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Sent: Wednesday, July 8, 2020 1:24 AM
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Cc: Park, James; Borges Roman, Jennifer; WCS_CISFEIS Resource; Roman, Cinthya; Vietti-Cook, Annette
Subject: [External_Sender] Letter from 60 Organizations in 22 states, re: Docket No. 72-1050 (NRC-2016-0231), Interim Storage Partners, LLC/Waste Control Specialists, LLC Consolidated Interim Storage Facility Project (Request for indefinitely prolonged DEIS pub...

July 8, 2020

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SUBJECT: Docket No. 72-1050 (NRC-2016-0231), Interim Storage Partners, LLC/Waste Control Specialists, LLC Consolidated Interim Storage Facility Project (Request for indefinitely prolonged DEIS public comment period and convening of public meetings at multiple sites across Texas, as well as in other states along transport routes)

Dear NRC Commissioners:

The undersigned 60 organizations from 22 states hereby propose a significant restructuring of the present plan for public participation in, and public commenting upon, the Draft Environmental Impact Statement (DEIS) of the Interim Storage Partners/Waste Control Specialists, LLC (ISP/WCS) license application for a consolidated interim storage facility (CISF) for spent nuclear fuel (SNF, also known as irradiated nuclear fuel, INF -- highly radioactive waste) proposed for Andrews County, Texas. Ten of the undersigned

organizations sought leave to intervene in the ISP/WCS CISF adjudicatory licensing proceeding, NRC Docket No. 72-1050 (NRC-2016-0231). Sierra Club was granted intervenor status, as well as a hearing on the merits of admissible contentions, but has since been ruled against by the Atomic Safety and Licensing Board Panel (ASLBP) presiding over the licensing proceeding, and the proceeding terminated by the ASLB. Beyond Nuclear and the Sustainable Energy and Economic Development Coalition of Texas were granted intervenor status, but were denied intervention because of a supposed lack of an admissible contention. Don't Waste Michigan, Citizens' Environmental Coalition, Nuclear Energy Information Service, San Luis Obispo Mothers for Peace, Leona Morgan, Public Citizen-Texas Office, and Citizens for Alternatives to Chemical Contamination were denied standing entirely.

All of the undersigned organizations hereby request that the Commission indefinitely extend, for the duration of the national COVID-19 pandemic emergency, the ongoing public comment period for the Draft Environmental Impact Statement (DEIS) for the ISP/WCS CISF proposed for development in Andrews County, west Texas. At the formal termination of the national emergency, as via a safe and effective vaccine available to all people regardless of socio-economic status, we request that the public comment period then be extended for a period of 180 days, post-pandemic. We further request that when in-person public comment meetings again become safely possible that the NRC conduct plenary-style, in-person public comment meetings in the following six Texas locations: San Antonio, Dallas/Fort Worth, Houston, El Paso, Midland, and Andrews. We also request that in-person public comment meetings likewise be held, post-pandemic, in more than a dozen more cities nationwide, on impacted transport corridors in states outside Texas, as listed later in this letter.

The undersigned 60 groups seek these changes in the public participation arrangements because of the serious present public health emergency, during which much of the American public is beset with concerns of maintaining individual and family health, free of the coronavirus. Americans are still facing, in unprecedented numbers, sudden dramatic economic reversals and dislocations associated with global recession or even economic depression. In fact, rather than the hoped for, hot weather, summertime lull in coronavirus cases, Texas, unfortunately, is currently an epicenter of an alarming resurgence of the highly infectious, deadly COVID-19 pandemic. Meaningful public participation in the NRC's processing of a license for the ISP/WCS CISF, and the implementation of procedures under the National Environmental Policy Act (NEPA), is impossible when people and their governments must address crisis-borne difficulties daily. As COVID-19 ravages major population centers and disrupts the health care continuum, it is increasingly unfair to expect citizens to perform needed research and analysis and consultation of experts in order to comment on the NRC's ISP/WCS DEIS.

Our requests in this letter are echoed by large blocs of U.S. Congress members. We are backed up by 24 Democratic U.S. Senators (including five who were campaigning for the presidency up until recently), who wrote the White House Office of Management and Budget on April 8, 2020, seeking suspensions of any deadlines on executive branch public comment periods, during this pandemic. In addition, 14 Democratic U.S. House of Representatives committee chairmen wrote a similar letter, making a similar call, to OMB on April 1, 2020.

