



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 1, 2018

Mr. James Stovall, District Manager
Pecos District
U.S. Bureau of Land Management
2909 West Second Street
Roswell, NM 88201-2019

SUBJECT: INVITATION TO PARTICIPATE AS A COOPERATING AGENCY IN
PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT FOR THE
PROPOSED HOLTEC CONSOLIDATED INTERIM STORAGE FACILITY,
LEA COUNTY, NEW MEXICO (DOCKET NO.: 72-1051)

Dear Mr. Stovall:

The purpose of this letter is to invite the Carlsbad Field Office, Pecos District, of the U.S. Bureau of Land Management (BLM) to participate as a cooperating agency in the U.S. Nuclear Regulatory Commission (NRC) staff's preparation of an Environmental Impact Statement (EIS), pursuant to the National Environmental Policy Act of 1969, as amended (NEPA). The NRC received an application from Holtec International (Holtec) 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. As part of this action, Holtec plans to submit an application to BLM for an easement for a railroad spur to be constructed across BLM land, connecting the proposed site to an industrial railroad. The railroad spur would be used for transportation of the spent fuel from the rail line to the CISF site. Both NRC and BLM have responsibilities under the NEPA regarding the environmental impacts of these actions.

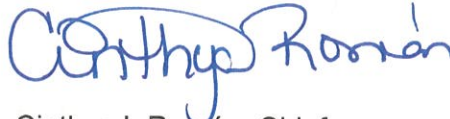
Enclosed is a Memorandum of Understanding (MOU) between NRC and BLM for the environmental review. The purpose of the MOU is to establish a framework for early coordination and participation between the two agencies to ensure the timely review of the proposed CISF. Cooperation between the NRC and the BLM on the Holtec application will ensure that each agency's review responsibilities under NEPA and other related statutes are met in connection with their respective jurisdictions. The general roles and responsibilities of the NRC (as lead agency) and the BLM (as cooperating agency) in developing an EIS for the Holtec CISF are provided in the attached referenced MOU.

NRC requests your signature as a party to this MOU for the duration of the environmental review. Please sign and return the MOU at your earliest convenience via email to the Environmental Project Manager, Ms. Jill Caverly, at Jill.Caverly@nrc.gov. The MOU will become publicly available upon receipt of your signature.

RECEIVED Bureau of Land Mngt
OCT 5 2018 PM 12:38

If you have any questions or need additional information, please contact Ms. Jill Caverly, by telephone at 301-415-7674, or via e-mail at the above-mentioned address.

Sincerely,



Cinthya I. Román, Chief
Environmental Review Branch
Division of Fuel Cycle Safety, Safeguards,
and Environmental Review
Office of Nuclear Material Safety
and Safeguards

Docket No. 72-1051

Enclosure:
Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. NUCLEAR REGULATORY COMMISSION, OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS, AND THE U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, CARLSBAD FIELD OFFICE, ON THE NATIONAL ENVIRONMENTAL POLICY ACT ENVIRONMENTAL REVIEW RELATED TO THE ISSUANCE OF AUTHORIZATIONS TO BUILD AND OPERATE THE PROPOSED HOLTEC INTERNATIONAL CONSOLIDATED INTERIM STORAGE FACILITY

The U.S. Nuclear Regulatory Commission (NRC) and the U.S. Bureau of Land Management (BLM), as parties to this Memorandum of Understanding (MOU), hereby acknowledge and declare as follows:

I. Introduction

The NRC and BLM developed this MOU to establish a cooperating agency relationship for the purpose of collaborating on the environmental reviews consistent with the National Environmental Policy Act of 1969 (NEPA) in support of the agencies respective regulatory processes associated with the authorizations required in connection with the construction and operation of the Holtec International (Holtec) proposed consolidated interim storage facility in Lea County, New Mexico. This MOU will be governed by all applicable statutes, regulations, and policy, including the NRC's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste," and Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," and BLM's regulations in 43 CFR Part 2800, "Rights-of-Way: General."

II. Purpose and Regulatory Background

On March 30, 2017, Holtec submitted an application to the NRC requesting a license 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 also plans to submit an application to the BLM for an easement for a railroad spur to be constructed across BLM land, connecting the proposed site to an existing industrial railroad approximately 4 miles west of the site. The railroad spur would be used for transportation of the spent fuel from the rail line to the CISF site.

Both the NRC and BLM have responsibilities under NEPA to conduct an environmental review in relation to their respective proposed actions. BLM has expressed interest in becoming a cooperating agency; and NRC would serve as the lead agency for the environmental review. NRC is preparing an environmental impact statement (EIS) for the proposed NRC action in accordance with 10 CFR 51.20(b)(9). This MOU will establish a framework under which both the NRC and BLM may satisfy their environmental review obligations.

The purposes of this MOU are:

- A. To designate the NRC as the lead agency in the EIS process.
- B. To designate the BLM as a cooperating agency in the EIS process.
- C. To provide a framework for cooperation and coordination between the NRC and the BLM that will aid in the successful completion of the EIS in a timely, efficient, and thorough manner.
- D. To describe the respective roles, responsibilities, jurisdictional authority, and expertise of BLM and NRC in the planning process.

