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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 for license application documents (Holtec International HI-STORE Consolidated Interim Storage Facility Project, Docket No. 72-1051)

Dear FOIA Officer:

On behalf of seven (7) grassroots organizations,¹ led by Don't Waste Michigan ("DWM *et al.*"), and the Sierra Club, organizations we represent as putative intervenors in the Holtec licensing case, we hereby request pursuant to the Freedom of Information Act (5 U.S.C. § 552 *et seq.*) and NRC FOIA regulations (10 C.F.R. Part 9) that certain records 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.² The requested records are components of the Holtec International application to NRC for a license to build and operate a consolidated interim storage facility (CISF) for spent nuclear fuel in Lea County, New Mexico.

As a related matter, we also write to formally complain that *the Holtec CISF license application page has not been updated since March 30, 2018*. During the year since files were last uploaded to the portal, there have been one or more formal revisions and reissuances of every Holtec application document, yet none of those revisions can be found there. Given the chronically unwieldy state of the ADAMS library for the average researcher, and the vital need to

¹Don't Waste Michigan, Citizens' Environmental Coalition, Citizens for Alternatives to Chemical Contamination, Nuclear Energy Information Service, Public Citizen, San Luis Obispo Mothers for Peace, and Nuclear Issues Study Group.

²The referenced NRC portal is
<https://www.nrc.gov/waste/spent-fuel-storage/cis/hi/hi-app-docs.html>

have one central location for the lengthy Holtec application, the Commission is shamefully and inexcusably failing in its transparency obligation to inform the public. Holtec proposes to develop the largest spent nuclear fuel dump on the planet, incorporating untested design features that must maintain their integrity to contain dangerous spent nuclear fuel ("SNF") for hundreds of years, if not longer. More than 200,000,000 Americans live near the routes by which many tens of thousands of tons of SNF will be sent to New Mexico on American waterways, highways and railways over decades. The Commission's failure to maintain the Holtec application portal is seen by our clients as a willful move by the NRC to thwart public participation in this critical policy decision. Within 3 to 5 months, the NRC Staff intends to issue the Draft Environmental Impact Statement, and as matters presently stand, interested members of the public who lack specialized research skills to navigate ADAMS are denied access to every iteration of this complicated and ever-evolving application, and also, they are threatened by Holtec that use of the license papers is "unlawful."

We note with dismay that Holtec continues the practice we protested last year of posting copyright notices and stern warnings against infringement³ on the covers of application papers. And each separate page of Holtec's application documents bears a notation that it is copyrighted! Holtec may be trying to exclude their license application from FOIA coverage by designating it as proprietary so the components are not "agency records" retrievable under FOIA.⁴ By having its documents handled as non-agency records, Holtec can rely on pre-FOIA NRC regulations to preserve redactions and inhibit the public from gaining details of the CISF plan. If the application components do not comprise "agency records," Holtec may later demand that the NRC pull or delete archivally important records from the NRC website entirely.

In any event, Holtec's copyright warnings cause a chilling effect on public participation and some citizens wonder if their reliance on or citation to Holtec's copyrighted documents during public comments might open them up to liability.

To resolve the confusion arising from Holtec's having saturated its documents with claims of copyright, we request that the documents listed below all be retrieved 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."

³A typical example appears on the cover of Holtec's Environmental Report, Rev. 3: "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 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."

⁴Within 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. . . ."

We again request—as we asked last year—that all Holtec application items be continuously released to the public through updates to the NRC portal and that they be identified as FOIA releases. In this way, we are signifying our intention to preserve rights and remedies available under FOIA.

Accordingly, pursuant to FOIA, DWM *et al.* 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:

- All Application Cover Letters dated after February 23, 2018
- All Safety Analysis Reports issued after Rev. 0, Rev. 0A, Part 1, Rev. 0A, Part 2, Rev. 0B
- All Environmental Reports issued after Rev. 1
- All Proposed License and Technical Specifications issued after Rev. 0A
- All Emergency Response Plans (non-proprietary) issued after Rev. 0
- All Decommissioning Plans issued after Rev. 0
- Decommissioning Cost Estimate and Funding Plans issued after Rev. 0
- Financial Assurance & Project Life Cycle Cost Estimates issued after Rev. 0

DWM *et al.* 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 to the public pursuant to FOIA, also through the NRC portal. We are 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 *et al.* and Sierra Club are official parties to the licensing proceeding, and the requested documents should be promptly provided by both NRC and Holtec as a matter of due course. Moreover, any searching and copying fees incurred as a result of this search should be waived because this disclosure involves a clear failing by the NRC to maintain a key public accessibility site which the agency should remediate without cost to the public. Finally, DWM and the Sierra Club satisfy the NRC's criteria in 10 C.F.R. § 9.41(b) for a fee waiver.

DWM *et al.* and Sierra Club seek the requested information in order to investigate for

active litigation purposes all aspects of the Holtec CISF licensing application so as to advance their pending petitions to intervene in the ongoing NRC licensing proceeding. The information is central to DWM *et al.* and Sierra Club efforts to pursue more than 40 contentions and amendments that they have filed in the licensing case. The availability of the application documents under the auspices of FOIA will allow DWM *et al.* and Sierra Club to seek public disclosure of redacted information and to have FOIA standards applied to the agency decision to release. That will promote DWM *et al.*'s and Sierra Club's respective interests as litigating parties, and will benefit the public interest in bringing due process to the licensing case. Centralizing and maintaining the currency of the Holtec application items will allow DWM *et al.* and the Sierra Club to realize the safety and environmental protection aims of the Atomic Energy Act, the National Environmental Policy Act, the National Historic Preservation Act, the Administrative Procedures Act, the Endangered Species Act, and NRC regulations and procedures. Without the availability of all application documents pursuant to FOIA, DWM *et al.*'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.

Throughout their extensive participation in the Holtec licensing case, DWM *et al.* and Sierra Club have made the application documents freely available to members of the public with whom they interact, without charge, through listserves and media releases so that their members and the general public can be informed and participate in the licensing process. Don't Waste Michigan is a nonprofit incorporated Michigan group which communicates with its members through news bulletins. The intervening party Public Citizen, Inc. is a nationally-recognized law reform and consumer rights organization with thousands of members nationwide. Citizens' Environmental Coalition is located in upstate New York. Citizens for Alternatives to Chemical Contamination is located in east central Michigan. Nuclear Energy Information Service is in Chicago. The San Luis Obispo Mothers for Peace are located in central California and have a half-century of high visibility activism involving their hundreds of members. The Nuclear Issues Study Group is a grassroots central New Mexico organization located in Albuquerque. The 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. None of the aforesaid organizations 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 *et al.* requests expedited consideration of this FOIA request because there is a compelling need for prompt disclosure of the requested information. As previously mentioned, the NRC Staff is expected to publish the Draft Environmental Impact Statement in midsummer 2019, which is a major legal milestone in the licensing proceeding that will be accompanied by a short public comment opportunity by the intervening groups as well as the general public. Along with it, the intervening groups will have the chance to amend existing contentions or to initiate new ones in the licensing case. Access to

up-to-the-minute amended and revised license application information is obviously essential for informed public participation on either level.

We look forward to receiving your response as quickly as possible on an expedited basis. 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 *et al.*

/s/ Wallace L. Taylor

Wallace L. Taylor

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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.

March 27, 2019

/s/ Terry J. Lodge

Terry J. Lodge

Counsel for Don't Waste Michigan