

News from Beyond Nuclear

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Beyond Nuclear appeals against proposed national high-level radioactive waste dump targeted at New Mexico

U.S. Nuclear Regulatory Commission urged to overrule its licensing board, reject Holtec International's illegal application

Washington, D.C.—Beyond Nuclear has filed an appeal with the U.S. Nuclear Regulatory Commission (NRC), against the NRC Atomic Safety and Licensing Board (ASLB) ruling on an application by Holtec International/Eddy-Lea Energy Alliance. Holtec proposes a consolidated interim storage facility (CISF) for 173,600 metric tons of highly radioactive, commercial irradiated nuclear fuel in Southeastern New Mexico. (See the Brief on the Appeal, as well as the Notice of the Appeal, posted at Beyond Nuclear's homepage, www.beyondnuclear.org.) On May 7, the ASLB rejected Beyond Nuclear's legal objections to the proposed CISF. Beyond Nuclear's appeal requests the NRC to order immediate denial of Holtec's license application to the extent that it violates the Nuclear Waste Policy Act of 1982, as Amended (NWPA). By considering and approving an application that requires violation of the NWPA, Beyond Nuclear asserts the NRC is violating both the NWPA and the Administrative Procedure Act (APA).

Diane Curran, lawyer for Beyond Nuclear, stated "The Atomic Safety and Licensing Board's decision is legally erroneous, because there are no exceptions to the clear mandates of the Nuclear Waste Policy Act and Administrative Procedure Act. The Nuclear Regulatory Commission must make its decisions in accordance with the law. Beyond Nuclear therefore seeks reversal of the licensing board, and also respectfully requests the Commission to order immediate denial of Holtec's license application to the extent that it violates the Nuclear Waste Policy Act."

Holtec's application still retains the option for the U.S. Department of Energy (DOE) to take ownership of commercial irradiated nuclear fuel, to be temporarily stored at its proposed facility, which even Holtec has admitted is not allowed under the NWPA. During the oral argument in Albuquerque, NM last January, counsel for Holtec conceded that, under such "interim storage" circumstances, DOE ownership of commercial irradiated nuclear fuel would violate the NWPA: "I will agree with

you that, on their current legislation, DOE cannot take title to spent nuclear fuel from commercial nuclear power plants, under the current statement of facts, but that could change, depending on what Congress does.” (Transcript, pages 250-252, exchange between ASLB chief judge Ryerson and Holtec’s counsel Silberg).

To get around this admitted illegality at the heart of the Holtec application, the ASLB stated in its May 7 [ruling](#):

“...the Board assumes Holtec will honor its commitment not to contract unlawfully with DOE to store any other spent nuclear fuel (that is, the vast majority of spent fuel from commercial reactors, which is currently owned by the nuclear power companies). Likewise, we assume DOE would not be complicit in any such unlawful contracts.” [Pages 32-33]

“Even assuming for purposes of argument that the Administrative Procedure Act would countenance the Atomic Safety and Licensing Board's disregard of the Nuclear Waste Policy Act, the licensing board's rationalization that Congress may change the Nuclear Waste Policy Act in the future is unreasonable, unfair, arbitrary, and capricious, and therefore fails to satisfy the relevant federal law,” said Mindy Goldstein, legal counsel for Beyond Nuclear.

“The inclusion of an illegal provision – the Department of Energy’s taking title to the irradiated nuclear fuel at an interim site – renders the entire proposal illegal,” Goldstein said. “The Nuclear Regulatory Commission’s complicity in just going along with Holtec’s illegal proposal is itself a violation of the Administrative Procedure Act, because federal agencies like Nuclear Regulatory Commission are not allowed to exceed the authority that Congress has bestowed on them,” Goldstein added.

“Holtec is attempting an end-run around the carefully crafted and well balanced Nuclear Waste Policy Act, the public’s several-decade old, best protection against an interim storage facility becoming *de facto* permanent, at the surface, in this case two and a half times bigger than the national dump-site targeted at Western Shoshone Indian land at Yucca Mountain, Nevada,” said Kevin Kamps, radioactive waste specialist at Beyond Nuclear.

“U.S. Senator Jeff Bingaman from New Mexico, serving as chairman of the Energy and Natural Resources Committee, put it well, many years ago: opening a consolidated interim storage facility, without an operating permanent repository, risks temporary becoming *de facto* permanent. The Nuclear Waste Policy Act protects a state like New Mexico from being stuck, against its will, with a mountain of forever deadly high-level radioactive waste, at the surface of its land,” Kamps added.

“On behalf of our members and supporters in New Mexico, and across the country along the road, rail, and waterway routes in most states, that would be used to haul

the high risk, high-level radioactive waste to New Mexico, we will continue to appeal NRC's illegal actions to the federal courts, if necessary," Kamps added.

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The mission of Beyond Nuclear is 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.