III. Authorities for the MOU

- A. The authorities of the NRC to enter into and engage in the activities described within this MOU include, but are not limited to:
 1. NEPA (42 USC § 4321 *et seq.*);
 2. Atomic Energy Act (42 U.S.C. 2011 *et seq.*);
 3. The NRC regulations implementing NEPA at 10 CFR Part 51; and
 4. National Historic Preservation Act of 1966.
- B. The authorities of the BLM to enter into and engage in the activities described within this MOU include, but are not limited to:
 1. Federal Land Policy and Management Act of 1976 (Pub. Law 94-579, 43 USC § 1701 *et seq.*);
 2. 43 CFR Part 2800; and
 3. Council on Environmental Quality (CEQ) NEPA-implementing regulations at 40 CFR 1500-1508

IV. Roles and Responsibilities

NRC. The NRC licenses waste storage facilities in accordance with its regulations such that the storage of spent fuel will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public, and protection of the environment.

BLM. The BLM manages use of Federal lands in accordance with its regulations such that there is a careful balancing of multiple use and sustained yield, as mandated by the Federal Land Policy and Management Act.

NEPA Lead Federal Agency. NEPA is the overarching environmental statute requiring the identification of impacts to the quality of the human environment from the proposed action, consideration of alternatives, and public involvement in the process. A primary objective of NEPA is to ensure that environmental information is available to public officials and citizens before irretrievable commitments of resources are made. This agreement supports these principles, and the NRC and BLM acknowledge their respective responsibilities for complying with the requirements of NEPA. To prevent duplication of efforts by Federal agencies, to the extent possible, and to encourage information sharing, collaboration, and integration of agency processes, NEPA allows for the designation of a lead Federal agency for the preparation of EISs when EISs are required.

The issuance of a license by the NRC to construct and operate an interim storage facility is an action that normally requires the preparation of an EIS per 10 CFR 51.20(b)(9). As the agency with authority to approve or deny the licensing of interim storage facilities, the NRC shall serve as the lead agency for the preparation of the EIS.

The NRC recognizes that BLM has special expertise evaluating impacts on BLM land due to the rail spur construction and operation and acknowledges that the BLM will be the agency responsible for issuing the appropriate rights-of-way (ROW) for the rail spur or permitting other project-related actions on BLM land. The EIS will serve to fulfill the NEPA responsibilities of both NRC and BLM. Both agencies will issue a separate Record of Decision.

A. NRC Responsibilities:

1. As Lead Agency, the NRC retains final responsibility for the content of the EIS. The NRC's responsibilities include identifying the purpose of and need for the Holtec CISF EIS; selecting alternatives for analysis; determining effects of the proposed alternatives; making recommendations on the proposed action; evaluating appropriate mitigation measures; and preparing the EIS. In meeting these responsibilities, the NRC will follow the guidance set forth in NUREG-1748 *Environmental Review Guidance for Licensing Actions Associated with NMSS Programs, Final Report*; and all applicable statutory and regulatory requirements.

2. To the fullest extent consistent with its responsibility as lead agency, the NRC will utilize the comments, recommendations, data, and/or analyses provided by the BLM in the CISF EIS process, giving particular weight to those topics on which the BLM is acknowledged to possess special expertise.
3. Upon request, the NRC will provide the BLM with copies of documents underlying the CISF EIS relevant to the BLM's responsibilities, including technical reports, data, analyses, and drafts of the CISF EIS specific to the BLM's area of special expertise, subject to the NRC's information handling requirements.
4. The NRC staff will identify milestone dates in the standard EIS review schedule listed in Attachment A to this MOU.

B. BLM Responsibilities:

1. The BLM is a Cooperating Agency for developing the CISF EIS and has special expertise regarding impacts on BLM land due to the rail spur construction and operation.
2. The BLM will review sections of the CISF EIS regarding rail spur impacts and provide timely comments or additional information to be incorporated in those sections.
3. When the BLM provides information, technical analyses, data sets or comments, it will provide the information to be used in developing the CISF EIS within the time frames in the schedule in Attachment A.
4. BLM will be responsible for writing and signing a separate Record Of Decision for the decisions that fall under BLM jurisdiction (Railroad ROW, and any other decision impacting BLM lands).

C. Responsibilities of BLM and NRC:

1. The Parties agree to participate in this planning process in good faith and make all reasonable efforts to resolve disagreements.
2. The Parties agree to comply with the review schedule, which incorporates specific milestones provided in Attachment A and timeframes for BLM's reviews and submissions. The NRC reserves the right to proceed with the EIS schedule notwithstanding any delays associated with input from the BLM.
3. Each Party agrees to fund its own expenses and costs associated with the CISF EIS process.