1. The ISP/WCS CISF Project Is Unprecedented And Controversial

ISP/WCS is presently seeking an NRC license for authorization to construct and operate a CISF for spent nuclear fuel (SNF) "interim storage" on a site in Andrews County, Texas. ISP/WCS intends initially to store 500 canisters (containing 5,000 metric tons, or MT) of irradiated nuclear fuel (INF), followed by numerous additional phases of 5,000 MT each. ISP/WCS plans eventually to store 40,000 MT of SNF at the facility. Even at 40,000 MT, the CISF would easily be one of the world's very largest INF aggregations in one place.

ISP/WCS proposes to accept more than half the total volume of SNF planned for entombment at the proposed U.S. Department of Energy (DOE) Yucca Mountain geological repository, targeting Western Shoshone land in Nevada: 40,000 MT of irradiated nuclear fuel at the ISP/WCS CISF, versus 70,000 MT at Yucca Mountain. It follows that ISP/WCS's transport volume, risks, and impacts will be more than half as intense as Yucca's. The largely-ignored or under-analyzed transportation effects of the ISP/WCS CISF would be more than half as significant as Yucca's very significant transportation impacts. And in the

sense that ISP/WCS plans to transport the INF, post-"interim storage" at the CISF in TX, to the Yucca Mountain, NV dump, the CISF's transport impacts will be greater than Yucca's (40,000 MT of SNF, transported twice, versus 70,000 MT, transported once).

ISP/WCS plans long-term INF storage for up to 60 years, awaiting completion of a deep geological repository for final INF disposal (1). ISP/WCS intends to provide storage services before a repository is built (2), which if approved by the Commission would comprise a conclusive violation of the Nuclear Waste Policy Act which is likely to continue to be opposed by intervening parties.

It further is very questionable whether the facility will operate for less than 60 years. Holtec International/Eddy-Lea Energy Alliance (Holtec/ELEA) in New Mexico, just 39 miles away from ISP/WCS's proposed CISF, has applied for up to a 120-year license for its CISF (3); Holtec has even asserted that a CIS facility "should have a minimum service life of 300 years." (4) And in 2019, then-Secretary of Energy Rick Perry – former Texas governor – acknowledged the possibility that the proposed Waste Control Specialists (WCS) INF CISF might *de facto* become the final repository for SNF, if a geological repository becomes politically or scientifically impossible. In response to questioning by U.S. Rep. Mike Simpson (R-ID) at a U.S. House appropriations subcommittee hearing on March 26, 2019, Perry said he and the political leaders of Andrews County, Texas, where the ISP/ WCS CISF would be located, do not object to the ISP/WCS CISF becoming a *de facto* permanent INF disposal site. (5) The acknowledged potential for such a momentous perversion of the interim storage concept, alone, is reason enough to extend the public comment period and its geographic reach to allow extended feedback from people and regions which would have to bear the burden of a different, "forever" mission.

2. The Present Public Comment Arrangements Are Grossly Inadequate

The NRC has granted only 120 days for public comment on the ISP/WCS CISF DEIS, (6) which contrasts sharply with the U.S. Department of Energy's (DOE) handling of the DEIS public comment stage on the Yucca Mountain, Nevada INF geologic repository scheme DEIS. DOE accepted comments on the Yucca DEIS for 199 days, and convened 23 different public comment meetings in 2001 and 2002, scattered across the country. But for ISP/WCS's CISF – expected to contain, in less secure circumstances, more than half the SNF volume of Yucca – the NRC has yet to schedule any public comment meetings. (At the WCS CISF environmental scoping stage in 2017, only two in-person public comment meetings were held, one in Hobbs, New Mexico, and one in Andrews, Texas.) The DOE convened half a dozen Yucca DEIS public comment meetings in Nevada and nearby parts of California, and held others in a dozen more states along transport corridors through which the INF would be shipped. Although deliberately excluded from the ISP/WCS CISF DEIS, the massive nationwide campaign of SNF shipping via barge, Legal Weight Truck (LWT), and rail, over literally millions of shipment miles, will expose most of the Lower 48 states to significant transport risks, identical to those of shipments bound for the Yucca Mountain repository in Nevada targeting Western Shoshone land. Besides the in-person public meeting sites at six locations across Texas (San Antonio, Dallas/Fort Worth, Houston, El Paso, Midland, and Andrews), the undersigned organizations, on behalf of our members and supporters across the United States of America, request that public comment meetings be held at each of these sites, all located along one or more anticipated major INF transport routes: Atlanta; Boston; Chicago; Cleveland; Detroit; Kansas City; Miami; Minneapolis/Saint Paul; Nashville; New York/Newark; Omaha; Philadelphia; Pittsburgh; San Luis Obispo, CA; St. Louis; Salt Lake City; Tampa.

