

From: Kevin Kamps <kevin@beyondnuclear.org>
Sent: Saturday, October 30, 2021 12:00 AM
To: NRC-EJReview Resource
Subject: [External_Sender] Public comments by Kevin Kamps and Kay Drey of Beyond Nuclear, re: "Docket ID NRC-2021-0137-0001"

Dear NRC EJ Review,

On behalf of our members and supporters in Utah, New Mexico, Texas, and beyond, we submit these public comments below.

NRC is a serial violator of environmental justice (EJ), just like the nuclear power industry which it serves as a rubber-stamp and enabler. The industry at times also pretends to care about EJ, when it really doesn't. But what makes NRC's behavior even more reprehensible is that it claims to be a public servant, including on EJ matters. The only way that is true is this twisted meaning: "serving the public," up for dinner, to the industry. That NRC does, regularly. Including EJ communities, most especially.

Over the years, I have personally witnessed some horrendous NRC violations of EJ, both large and small, and too numerous to comprehensively recount. But I will share some examples.

The license approval by NRC of the Private Fuel Storage, LLC (PFS) Monitored Retrievable Storage site/Away-from-Reactor Independent Spent Fuel Storage Installation/Consolidated Interim Storage Facility (CISF), despite the blatant EJ violation it represented, inspired me to come up with a new translation for what NRC stands for: Nuclear RACISM Commission. NRC is a perpetrator of radioactive racism, a subset of environmental racism, or environmental injustice.

NRC's licensing of PFS at Skull Valley Goshutes Indian Reservation in Utah, despite the blatant EJ violation that represented, was and is (since it is still licensed to this day), a big violation of EJ perpetrated by NRC.

But smaller violations by NRC contributed to that bigger, overarching violation. For example, at a public meeting in Salt Lake City, Utah, for public comments on the PFS CISF Draft EIS, I witnessed an NRC staff person demand that Margene Bullcreek, the lead Skull Valley Goshute opponent of the proposed dump, turn over to her Margene Bullcreek's sacred staff. The sacred staff included an eagle's head, as well as eagle talons. Apparently the NRC considered Margene Bullcreek's sacred staff a potential weapon. First of all, Margene Bullcreek was already a grandmother at the time. Secondly, Margene Bullcreek was a most non-violent person, in word and deed, as NRC should have well known, since she attended all PFS related events, and exhibited none other than a calm demeanor each and every time, despite the threat that PFS posed to herself, her family, and her community, as well as the homeland she held dear. Last but not least, the sacred staff would not have made a very effective weapon. If used to strike someone, the fragile sacred staff would likely have shattered, and in any event could not have caused any physical injury. In fact, Margene Bullcreek's staff, although a symbol of spiritual power, represented the healing and protection of the land and creation, not injury or harm.

But besides all that, NRC's action, of demanding that Margene Bullcreek turn over to them her sacred staff, represented an environmental injustice, as well as a violation of federal law. The American Indian Religious Freedom Act of 1978 (AIRFA) protects the rights of Native Americans to exercise their traditional religions by ensuring access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites. The NRC's demand that Margene Bullcreek hand over her sacred staff was a violation of her right, under the federal American Indian Religious Freedom Act of 1978, to use and possess a sacred object.

In addition to that, NRC's action violated Margene Bullcreek's fundamental right to free speech, and to petition the government for redress of grievances, enshrined in the First Amendment in the Bill of Rights in the U.S. Constitution.

Margene Bullcreek didn't hesitate long to hand her sacred staff over to the NRC official. This was not surprising, given the overall intimidating nature of the hearing itself. A heavily armed, and armored, law enforcement officer was aggressively searching all bags of hearing attendees as they entered the room. Why was this even called for? Apparently that law enforcement officer didn't regard Margene Bullcreek's sacred staff as a potential weapon, because he allowed her to bring it into the room.

