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CASE NO: NRC-2018-000634
DATE REC'D: 07/11/2018

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July 5, 2018

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

Due to maintenance unavailability of FOIAonline, emailed to FOIA.resource@nrc.gov

Re: Freedom of Information Act Request (Holtec International HI-STORE
Consolidated Interim Storage Facility Project, Docket No. 72-1051 (requesting
material redacted from Environmental Report)

Dear NRC FOIA Officer:

On behalf of Don't Waste Michigan ("DWM"), and pursuant to the Freedom of Information Act ("FOIA," 5 U.S.C. § 552 *et seq.*) and NRC FOIA regulations (10 C.F.R. Part 9), I 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.

Pursuant to FOIA, DWM requests that the documents described in Section 1 below be provided. Sections 2 and 3 of this letter request a waiver of search and copy fees and expedited consideration.

1. Document request

DWM specifically requests provision of all material redacted from the Holtec Environmental Report on the HI-STORE CIS Facility ("CISF"), Rev. 1 ("ER"), beginning at pp. 321 through 464 (143 pages), and specifically requests that it be provided in digital format wherever possible.

In the ER, Holtec states that it discovered two historic properties "that could be directly affected by this project," yet does not explain where they are located, what they are, their significance, how they would be affected by the CISF, nor what measures are being considered to mitigate their destruction or alteration as a consequence of building the CISF. Commencing at p. 321 of the ER, "Appendix C: Cultural Resources Communications and Survey Results," all of Appendix C (pp. 321-464) is redacted, and each page is marked "Security-Related Information Withheld under 10 CFR 2.390." Whether or not Appendix C contains this information about

cultural resources is unclear; however, no information about the historic properties appears anywhere else in the Environmental Report.

The only public interest cognizable under FOIA is the public "understanding of the operations or activities of the government." *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775, 109 S.Ct. 1468, 103 L.Ed.2d 774 (1989); *Bibles v. Or. Natural Desert Ass'n*, 519 U.S. 355, 355-56, 117 S.Ct. 795, 136 L.Ed.2d 825 (1997) (identifying relevant public interest as "extent to which disclosure of the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens know what their government is up to" (internal quotation marks and alterations omitted)).

An Environmental Impact Statement must include a detailed statement regarding any adverse environmental effects that cannot be avoided. 42 U.S.C. § 4332(2)(C)(ii). Implicit in this requirement is an understanding that the EIS will discuss the extent to which steps can be taken to mitigate adverse environmental consequences. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351-52, 109 S.Ct. 1835, 1846-47, 104 L.Ed.2d 351 (1989). Omission of a reasonably complete discussion of possible mitigation measures would undermine the action-forcing function of NEPA and prevent the agency and interested parties from properly evaluating the severity of the adverse effects. *Id.* at 352, 109 S.Ct. at 1847. NEPA requires that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fully evaluated. *Id.*; see also *Communities, Inc. v. Busey*, 956 F.2d 619, 625-26 (6th Cir.) (EIS mitigation discussion sufficient if investigation was conducted to identify mitigation alternatives and make reasonable estimate of cost), *cert. denied*, 113 S.Ct. 408, 121 L.Ed.2d 332 (1992). Council on Environmental Quality regulations at 40 C.F.R. §1502.14(f) require an Environmental Impact Statement to "[i]nclude appropriate mitigation measures not already included in the proposed action or alternatives."

Thus, mitigation plans capable of satisfying NEPA must be "developed to a reasonable degree." *Wetlands Action Network v. U.S. Army Corps of Eng'rs*, 222 F.3d 1105, 1121 (9th Cir. 2000); see also *Tillamook County v. U.S. Army Corps of Eng'rs*, 288 F.3d 1140, 1144 (9th Cir. 2002). Presumably, to ascertain whether that standard is met, the public must have access.

Here, there are 144 pages of Appendix C classified as security-related. What is "secured" by nondisclosure is very unclear. There does not appear to be a provision of 10 C.F.R. § 2.390 that authorizes the withholding of information which is neither proprietary nor related in any obvious way to national security. The identities of the endangered cultural resources and any mitigation proposed to preserve them have been completely withheld from scrutiny by the public. The public cannot discern whether any mitigation plans have been developed at all, much less whether they have been "developed to a reasonable degree." Members of the public cannot meaningfully propose mitigation measures, or counsel means of avoidance of destruction of the unidentified cultural resources, unless they know what they are and where they are located on Holtec's 900-acre site.

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 asks that any searching and copying fees incurred as a result of this search be waived because DWM satisfies the NRC's criteria in 10 C.F.R. § 9.41(b) for a fee waiver.

DWM seeks the requested information as part of their investigation of certain aspects of the Holtec Consolidated Interim Storage Facility application, for the purposes of commenting upon, and formal intervention in, the anticipated NRC licensing proceeding. The requested information will assist DWM in formulating contentions in support of an intervention petition. The availability of the documents under the auspices of FOIA will further enable DWM to seek public disclosure of any remaining redacted information. That will promote DWM's interests and aid the preservation of due process in this 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. Moreover, the goals of the National Historic Preservation Act and the Native American Religious Freedom Act will be served insofar as public disclosure and consultation may be promoted.

Without this information being made available pursuant to FOIA, DWM's members, and members of the public, will be placed at a disadvantage in participating effectively in the licensing process.

NRC has given official notice that the public has only until July 30, 2018, to submit comments concerning the scope of the environmental impact statement that NRC must prepare. DWM intends to comment and further will also make the information released freely available to the public, without charge, through bulletins so that their members and the public can be informed and participate in the licensing process. DWM is a nonprofit incorporated Michigan membership group of approximately 20 people. DWM has no commercial interest in this FOIA request.

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. Publication of 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 communicate meaningfully with its members and the general public, and to intervene and properly support their likely 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 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 fast-approaching, short time period for

filing a petition to intervene. If you have any questions, please contact me via phone or email as indicated on the letterhead.

Thank you for your prompt attention to this request.

Sincerely,

/s/ Terry J. Lodge

Terry J. Lodge

Counsel for Don't Waste Michigan

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 for a reasonable time to review the documents sought in this FOIA request in order to participate meaningfully in that 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 expedited disclosure of the requested information.

Sincerely,

/s/ Terry J. Lodge

Terry J. Lodge

Counsel for Don't Waste Michigan