The possibility of a spent nuclear fuel leak, explosion, criticality or canister breach in any of these urban areas, not to mention routine (incident-free) X-ray-like gamma and neutron radiation emissions during canister transport, surely warrants the scheduling of public comment plenaries in each location. The licensing decision for ISP/WCS's CISF requires a process that is much more visible and accessible than at present. The NRC's concept of public involvement so far does not match the scale of policy, operational and environmental concerns raised by the proposal. There were more than 47,000 public comments submitted at the ISP/WCS CISF scoping stage, (7) over 95% of which were opposed to the plan. That degree of public interest will be eclipsed by the sponsorship of public comment meetings in transportation corridors at greater distances from west Texas. The NRC's restrictive level of public engagement is grossly inadequate for so ambitious a project.

3. NEPA Requires Maximum Public Participation at the DEIS Stage

The NRC's NEPA regulations at 10 C.F.R. § 51.73 require that at least 45 days be allowed for DEIS public comments. Council on Environmental Quality (CEQ) regulations at 40 C.F.R. § 1501.8, however, impose nuanced considerations on the structuring of the comment phase. Section 1501.8 does not "prescribe [] universal time limits for the entire NEPA process, "but expects agencies to set time limits that are "appropriate to individual actions" and "are consistent with the purposes of NEPA and other essential considerations of national policy." *Id.* The regulation suggests consideration of the following factors when setting time limits in the NEPA process:

- Potential for environmental harm.
 - Size of the proposed action.
 - State of the art of analytic techniques.
 - Degree of public need for the proposed action, including the consequences of delay.
 - Number of persons and agencies affected.
 - Degree to which relevant information is known and if not known the time required for obtaining it.
 - Degree to which the action is controversial.
 - Other time limits imposed on the agency by law, regulations, or executive order.
- 40 C.F.R. § 1501.8(b)(i-viii).

The magnitude of the ISP/WCS CISF project against these factors supports the provision of many public comment meetings across the country. There is very serious accident potential in hauling SNF by the thousands of cargoes to Andrews County, Texas. One of the single largest agglomerations of irradiated nuclear fuel on the planet will have to be perfectly contained when received, handled, stored at the surface, monitored, retrieved, exported, and at the decommissioning of the ISP/WCS CISF. The array of scientific considerations in the DEIS is extensive and may require interested commenters to seek expert interpretation and advice. The development of the ISP/WCS CISF is a national public policy determination for which there are years available to make the best-informed public determination. While the DEIS excludes serious analysis of transportation impacts from long-distance and transcontinental shipments of SNF, over 200,000,000 people live within 50 miles of a barge, truck or rail route on which the waste will travel. (8) Multiple federal and state agencies are affected and will have a role in regulation or implementation, such as the NRC, DOE, the U.S. Department of Interior's Fish and Wildlife Service, U.S. Department of Transportation's Federal Highway Administration and its Federal Rail Administration, the Army Corps of Engineers, and Department of Homeland Security. Hundreds of state and local utility, transportation, environmental, and emergency preparedness authorities will also be involved, pre-implementation and during the operational and decommissioning phases. Given the controversial nature of the project, the foregoing considerations militate in favor of a more geographically inclusive and lengthy DEIS public comment stage than the NRC has committed to do.

4. NRC Discretion to Limit Public Comments Is Constrained

Congress intended that agency discretion, and not the courts, be used to determine "when extra procedural devices should be employed." *Phillips Petroleum Co. v. U.S. EPA*, 803 F.2d 545, 559 (10th Cir. 1986) (emphasis omitted) (quoting *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 546 (1978) (internal quotation marks omitted)). But a reviewing court can overturn an agency decision for failure to provide additional procedure when there are "extremely compelling circumstances." *Vermont Yankee*, 435 U.S. at 543.

Such circumstances are present here, where the DEIS for an enormous undertaking has been published in the midst of an unprecedented national and global public health ordeal. Construction and operation of the ISP/WCS CISF demands flawless transportation from locations around the country to the Texas destination. At issue is an expensive and long-duration SNF storage site where extraordinarily deadly substances will have to be contained for many decades, or even centuries, or longer. The continued storage of INF at reactor sites, in hardened on-site or near-site storage, as an alternative to the ISP/WCS

CISF, requires further consideration. The risks from even one major cask transport accident or act of sabotage, if accompanied by catastrophic releases of hazardous radioactivity, would be more than the public is willing to accept just to have the waste concentrated in west Texas.