But then even worse, the venue (a posh hotel) security physically manhandled a staff person from Families Against Incinerator Risk (FAIR), a local grassroots Utah environmental group. The security officer actually physically threw the FAIR staffer out of the venue, by the scruff of the neck. What was the FAIR staffer's crime? He had a placard that was too large, according to NRC's Byzantine, little noticed (as in, no public notice given), regulations. Such physical violations against members of the public — at an NRC public meeting, supposedly for the collection of public comments — was an outrage. No wonder Margene Bullcreek didn't even protest the taking away of her sacred staff. NRC and its hotel venue host had already shown that it would deploy physical violence against public attendees, for little to no reason.

While NRC's action against Margene Bullcreek may seem to some as a small thing, it was actually a big violation of her rights, and of justice, including environmental justice — especially considering the context: NRC's complicity with PFS (a consortium of a dozen or more nuclear power utilities, led by Northern States Power/Xcel Energy, as well as the container vendor, Holtec International) to dump, on a de facto permanent basis (for lack of a permanent geologic repository), at least 40,000 metric tons of highly radioactive commercial irradiated nuclear fuel, at the surface of the reservation, a short distance from the homes of the 125 members of the tiny, low income tribe.

The 40,000 metric ton highly radioactive waste dump alone would have represented a big enough EJ violation. But what made it an even much bigger EJ violation, were the numerous EJ violations the Skull Valley Band of Goshute Indians already suffered. Albeit not NRC licensees, NRC nonetheless should have taken into account such EJ violations as those associated with radiological, biological, and chemical weapons testing by the U.S. military in the immediate vicinity. As but one example: a wayward nerve agent weapons test resulted in the deaths of

thousands of sheep in Skull Valley itself — the nerve agent-contaminated sheep carcasses were then simply buried in a mass, shallow grave, again not far from the Skull Valley Goshute community.

But many other polluting industries have also set up shop in the Tooele County Hazardous Industries Zone, as it is officially called, over the course of many decades. NRC was blind to all of these EJ violations, as in its EJ analyses and conclusions in its PFS EIS — despite large numbers of public comments submitted to NRC calling attention to this, during the environmental scoping and DEIS stages.

Kevin Fedarko published an enlightening article in Outside Magazine entitled “In the Valley of the Shadow,” which documents well the many environmental (and, given the Skull Valley Goshutes’ homeland there, environmental justice) violations taking place in Skull Valley and Tooele County, given the many hazardous industries located there. Here is a link to the text of the article: <https://www.outsideonline.com/outdoor-adventure/environment/sustainability-happiness-green-countries/>

But the original hardcopy article also included a detailed map, showing the many hazardous industries surrounding the Skull Valley Goshutes Indian Reservation, even before PFS arrived.

Another good source of documentation of the hazardous industries surrounding Skull Valley is a book by Chip Ward entitled *Canaries on the Rim*. Ward served as a board of directors member of FAIR at the time (see above). One entire chapter is devoted to the threat posed by the PFS CISF. Another chapter is devoted to the hazards inherent in the Envirocare/Energy Solutions “low-level” radioactive waste dump located in Clive, Utah, a short distance west of the Skull Valley Goshutes Indian Reservation. NRC approved the Envirocare dump license, even though the dump was founded on a criminal bribery/extortion conspiracy involving the dump’s founder, and a Utah state licensing official. Envirocare/Energy Solutions has now “served” as a national Class A “low-level” radioactive waste dump for many states, for decades.

Despite a large number of public comments opposing the dump, many alerting NRC to the blatant EJ violations the proposed dump represented, and despite the magazine article, and despite the book, and despite the many other documents showing the numerous EJ violations already present at Skull Valley, which would be made all the worse by PFS, NRC remained willfully blind.

NRC approved PFS’s construction and operations license, despite the very significant additional EJ violation the 40,000 metric ton highly radioactive waste dump represented for the Skull Valley Goshutes, and despite the numerous EJ violations they were already suffering before PFS even showed up. Thus Nuclear RACISM Commission was an apt appellation, given the environmental racism and environmental injustice NRC was all too happy to bless, in the form of the PFS construction and operations license.

