

**MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. NUCLEAR REGULATORY
COMMISSION, OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS, AND THE
NEW MEXICO ENVIRONMENT DEPARTMENT ON THE 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 New Mexico Environment Department (NMED), as parties to this Memorandum of Understanding (MOU), hereby acknowledge and declare as follows:

I. Introduction

The NRC and NMED developed this MOU to establish a cooperating agency relationship for the purpose of preparing an Environmental Impact Statement (EIS) for the license application for the Holtec International (Holtec) Consolidated Interim Storage Facility (CISF), consistent with the National Environmental Policy Act of 1969 (NEPA).

The NRC shall be the lead federal agency (Lead Agency). The NRC acknowledges that NMED requested to be a Cooperating Agency and designates NMED as such for preparation of the CISF EIS. The NRC recognizes that NMED has special expertise in the areas listed in Section IV of this MOU. This MOU describes the responsibilities and procedures agreed to by the NRC and NMED. The cooperating agency relationship established through this MOU shall be governed by all applicable statutes, regulations, and policy, including the NRC's regulations (in particular, Title 10 of the *Code of Federal Regulations* (10 CFR) Part 51).

II. Purpose

The purposes of this MOU are:

- A. To designate the NRC as the lead agency in the EIS process.
- B. To designate NMED as a cooperating agency in the EIS process.
- C. To provide a framework for cooperation and coordination between the NRC and NMED 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 NMED and the NRC in the EIS development process.
- E. To foster opportunities for effective and efficient communication between the NRC and NMED, including the exchange of information, and government-to-

government meetings to enhance the Parties' interdisciplinary capabilities and further the goals of the NEPA.

F. To allow the NRC, as the Lead Agency, to draw on the expertise of NMED.

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

B. The authorities of NMED to enter into and engage in the activities described within this MOU include, but are not limited to:

1. Section 74-1-6(C) of the New Mexico Environmental Improvement Act.

IV. Roles and Responsibilities

A. The NRC's 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 proposed Holtec CISF; identifying the proposed action and reasonable alternatives; determining the effects of the proposed action; determining the effects of the 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 NMED in the CISF EIS process, giving particular weight to those topics which NMED is acknowledged to possess special expertise.
3. The NRC will provide NMED with copies of documents underlying the CISF EIS relevant to NMED's responsibilities, including technical reports,

data, analyses, and drafts of the CISF EIS specific to NMED's areas of special expertise, subject to the NRC's information handling requirements.

4. The NRC staff will identify milestone dates in the EIS review schedule to incorporate activities listed in Attachment A to this MOU.

B. NMED's Responsibilities:

1. NMED is a Cooperating Agency for developing the CISF EIS and is recognized as having special expertise regarding impacts due to its knowledge of the region and the state environmental permitting requirements. NMED staff's areas of expertise include surface water and groundwater.
2. NMED will work with the NRC to mutually coordinate, prioritize, identify, and manage tasks to provide technical information, comments, and expertise regarding those resource areas, and the data and analyses supporting them, in which it has special expertise. The NRC and NMED will identify staff to implement and coordinate these activities.
3. Within the areas of its special expertise, NMED may participate in any of the activities identified in Attachment A. These activities may include, but are not limited to: identifying data needs, identifying effects of alternatives, identifying cumulative impacts and their effects, suggesting mitigation measures, participating in government-to-government meetings, and providing written comments on working drafts of the Draft CISF EIS and Final CISF EIS.
4. For areas of review in which NMED assistance is requested, it will provide the information to be used in developing the CISF EIS within the time frames in the schedule in Attachment A.

C. Responsibilities of NMED and the NRC:

1. The Parties agree to participate in this 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 NMED's reviews and submissions.

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 its respective jurisdiction. Nothing in this MOU shall require any Party 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. **Immunities and Defenses Retained.** Each Party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.
- D. **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 licensing action, including development of the CISF EIS.
- E. **Documenting Disagreement or Inconsistency.** As described in Section IV above, the NRC staff will provide an opportunity for NMED to review all sections of preliminary versions of the Draft and Final EIS specific to NMED's areas of expertise. Where the NRC and NMED 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 NMED may document its views and submit them as comments on the Draft and Final EIS.
- F. **Management of Information.** NMED staff acknowledges that all 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 and other applicable statutory authorities. NMED staff 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.

Documents that NMED submits to the NRC and seeks to have withheld from public disclosure because they contain trade secrets, privileged, or confidential commercial or financial information will be labeled according to requirements in 10 CFR § 2.390(b).

Should NMED cause any distribution of confidential, proprietary, Controlled Unclassified Information, Sensitive Unclassified Non-Safeguards Information, or other protected information to occur, NMED will return the information to the NRC and NMED may have its cooperating agency status terminated.

The NRC and NMED 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.

If NMED receives a public records request for the disclosure of information that the Parties have withheld from public disclosure pursuant to this MOU, NMED will provide the NRC with written notice of the request within one (1) business day after receipt of the request.

- G. **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.
- H. **This MOU's Limitations.** Nothing in this MOU is intended to confer a binding or enforceable right of action on any party.
- I. **Retention of Rights.** Cooperating agency status for the CISF EIS does not preclude NMED 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 NMED and the NRC during the planning process.

The NRC's Representatives:
Jill Caverly, Senior Project Manager
Jill.Caverly@nrc.gov
301-415-7674

Stacey Imboden, Senior Project Manager
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301-415-2462

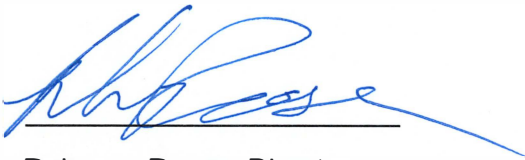
NMED's Representative:
Rebecca Roose, Water Protection Division Director
Rebecca.Roose@state.nm.us
505-827-2855

VII. Administration of the MOU

- A. **Approval.** This MOU becomes effective upon signature by the authorized officials of each of the Parties
- B. **Amendment.** This MOU may be amended through written agreement of each Party.
- C. **Termination.** If not terminated earlier, this MOU will end when the final CISF EIS is issued by the NRC. Any Party may end its participation in this MOU by providing 30 days written notice to the other Party.
- D. **Entirety of Agreement.** This MOU, including Attachment A, consisting of 7 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.



Rebecca Roose, Director
Water Protection Division
New Mexico Environment
Department



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