Perhaps there can be no time when 100% of the interested public can participate at the public comment stage, but that only means that the public's chance to focus on the ISP/WCS CISF, and participate, must be made as convenient and informed as possible. Accordingly, the ISP/WCS CISF licensing process must yield to this historical virus calamity. We thus request that the DEIS public comment opportunity for the ISP/WCS CISF be indefinitely extended from September 4, 2020, through the formal end of the COVID-19 pandemic crisis, as when a safe, effective vaccine is universally available. We further ask that at that time, the NRC allow an additional 180 days for public comment, and that the agency also convene more than a dozen, geographically widespread, in-person public comment meetings, as proposed in this letter, along with the six requested Texas plenaries. The undersigned organizations have previously participated in this licensing proceeding as advocates for public health and safety and the environment. Finally, we ask for an expedited decision from the Commission as to these requests, given the fast-approaching September 4, 2020 deadline.

Thank you very much.

/s/ Terry J. Lodge

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References:

- (1) From "Environmental Impact Statement for Interim Storage Partners LLC's International's License Application for a Consolidated Interim Storage Facility for Spent Nuclear Fuel in Andrews County, Texas, Draft Report for Comment," NUREG-2239 (ISP/WCS DEIS), p. 2-2.
- (2) From the ISP/WCS CISF DEIS, Section 2.2.1, Proposed Action, p. 2-2: "By the end of the license term of the proposed CISF, the NRC staff expects that the SNF [spent nuclear fuel] stored at the proposed facility would have been shipped to a permanent geologic repository."
- (3) From "Environmental Impact Statement for the Holtec International's License Application for a Consolidated Interim Storage Facility for Spent Nuclear Fuel and High Level Waste, Draft Report for Comment," NUREG-2237 (Holtec DEIS), Docket ID NRC-2018-0052, p. 2-2.

(4) Letter, Joy Russell, Holtec Vice-President, to DOE, "Response to RFI on Private Initiatives to Develop Consolidated SNF Storage Facilities," 1/27/2017, <https://www.energy.gov/sites/prod/files/2017/02/f34/Jan%2027%2C%202017%20-%20Joy%20Russell%20-%20Response%20to%20the%20RFI%20on%20Private%20Initiatives.pdf>

(5) See Perry testimony from 23 minutes 30 seconds to 29 minutes 30 seconds at <https://www.youtube.com/watch?v=CgtHCsQzffc&feature=youtu.be>

(6) Federal Register Notice for WCS' DEIS, FR Doc. 2020-09795, Filed: 5/7/2020 8:45 am; Publication Date: 5/8/2020.

(7) Letter from U.S. Representative Lloyd Doggett (35th District, Texas) to NRC Chairman Kristine L. Svinicki, NRC Commissioners Baran, Caputo, Wright, and Hanson, Secretary Vietti-Cook, and Mr. James Park, Office of Nuclear Material Safety and Safeguards, June 16, 2020, posted online at: <http://static1.1.sqspcdn.com/static/f/356082/28319398/1593466400517/6+16+20+US+Rep+Lloyd+Doggett+Letter+to+NRC.pdf?token=xi5Xnzq7U4qOSXySGHBXzzTRZaY%3D> Also notable, the environmental scoping comment period for ISP/WCS's CISF was limited to a 60-day period, while for Yucca Mountain, the DOE allowed 120 days. "Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada," DOE/EIS-0250, Vol. 1, pp. 1-23-24.

(8) In the "Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada, Volume I" (February 2002), the U.S. Department of Energy pronounced that the "region of influence for public health and safety along existing transportation routes is 800 meters (0.5 mile) from the center line of the transportation rights-of-way and from the boundary of rail yards for incident-free (non-accident) conditions. The region of influence was extended to 80 kilometers (50 miles) to address potential human health and safety impacts from accident scenarios." §§ 3.2.1, p. 3-119. The irradiated nuclear fuel bound for the ISP/WCS CISF is identical to the INF targeted for deep repository burial on Western Shoshone land at Yucca Mountain, Nevada. The Yucca Region of Influence radius of 0.5 miles for incident-free transports, and 50 miles for accident scenarios, can be logically used in public comments about the several thousands of shipments of INF headed to the ISP/WCS CISF in Texas. Additionally, every single one of the several thousands of canisters delivered to ISP/WCS's CISF would, at a later date, supposedly have to be shipped, yet again, to a geological repository for permanent disposal.

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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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