Perhaps the way NRC tries to justify the unjustifiable is the money and other economic benefits that would supposedly accrue to the Skull Valley Goshutes, while turning a blind eye to the costs, risks, harms, hazards, and liabilities. Yes, the Skull Valley Goshutes were a low income

Indigenous community. But as Keith Lewis, environmental director for the Serpent River First Nation in Ontario put it in the 1990s, “There is nothing moral about bribing a starving man with money.” He was speaking about the harm done to his First Nation community, and its homeland, by the offer of uranium mining and milling jobs beginning in 1948, and ending altogether by 1996. Indeed, PFS’s targeting of the low income Indigenous community, Skull Valley Goshutes, for a 40,000 metric ton highly radioactive waste dump — and NRC’s complicity and enabling in the form of license approval — was and is an immoral EJ violation of the worst order.

Another “small” incident I witnessed in the context of NRC’s PFS proceedings also involved Margene Bullcreek, and her teenage nephew, Daniel Moon. I accompanied them to NRC’s HQ in Rockville, MD. They were in town for an ASLB hearing related to the PFS licensing proceeding, in which the grassroots community group Margene Bullcreek led — OGDA — was an official intervenor. Daniel Moon had never been to Washington, D.C. before, and so was taking many photographs during his visit. This included his innocently enough taking a photo at the entrance to the NRC’s HQ. Upon entering the HQ, our party was accosted by numerous armed security guards, who were acting very aggressively against us, particularly against Daniel Moon. It took us some minutes to even understand why NRC’s armed security guards were behaving in such an aggressive way against Skull Valley Goshute intervenors against the dump, one of whom was a grandmother, and the other of whom was a minor, and who were simply there to attend the hearing as official parties to the proceeding. It was the camera, and the photo he had innocently snapped, which apparently violated a little known, little noticed NRC HQ prohibition against photography. NRC security’s very aggressive and intimidating behavior was most unwarranted, however. It was frightening and traumatizing. To add to the irony, as soon as Margene Bullcreek and Daniel Moon finally made it into the ASLB hearing room — after a long, frightening and traumatizing delay in the custody/detention of NRC’s armed security guards — the chief ASLB judge offered them a warm welcome to the hearing. He was unaware how they had just been treated at NRC’s hands. But then again, in the end, even the ASLB chief judge, along with a majority of the ASLB, voted in favor of PFS de facto permanently storing, at the surface of the Skull Valley Goshutes’ reservation, 40,000 metric tons of forever deadly highly radioactive waste. Similarly, the NRC Commissioners voted in favor of the PFS license, with a lone dissenting vote. In doing so, the ASLB majority, NRC staff, and NRC Commission majority, had perpetrated a major violation of EJ against the Skull Valley Goshutes.

Fortunately for EJ and the Skull Valley Goshutes, other federal agencies were less willing than NRC to simply serve as complicit rubber-stamps for the PFS scheme. The BLM, for example, refused to allow PFS to construct and operate an intermodal (train to heavy haul truck) transfer facility on BLM land in Skull Valley. The BIA refused to approve the lease agreement signed between PFS and the controversial, corrupt, disputed and even law breaking Skull Valley Goshute tribal chairman, Leon Bear. BIA said, significantly, that it could not approve the lease agreement, because, as trustee for the tribe, it could not allow so-called “interim” storage on the reservation, when there was no permanent repository in existence, because then “interim” storage would risk becoming de facto permanent storage. BIA concluded that, given there was no guarantee the forever deadly highly radioactive waste would ever leave the reservation, it could not in good conscience, as trustee for the Skull Valley Goshute tribe, approve the lease agreement between PFS and disputed tribal chairman Leon Bear.

BIA's action, of course, was in harmony with the Nuclear Waste Policy Act of 1982, as Amended, prohibition against DOE taking ownership of commercial irradiated nuclear fuel at a private, so-called "interim" storage site, in the absence of a permanent repository. But NRC — conveniently for ISP in TX and Holtec in NM — has simply ignored that federal law for several long years, long enough to approve the ISP license in September 2021, as NRC is poised to do with the Holtec license in January 2022.

Why did I mention DOE in the context of the supposedly "Private" Fuel Storage, LLC CISF? Because obviously the PFS consortium of nuclear utilities, plus Holtec, was looking to DOE to pay all the bills — effectively, to take title to/ownership of commercial irradiated nuclear fuel, before a permanent geologic repository was open in this country. Otherwise, why didn't PFS utilize the license NRC rubberstamped for it to construct and operate the CISF?