V. Other Provisions

- A. **Authorities Not Altered.** Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.
- B. **Financial Obligations.** Nothing in this MOU shall require any of the Parties to assume any obligation or expend any sum in excess of authorization and appropriations available. The MOU does not obligate any funding.
- C. **Conflict of Interest.** The Parties agree not to utilize any individual for purposes of environmental analysis including officials, employees, or third party contractors, having a financial interest in the outcome of the CISF EIS.
- D. **Documenting Disagreement or Inconsistency.** As described in Section IV above, the NRC staff will provide an opportunity for the BLM to review sections of preliminary versions of the Draft and Final EIS specific to BLM's areas of expertise. Where the NRC and the BLM disagree on significant elements of the CISF EIS, and these disagreements cannot be resolved, the NRC will make the final decision regarding the content of the EIS and the BLM may document its views and submit them as comments on the EIS to be incorporated in the final document as appropriate.
- E. **Management of Information.** The BLM acknowledges that all data and information provided will become part of the NRC's official record and will be available for public review, except that NRC may withhold information from the public that is exempt from disclosure under the Freedom of Information Act (FOIA) and other applicable statutory authorities. Subject to the FOIA, the BLM agrees that internal working draft documents for the development of the CISF EIS will not be made available for review by individuals or entities other than the Parties to this MOU.

All confidential, proprietary, Sensitive Unclassified Non-Safeguards Information or other protected information under NRC regulations will be labeled according to requirements in 10 CFR § 2.390. The NRC and BLM shall ensure that shared data, including data concerning the precise location and nature of historic properties and properties of religious and cultural significance, are protected from public disclosure to the greatest extent permitted by law, including conformance to Section 304 of the National Historic Preservation Act, as amended and Section 9 of the Archaeological Resources Protection Act.

In cases where the license applicant provides information it considers confidential or proprietary, BLM agrees that such information is to be held confidential. Should the BLM cause any unauthorized distribution of confidential or proprietary information to occur, the BLM will return the information to the NRC and the BLM may have its cooperating agency status terminated.

The NRC and BLM agree that in order to allow full and frank discussion of preliminary analysis and recommendations, meetings to review pre-decisional and deliberative documents will not be open to the public.

- F. **Responsibility for Decision Making.** While the Parties agree to make reasonable efforts to resolve procedural and substantive disagreement, they acknowledge that the NRC retains final responsibility for any determinations identified in the CISF EIS regarding the NRC licensing action excepting those that fall under BLM jurisdiction (Railroad ROW, any other decision impacting BLM lands).
- G. **MOU Limitations.** Nothing in this MOU is intended to confer a binding or enforceable right of action on any party.
- H. **Retention of Rights.** Cooperating agency status for the CISF EIS does not preclude the BLM from participating in the NEPA process according to the provisions in 10 CFR Part 51.

VI. **Agency Representatives**

Each agency will designate a representative to ensure coordination between the BLM and the NRC during the planning process.

NRC Representatives:

Jill Caverly, Senior Project Manager

Jill.caverly@nrc.gov

301-415-7674

Stacey Imboden, Senior Project Manager

Stacey.imboden@nrc.gov

301-415-2462

BLM Representative:

Tessa Cisneros, Realty Specialist

tcisnero@blm.gov

575-234-5980


VII. **Administration of the MOU**

- A. **Approval.** This MOU becomes effective upon signature by the authorized officials of all of the Parties

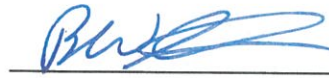
- B. **Amendment.** This MOU may be amended through written agreement of all signatories.
- C. **Termination.** If not terminated earlier, this MOU will end when the CISF EIS is issued by the NRC. Any Party may end its participation in this MOU by providing written notice to the other Party.
- D. **Entirety of Agreement.** This MOU, including Attachments, consisting of 8 pages represents the entire and integrated MOU between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

VIII. Signatories

This agreement will take effect on the last date of signature.

 10/15/2018

James Stovall, District Manager
Pecos District
Bureau of Land Management
U.S. Department
of the Interior

 10/1/18

Brian Smith, Acting Director
Division of Fuel Cycle Safety, Safeguards,
and Environmental Review
Office of Nuclear Material Safety
and Safeguards
U.S. Nuclear Regulatory Commission

EIS Schedule

	Potential Activities of Cooperating Agency BLM within its acknowledged areas of expertise	Schedule for Input to NRC
1	Provide information for consideration in assessing impacts of construction and operation of the rail spur, if applicable.	Within 45 calendar days of MOU signing by NRC and BLM representatives.
2	Provide review comments on sections of substantive working drafts of the Draft EIS specific to BLM's areas of special expertise before it is sent to publishing as an official Draft EIS for public comments; attend draft EIS review meeting if requested.	Within 10 business days of receiving applicable sections of the working draft of the Draft EIS for review.
3	Provide comments on the Draft EIS, as appropriate.	Within the time period identified in the <i>Federal Register</i> Notice for publication of the Draft EIS for public comment.
4	Provide comments on sections of substantive working drafts of proposed responses to public comments on the Draft EIS, specific to BLM's areas of special expertise.	Within 10 business days of receiving draft compilation of comments and responses.
5	Provide comments on sections of substantive working drafts of the Final EIS, specific to the BLM's areas of special expertise.	Within 10 business days of receiving applicable sections of the working draft of the Final EIS for review.