

**From:** Richard Arnold  
[External\_Sender] NRC-2018-0052 Holtec HI STORE Consolidated Interim Storage Facility - Tribal Comments  
Tuesday, July 31, 2018 2:11:53 AM  
[TRMTC NRC Holtec letter.docx](#)  
**Subject:**  
**Date:**  
**Attachments:**

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Good Evening,

Attached please find Tribal comments developed and submitted on behalf of the Tribal Radioactive Materials Transportation Committee (TRMTC). These comments are in response to a Federal Notice of an impending Scoping Process related to an Environmental Impact Statement for the proposed Holtec Hi Store Consolidated Interim Storage Facility.

Respectfully,

Richard Arnold, TRMTC Co-Chair

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ADD= Antoinette Walker-Smith, Jill Caverly (JSC1)

COMMENT (229)  
PUBLICATION DATE: 3/30/2018  
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# TRMTC

TRMTC

July 30, 2018

**Tribal Radioactive  
Materials Transportation  
Committee**

Agua Caliente Band of Cahuilla  
Indians

Catawba Indian Nation

Confederated Tribes  
of the Umatilla Indian Reservation

Morongo Band of Mission Indians

Navajo Nation

Nez Perce Tribe

Oneida Nation of Wisconsin

Consolidated Group of  
Tribes and Organizations

Prairie Island Indian Community

Pueblo de San Ildefonso

Pueblo of Jemez

Pueblo of Laguna

Pueblo of Pojoaque

Santa Clara Pueblo

Seneca Nation of Indians

Shoshone-Bannock Tribes

Timbisha Shoshone Tribe

Ms. May Ma

Chief, Program Management, Announcements and Editing Branch

Office of Administration, MS TWFN-7-A60M

US Nuclear Regulatory Commission

Washington, DC 20555-001

RE: NRC-2018-0052, Holtec HI-STORE Consolidated Interim Storage Facility

Dear Ms. Ma:

On March 30, 2018, the Nuclear Regulatory Commission (NRC) published a notice in the Federal Register requesting comments on the scope of the agency's Environmental Impact Statement (EIS) for the Holtec International HI-STORE Consolidated Interim Storage facility project located in Lea County, New Mexico (83 FRN 13802). The Tribal Radioactive Materials Transportation Committee (TRMTC) offers the following comments and recommendations regarding the scope of the EIS.

TRMTC consists of members of 17 active tribes that meet semi-annually to plan and discuss topics relevant for the National Transportation Stakeholders Forum (NTSF). The NTSF is the mechanism through which Department of Energy (DOE) communicates with tribes and states about shipments of radioactive waste and materials. NTSF meetings focus specifically on issues relating to packaging and transportation, emergency management, security, inspection and enforcement, and radiation protection.

## Background

The NRC received a license application by letter dated March 30, 2017, from Holtec International requesting authorization to construct and operate a HI-STORE consolidated interim storage facility (CISF) for spent nuclear fuel at a site in Lea County, New Mexico. Holtec intends to initially store 500 canisters (or 8680 metric tons) of uranium, and eventually store up to 10,000 canisters in the CISF. The NRC staff will prepare an EIS to document the potential environmental impacts from the proposed action.

It is expected that spent nuclear fuel will be transported from sites throughout the U.S. to the CISF. The transportation routes will include much of Indian Country. Therefore, the scope of the EIS must certainly include potential impacts to tribal historic and cultural resource areas, pursuant to Section 106 of the National Historic Preservation Act (NHPA). It is also important to note that many tribes may have hunting, fishing and gathering rights on lands that they ceded to the Federal government (that may be outside reservation boundaries); potential impacts on these lands must be evaluated in accordance with NEPA.

### Tribes in the United States

Presently, there are 566 federally recognized Indian tribes in the United States. Each tribe should be considered a unique governmental entity, with its own structure, leadership, land base, membership criteria, language, culture and traditions. As such, there are distinct differences among tribes and it is unacceptable to use a "one size, fits all" approach when interacting with and understanding Indian tribes.

You may hear the terms Indian tribes or Nations, Bands, tribes, Pueblos, Rancherias, Villages, Communities; they all refer to federally recognized Indian tribes. The tribal leadership may be different as well—Chiefs, Governors, Presidents, Chairman and tribal council, community council, business council—but it all means the same thing, a duly elected system of government for the tribe.

Indian tribes should be thought of as sovereign nations with the ability to exercise jurisdiction over its land and people. Each tribe's land base may be different, whether large or small, they are established by a Treaty with the U.S. government, Presidential Executive Order, or through a Trust land acquisition. In all cases, each federally recognized Indian tribe has regulatory jurisdiction over its own lands.

The NRC should bear in mind that the transportation aspects (of the CISF) have the potential to impact a great number of Indian tribes and tribal lands. Tribal governments along or adjacent to a transportation corridor have an expectation that the NRC will work with them on a government-to-government basis to address any potential concerns. It is not clear how, if, and when the NRC plans to consult with any potentially impacted federally recognized tribes.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments states *"The United States has a unique legal relationship with Indian Tribal governments; the United States recognizes the right of Indian Tribes to self-government and tribal sovereignty; each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that affect the Tribe."*

Furthermore, the Executive Order states *"Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights."*

TRMTC appreciates the NRC's efforts to develop its own Tribal Policy. In fact, NRC representatives have briefed TRMTC many times throughout the development of the policy. Regarding the principles in the NRC Tribal Policy Statement, we believe it is vital for the NRC to recognize the Federal Trust relationship by upholding its Trust Responsibility with federally recognized Indian tribes.

The basis for the tribal-federal government relationship is a general trust responsibility to federally recognized Indian tribes. That means the United States government has a legally enforceable fiduciary obligation to protect tribal sovereignty, self-determination, tribal lands, tribal assets and resources, and treaty and other federally recognized and reserved rights. This is especially important when we consider the potential consequences and cumulative effects of radiological impacts to tribal lands and resources.

It has been argued that as long as the federal agency complies with its statutory duties, it fulfills its trust responsibilities. TRMTC believes that the trust responsibility must mean more than solely complying with existing statutes and regulations, the same protections that are available to other persons (i.e., the public). In our view, communication is not consultation and the NRC are required to do more, not less. This is especially true when the issues relate to lands held in trust by the United States for a tribe and/or tribal cultural and historic resources within a tribe's homeland.

With regard to NRC interactions with Indian Tribes, we expect a good-faith government-to-government relationship and early consultation with the agency. We would like to have a conversation with NRC representatives well before the agency takes any action that may impact our people, land and culture.

The NRC's Tribal Policy recognizes the distinction between federally recognized Indian tribes and those who are not. While not federally-recognized, we believe transportation routes have the potential to impact State-recognized Tribes and their resources as well. As such, the draft EIS must systematically evaluate impacts in accordance with NEPA.

Since the development of the EIS will take several months to complete, we would like to invite members of the NRC team drafting the EIS to attend our next meeting to discuss our concerns further. We will be meeting in January 2019 in the Washington, DC area. Meanwhile, if you have any questions, please feel free to contact me at (702) 339-7200.

Sincerely,

*Richard Arnold*

Richard Arnold, Pahrump Paiute Tribe/ Consolidated Group of Tribes and Organizations  
TRMTC Co-Chair

*Ron Johnson*

Ron Johnson, Prairie Island Indian Community  
TRMTC Co-Chair

Tribal Radioactive Materials Transportation Committee