impacts to aquatic habitats, including direct, secondary, and cumulative impacts to arroyos, ephemeral, intermittent and perennial streams, and wetlands. Both permanent and temporary impacts should be identified. EPA recommends that NRC include a wetland compensatory mitigation discussion that would describe options for mitigation to compensate for unavoidable impacts to aquatic resources.

#### **Clean Water Act (CWA) Section 303(d)**

The CWA requires States to develop a list of impaired waters that do not meet water quality standards, establish priority rankings, and develop action plans, called Total Maximum Daily Loads (TMDLs), to meet water quality standards. EPA recommends the EIS provide information on CWA Section 303(d) impaired waters in the project area, if any, and efforts to develop and revise TMDLs. EPA recommends the EIS describe existing restoration and other enhancement efforts for those waters, how proposed activities may affect on-going protection efforts, and any mitigation measures that will be implemented to avoid further degradation of impaired waters.

Existing impaired waters under Section 303(d) of the Clean Water Act do not represent the entire universe of potential water and sediment quality concerns that may need to be addressed. NRC should ensure the EIS considers if there are water or sediment quality concerns that are documented by sources of information other than the 303(d) list.

#### **Biological Resources, Habitat and Wildlife**

EPA recommends the EIS identify all candidate and listed threatened and endangered species and designated critical habitat within the project area. We further recommend the EIS identify, as appropriate, species or critical habitat potentially affected by each alternative and possible practicable mitigation. EPA recommends the analysis of potential impacts and mitigation for at-risk species include:

- Baseline conditions of habitats and populations of the covered species, where available.
- Potential monitoring and adaptive management efforts to promote species and habitat conservation effectiveness.

EPA recommends incorporating information on the potential for compensatory mitigation, as appropriate, for unavoidable impacts to WOTUS and biological resources in the EIS. We recommend identifying potential compensatory mitigation lands or available lands for compensatory habitat mitigation (i.e., other than mitigation for impacts to aquatic habitats under Clean Water Act Section 404), as well as the reasonably foreseeable need for compensation in the area.

EPA recommends incorporating mitigation, monitoring, and reporting measures that result from consultation with the U.S. Fish and Wildlife Service (FWS), if and when available. We recommend the EIS also discuss, as appropriate, recently released guidance to avoid and minimize adverse effects to sensitive biological resources. EPA further recommends that the EIS describe the potential for habitat fragmentation and obstructions for wildlife movement. We recommend the EIS discuss the need for monitoring, mitigation, and if applicable, translocation management plans for sensitive, high value biological resources.

EPA recommends the EIS specifically address the potential impact of construction, installation, and maintenance activities (deep trenching, grading, filling, and fencing) on habitat. EPA recommends the EIS describe the reasonably foreseeable extent of these activities and the associated impacts on important habitats, including downstream resources, and include data, modeling or other supporting documentation.

### Air Quality

EPA recommends the EIS provide a detailed discussion of ambient air conditions (baseline or existing conditions), National Ambient Air Quality Standards (NAAQS) and non-NAAQS pollutants, criteria pollutant nonattainment areas, and potential air quality impacts of the proposed project (including cumulative and indirect impacts). Such an evaluation is necessary to understand the potential impacts from temporary, long-term, or cumulative degradation of air quality.

We recommend the EIS describe and estimate air emissions from potential construction, maintenance and transportation-related activities, as well as proposed mitigation measures to minimize those emissions. EPA recommends an evaluation of the following measures to reduce emissions of criteria air pollutants and hazardous air pollutants (air toxics):

- *Existing Conditions* – We recommend the EIS provide a detailed discussion of ambient air conditions, National Ambient Air Quality Standards, and criteria pollutant nonattainment areas in the vicinity of the project.
- *Quantify Emissions* – We recommend the EIS estimate emissions of criteria and hazardous air pollutants (air toxics) from the proposed project and discuss the timeframe for release of these emissions over the lifespan of the project. We recommend the EIS describe and estimate emissions from potential construction activities, as well as proposed mitigation measures to minimize these emissions.