Last but not least, the Interior Department was not willing to allow PFS to construct and operate train tracks across the Cedar Mountains federal wilderness area, which would have violated federal law. Other agencies' unwillingness to violate norms, Presidential Executive Orders (as on EJ itself), and even laws — as well as their own mandates (such as BIA's role as trustee for the Skull Valley Goshutes) — blocked the PFS CISF, where NRC was all too happy to enable the dump to open and operate, despite these many violations, including of EJ itself.

For more information about the ultimately successful resistance to the radioactively racist PFS CISF targeted at the Skull Valley Goshutes in Utah — despite NRC's misdeeds, small and large — please see: <<http://archives.nirs.us/radwaste/scullvalley/skullvalley.htm>>.

Even though the PFS CISF never actually opened, it remains licensed by NRC to this day (something NRC either intentionally lied about in its Readers Guides associated with the ISP TX and Holtec NM CISF DEISs, or else unintentionally but incompetently got flat wrong; despite numerous comments to NRC, calling on it to correct the record on this subject matter, it is not clear that NRC ever has done so). And NRC's EJ misdeeds have continued in both the TX and NM CISF licensing proceedings.

Despite many thousands of public interventions and comments opposed to both CISFs, in both the TX and the NM licensing proceedings as well as environmental scoping and DEIS proceedings, NRC has effectively turned a willfully deaf ear to protests against both CISFs, including due to EJ violations.

Shockingly, this included the ASLB in the Holtec licensing proceeding not only rejecting all EJ contentions submitted by Alliance for Environmental Strategies (AFES), but never even recognizing AFES's legal standing in the matter. This was remarkable, as AFES is a Latinx-led grassroots EJ group based in southeastern NM. But incredibly, despite its appeal of the ASLB's bad rulings, the NRC Commission itself fully backed up the ASLB's horrendous ruling. NRC's treatment of AFES, from start to finish, shows that NRC does not have a policy of environmental justice, it has a policy of environmental injustice.

NRC also gravely violated EJ during its environmental scoping public comment meetings in NM in spring 2018. Already at the very first meeting, in Hobbs, Latinx members of the public were

expressing — on and off microphone (to NRC, and to their environmental colleagues) — that they were feeling discriminated against by the NRC itself. Then at the second meeting in Roswell, Latinx members of the public expressed their feelings of fear and intimidation that armed law enforcement officers were visibly present throughout the meeting in the meeting room.

But the single worst incident occurred at the third meeting, in Carlsbad. It involved how NRC facilitator Xavier Francis “Chip” Cameron behaved toward AFES co-founder Noel Marquez of Artesia and Port Arthur, NM. As I did not trust Chip Cameron to be fair in terms of how much time was allotted for anti-dump public commenters to speak, I carefully kept time on all speakers, at all three environmental scoping meetings. Noel Marquez was only about half-way through his allotted time, when Chip Cameron inappropriately and rudely pressured him to wrap up his comments. Noel Marquez attempted to finish reading his prepared comments, only to then have Chip Cameron approach him in a very intimidating physical manner, as if Chip Cameron were about to seize the microphone away from him, or even shove him away from the microphone. Chip Cameron’s completely unwarranted behavior caused several members of the public — including myself — to yell out in alarm, and then to demand that Noel Marquez be granted his fair, equal, equitable allotted time during which to make his comments. Chip Cameron did not allow that to happen right then, but later in the program, allowed Noel a little more time to finish his comments, although it may not have been as much time as he should have been allotted.

The incident struck many observers, myself included, as racist in nature. Ironically enough, Noel Marquez’s comments — at first delivered in Spanish language, then later in English — were about the racism against Latin Americans, Hispanics, and Chicanos in southeastern NM, dating back not years, but decades and perhaps even centuries. The example Noel Marquez gave, in Spanish, was how his own mother was treated growing up in southeastern NM while attending public schools. The Hispanic American children were forced to attend a segregated classroom located in a shack-like structure, behind the main school house, where white American children attended class. Noel Marquez was making the point that the proposed Holtec CISF is a present-day manifestation of such anti-Latinx racism, targeting his majority Latinx area with a highly radioactive waste dump for the “interim storage” of up to 173,600 metric tons of commercial irradiated nuclear fuel and Greater Than Class C “low-level” radioactive waste.

Despite Chip Cameron’s denials that he had done anything wrong, and that what took place was certainly not racist on his behalf, there are multiple video recordings of what took place. The NRC’s transcript should also reflect some of the inappropriateness, to put it mildly, of Chip Cameron’s behavior during this incident.

NRC also held but two environmental scoping meetings on the WCS/ISP CISF proposal, in February 2017, on very short notice. One was held in Hobbs, NM, which meant that the second, in Andrews, TX, was the only environmental scoping meeting held in the very large state of Texas, even though the dump is targeted at Texas, and associated transport risks alone would impact much of the state. Members of the public and representatives of environmental groups from places like Austin, and Fort Worth, had to drive for many long hours, all the way across Texas, to take part.

NRC's WCS/ISP CISF environmental scoping public meeting held at NRC's HQ in Rockville, MD was held on two days' notice. No surprise, very few members of the public showed up to take part — because NRC had done so little public notification, very few members of the public even knew the meeting was being held!

Such NRC behavior is itself an EJ violation. BIPOC (Black, Indigenous, people of color) communities, as well as low-income communities, often lack the resources necessary to take part in NRC public comment meetings, even if adequate notification had been provided, which it had not, as described above.

The NRC's behavior during both the Holtec NM and ISP TX CISF DEIS public comment proceedings also amounted to violations of EJ. A very large number of environmental and EJ organizations, in coalition, urged NRC to significantly extend the DEIS public comment deadlines, or else to suspend them entirely, until after the national Covid-19 pandemic emergency had passed. A part of that request involved the need for in-person public meetings, to be held at a much larger number of locations, including in multiple states along the transportation routes that would be used to haul highly radioactive wastes to the CISFs.

Many members of Congress also appealed to the Trump administration at the time, and some to NRC directly, calling for any and all EIS public comment proceedings to be suspended until after the Covid-19 pandemic emergency had passed.

NRC granted but relatively short extensions to the CISF DEIS public comment periods. It held not a single in-person meeting. Instead, it held online webinars, which themselves were very incompetently carried out, leading to even more public confusion and frustration. At the first Holtec CISF DEIS webinar-only public meeting, NRC would call upon a person to deliver their verbal comments, only to then have an inexplicable several minute long delay take place. The public commenters were present, ready, willing, and able to deliver their comments, but NRC's webinar system would not allow that to happen. A large number of public commenters had to sit through hours of such technical difficulty, in hopes of at long last not only being called on to make their comments, but then, in hopes that NRC's technology would work, to allow their comments to actually be heard.

Such incompetence by a federal agency with several thousand staff members, and an annual budget that measures into the many hundreds of millions of dollars, is really hard to understand. And yet such poor performance is actually par for the course when it comes to NRC.

But it is also an EJ violation. NRC is simply assuming that BIPOC and low-income communities, individuals, and organizations have the telephone and computer/internet technology and access to take part in such webinar meetings. Of course, not all do.

Even for myself, who has organizational support, as well as decades of experience, I have found NRC's CISF DEIS public comment meetings difficult to navigate. My colleagues at other organizations expressed to me similar frustrations. For example, one had to have a telephone for the meetings' audio component, but also a computer, to take in the NRC's visual component —

such as the slideshow presentation. Just assuming that large segments of the public have access to that much technology is a false assumption by NRC that amounts to an EJ violation — especially when both CISFs are targeted at the NM/TX borderlands, which is an area with many Latinx majority populations, as well as very serious issues of low income and other very dire socio-economic challenges.

Groups like Public Citizen's Texas Office, SEED Coalition, Texas Rural Legal Aid, and many others, provided very high-quality EJ comments to NRC, during both the environmental scoping and DEIS public comment meetings in the ISP CISF proceeding. For example, using US EPA modeling, Public Citizen and SEED Coalition documented that in West Texas, along rail routes that will almost certainly be used to haul highly radioactive waste to ISP at WCS, many communities living along the tracks are majority Latinx.