- *Specify Emission Sources* – We recommend the EIS specify all emission sources by pollutant from mobile sources (on and off-road, including those involved in transporting coal), stationary sources (including portable and temporary emission units), fugitive emission sources, area sources, and ground disturbance. This source specific information should be used to identify appropriate mitigation measures and areas in need of the greatest attention.
- *Construction Emissions Mitigation Plan* – We recommend the EIS include a draft Construction Emissions Mitigation Plan and ultimately adopt this plan in the Record of Decision. We recommend all applicable local, state, or federal requirements be included in the Construction Emissions Mitigation Plan in order to reduce impacts associated with emissions of particulate matter and other toxics from any potential construction-related activities.

### **Hazardous Materials, Hazardous Waste and Solid Waste**

EPA recommends the EIS address potential direct, indirect and cumulative impacts of solid and hazardous waste from construction, maintenance, and operation of the proposed project. The EIS should identify projected solid and hazardous waste types, volumes, and expected storage, disposal, and management plans. We recommend the EIS address the applicability of state and federal hazardous waste requirements. Appropriate mitigation should be evaluated, including measures to minimize the generation of hazardous waste (i.e., hazardous waste minimization). Alternate industrial processes using less toxic materials should be evaluated as mitigation since such processes could reduce the volume or toxicity of hazardous materials requiring management and disposal as hazardous waste.

### **Environmental Justice Communities**

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 11, 1994), and the Interagency Memorandum of Understanding on Environmental Justice (August 4, 2011) direct federal agencies to identify and address disproportionately high and adverse human health or environmental effects on minority and low-income populations, allowing those populations a meaningful opportunity to participate in the decision-making process. Guidance<sup>1</sup> by CEQ clarifies the terms low-income and minority population (which includes Native Americans) and describes the factors to consider when evaluating disproportionately high and adverse human health effects.

EPA recommends the EIS include an evaluation of environmental justice populations within at least five-mile radius of the proposed project boundaries and use of available tools (i.e., EJ Screen, U.S. Census Bureau, area knowledge) to identify and screen environmental justice populations. If such populations exist, EPA recommends the EIS address the potential for disproportionate adverse impacts to minority and low-income populations, and the approaches

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<sup>1</sup> Environmental Justice Guidance under the National Environmental Policy Act, Appendix A (Guidance for Federal Agencies on Key Terms in Executive Order 12898), CEQ, December 10, 1997.

used to foster public participation by these populations. We recommend a comprehensive communication strategy to inform environmental justice communities.

EPA recommends that NRC utilize the Promising Practice Report ([https://www.epa.gov/sites/production/files/2016-/documents/iwg\\_promising\\_practices\\_final\\_5-16-2016.pdf](https://www.epa.gov/sites/production/files/2016-/documents/iwg_promising_practices_final_5-16-2016.pdf)) to supplement the applicable requirements for considering and analyzing environmental justice populations for the proposed project.

### **Coordination with Tribal Governments**

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (November 6, 2000), was issued in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, and to strengthen the United States government-to-government relationships with Indian tribes. If applicable, we recommend the EIS describe the process and outcome of government-to-government consultation between the NRC and with any and each of the tribal governments within the project area, issues that were raised (if any), and how those issues were addressed in the selection of the proposed alternative.

### **National Historic Preservation Act (NHPA) and Executive Order 13007 (Indian Sacred Sites)**

EPA recommends the EIS address the existence of cultural and historic resources, including Indian sacred sites and traditional cultural properties, in the project areas, and address compliance with Section 106 of the NHPA. It should also address Executive Order 13007, distinguish it from Section 106 of the NHPA, and discuss how NRC will avoid adversely affecting the physical integrity, accessibility, or use of sacred sites, if they exist. We recommend the EIS provide a summary of all coordination and consultations with Tribes, the State Historic Preservation Officer/Tribal Historic Preservation Officer, or any other party; and identify all NHPA listed or eligible sites, as well as the development of a Cultural Resource Management Plan for the area, as appropriate.

### **Children's Health and Safety**

Executive Order 13045, *Protection of Children from Environmental Health Risks and Safety Risks* (April 23, 1997), directs federal agencies to identify and assess environmental health and safety risks that may disproportionately affect children, and shall ensure that its policies, programs, activities, and standards address these risks. EPA recommends the EIS address the potential for disproportionate adverse impacts to children populations related to the proposed action.<sup>2</sup>

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<sup>2</sup> <http://www.epa.gov/compliance/resources/policies/nepa/children-health-risks-pg.pdf>