In one case, from El Paso to Monahans, the minority share of the local population is 94%, including 92% Hispanic. See:

<http://static1.1.sqspcdn.com/static/f/356082/28466350/1631389405890/CISF+Dangers+and+Holt+and+ISP+sites-3.pdf?token=m8ZOHN15O9f10mhgJREuhkrWayk%3D>

This is of course a highly disproportionate percentage of Latinx living along these rail routes, as compared to national percentages. Despite such blatant EJ burdens, NRC turned a deaf ear, despite such high quality public comments, echoed by thousands of public commenters.

NRC remained willfully blind to this issue, of the EJ burden of highly radioactive waste transportation, even though it is a matter of public discussion from leading national experts. For example, Mustafa Ali, who served as the US EPA's EJ chief during the Obama administration, and now serves as EJ chief at National Wildlife Federation, appeared on Democracy Now! In September 2019, and spoke about the EJ burden of highly radioactive waste transportation.

Ironically enough, NRC's technical glitches extended even to this EJ review proceeding, in recent months. At both NRC public comment meetings held just a couple months ago, I could not figure out how to access the video or audio for one of the webinar public comment meetings. This, despite my having nearly 30 years of experience in submitting public comments, verbally at in-person meetings, as well as virtually via webinars. Most grassroots EJ community members cannot be expected to navigate such technical hurdles, when even experienced, resourced advocates cannot manage to.

As has been communicated to NRC by myself, and literally thousands of other public commenters, New Mexico has already suffered a very disproportionate impact from nuclear activities. But it has also suffered very significant impacts from the fossil fuel industry, as in the Permian Basin (which is targeted for both CISFs, including the one in TX, just 0.37 miles from the NM state line, and upstream). It has also suffered from a large number of other hazardous facilities throughout the state.

Such impacts are clearly documented in the map of NM by Deborah Reade of Santa Fe entitled "Water, Air and Land: A Sacred Trust." I submitted this map, along with EJ comments, at both the environmental scoping stage, as well as the DEIS stage. See the map posted online here:

<http://archive.beyondnuclear.org/centralized-storage/2021/7/29/water-air-and-land-a-sacred-trust.html>>.

Note that a close up of southeastern NM is also provided. These maps show clearly the EJ burden southeastern New Mexicans — a majority of whom are Latinx — already suffer. This includes WIPP, URENCO, and WCS national “low-level” radioactive waste dump just over the border (and upstream) in TX. But it also includes the Gnome-Coach nuclear weapon test site, as well as the Trinity nuclear weapon test site. And now proposed are the Holtec CISF, as well as the ISP CISF, for highly radioactive waste “interim storage.” But all that is “just” the nuclear industry impacts on southeastern NM. There are also large-scale, significant nuclear industry impacts elsewhere in NM, such as the Los Alamos National Lab, uranium mining and milling, etc. To those nuclear impacts must be added the Permian Basin’s very large fossil fuel impacts, as well as fossil fuel impacts elsewhere across NM. And to all that must be added other hazardous facility impacts across southeastern NM, as well as the rest of the state. NRC has remained willfully blind to all these EJ impacts, throughout both CISF licensing proceedings.

Eunice, NM -- home to AFES co-founder Rose Gardner -- a majority Latinx community, is located just several miles from WCS. Every single shipment bound for ISP will pass through Eunice.

For NRC to approve CISF licenses in (or immediately upon the border of) the majority minority (Indigenous, Latinx) state of NM, despite how much toxic and radioactive burden NM has already suffered, and continues to suffer, from the nuclear, fossil fuel, other hazardous industries, is not only an outrage, but relevant to NRC’s current EJ review, is a blatant EJ violation. And yet NRC has remained willfully blind to this, throughout both CISF licensing proceedings.

We urge NRC to take EJ seriously. Thank you for considering our comments.

Sincerely,

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Beyond Nuclear aims to educate and activate the public about the connections between nuclear

power and nuclear weapons and the need to abolish both to safeguard our future. Beyond Nuclear advocates for an energy future that is sustainable, benign and democratic.

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