



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

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BOSTON, MA 02109-3912

February 17, 2022

Mr. Kelly Trice
Holtec Decommissioning International
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Dear Mr. Trice:

This letter is in response to Holtec's January 27, 2022, letter and "Information Sheet" to "Stakeholders, Elected Officials, Advocacy Groups and Community Members" regarding the decommissioning of Pilgrim Nuclear Power Station (PNPS). We want to make very clear that, contrary to the implication in the letter that discharges of spent fuel pool water are allowed by EPA, any such discharge is explicitly prohibited by the company's Clean Water Act (CWA) discharge permit, unless there are no CWA-regulated pollutants present. While radioactive materials regulated by the Nuclear Regulatory Commission are not considered CWA pollutants, EPA regulates a wide range of other contaminants and the presence of any of those would require further analysis and permitting before any discharge could be allowed by EPA. The permit clearly states that it was not designed to cover such undisclosed discharges associated with decommissioning and that EPA expects that a more detailed characterization of the pollutants in the spent fuel pool water would be required before any discharge would be authorized under the CWA.

Both your letter and information sheet discuss the EPA's role in the regulation of water discharges from PNPS to Cape Cod Bay and make general reference to the National Pollutant Discharge Elimination System (NPDES) Permit for PNPS (NPDES Permit No. MA0003557), which EPA Region 1 re-issued in January 2020. Your letter states that, at the November 2021 meeting of the Pilgrim Nuclear Decommissioning Citizens Advisory Panel, "a discussion was held regarding the discharge of **processed and filtered water** from the Pilgrim station as part of the ongoing decommissioning." (*emphasis added*). Your letter continues: ". . . it is well known that **these discharges** are normal for nuclear plants and are very well regulated by the United States Nuclear Regulatory Commission (NRC). **These discharges** are also allowed by the EPA . . ." (*emphases added*). While the letter does not define the term "processed and filtered water," it

appears to be a reference to spent fuel pool water and other water associated with decommissioning the reactor.

As noted above, the Clean Water Act prohibits the discharge of any “pollutant” except in compliance with the limits and conditions contained in an NPDES permit, 33 USC § 1311(a), but the term “pollutant” excludes “radioactive materials” regulated by the Nuclear Regulatory Commission under the Atomic Energy Act of 1954 (i.e., source, byproduct, and special nuclear materials). 40 CFR § 122.2 (defining “pollutant”). Thus, an NPDES permit can neither prohibit nor authorize the discharge of such radioactive materials. If, on the other hand, a discharge contains “pollutants” within the meaning of the Clean Water Act, then the discharge must be authorized under an NPDES permit in order to be lawful. The NPDES Permit for PNPS explicitly prohibits the “discharge of pollutants in spent fuel pool water” and other water associated with decommissioning. *See* NPDES Permit No. MA0003557 at Part I.B.2-4. The suggestion by Holtec in its January 27, 2022, letter and information sheet that discharges of spent fuel pool water or other water associated with decommissioning are authorized by EPA in the company’s NPDES permit has engendered considerable public confusion. As EPA has previously explained to the company, and as reflected in the plain, unambiguous text of the permit, discharges of spent fuel pool water that contain CWA-regulated pollutants are expressly prohibited by the company’s permit. (EPA observes that the company did not dispute this straightforward reading of the permit in its Petition for Review of the Permit filed before the Environmental Appeals Board.) In other words, a discharge of spent fuel pool water would be prohibited by the permit unless it contained no CWA-regulated pollutants. As recently as November 3, 2021, representatives from EPA Region 1 met with representatives from Holtec and PNPS and pointed out these provisions of the NPDES Permit. At that time, the company did not provide any alternative reading of these clear and relevant prohibitions. So that there is no misunderstanding regarding the authorization provided by the NPDES Permit, I write to remind you of the plain language of the Permit and reiterate what it does and does not allow.

The NPDES Permit authorizes PNPS to discharge pollutants to Cape Cod Bay, a Class SA water, “in accordance with effluent limitations, monitoring requirements and other conditions set forth” in the Permit. These discharges are in Part I.A.1 (circulating water and commingled waste streams), Part I.A.2 (non-thermal backwash water), Part I.A.3 (low volume waste), Part I.A.4 (intake screen washwater), Part I.A.5 (stormwater), Part I.A.6 (municipal water), Part I.A.7 (station heating system water, cooling water from heat exchangers of the Turbine Building Closed Cooling Water (TBCCW) system and Reactor Building Closed Cooling Water (RBCCW) system, drainage from the floor drains in the boiler room (station heating water), SSW system chlorinated salt water from various sumps in the Turbine and Reactor buildings, and reject water from the demineralizer system), Part I.A.8 (cooling water from heat exchangers of the Turbine Building Closed Cooling Water (TBCCW) system and Reactor Building Closed Cooling Water (RBCCW) system, SSW system chlorinated salt water from various sumps in the Turbine and Reactor buildings, and reject water from the emergency standby liquid control system), and Part I.A.9 (cooling water from heat exchangers of the Turbine Building Closed Cooling Water (TBCCW) system and Reactor Building Closed Cooling Water (RBCCW) system, SSW system

chlorinated salt water from various sumps in the Turbine and Reactor buildings, and reject water from the emergency standby liquid control system) of the NPDES Permit.

As noted above, the NPDES permit also lists specific discharges that are not authorized. *See* Part I.B.1-4. Specifically, unauthorized discharges include: pollutants in spent fuel pool water, Part I.B.2, pollutants in stormwater associated with construction activity, including activities, physical alterations, or additions associated with the dismantlement and demolition of plant systems, structures, and buildings, Part I.B.3, and pollutants associated with contaminated site dewatering, pipeline and tank dewatering, collection structure dewatering, or dredge-related dewatering, and including but not limited to physical alterations or additions resulting in the discharge of pollutants associated with the dismantlement and decontamination of plant systems and structures and/or the demolition of buildings, Part I.B.4. Further, EPA noted in the Response to Comments accompanying the NPDES Permit that

the Final Permit ***does not authorize*** the discharge of pollutants associated with the spent fuel pool water. Similarly, the Final Permit ***does not authorize*** the discharge of pollutants associated with other activities related to the decommissioning at PNPS, including, but not limited to, contaminated site dewatering, pipeline and tank dewatering, collection structure dewatering, dredge-related dewatering, or dismantlement and decontamination of plant systems and structures. If pollutants in these or similar wastestreams, or other wastestreams not expressly authorized by the Final Permit are expected to be discharged, the Permittee must either seek coverage for such discharges under another NPDES permit (i.e., an applicable General Permit)^[footnote omitted] or obtain a modification to the Final Permit ***[T]he Agencies are clarifying that the NPDES Permit only authorizes the discharge of pollutants associated with the wastestreams named in Part I.A of the Final Permit and that the discharge of pollutants in other wastestreams are not authorized.***

NPDES Permit No. MA0003557, Response to Comments at 275-77 (emphases added). Notably, although Holtec appealed some provisions of the NPDES Permit in 2020 to EPA's Environmental Appeals Board, it did **not** appeal the provisions at Part I.B.2-4.

Holtec has never provided EPA with a pollutant characterization of spent fuel pool water or other water associated with decommissioning the reactor. Holtec's January 27, 2022, letter and information sheet lay out three possible options for "water disposition," the first of which is to discharge such water to Cape Cod Bay. This is not an available option at this time, however, unless, as explained above, there are no CWA pollutants present. As EPA explained on the permit record, and as reflected in the permit itself, should Holtec wish to discharge any such water, it should first provide EPA with a full characterization of pollutants present in such water to determine whether Clean Water Act requirements apply and if they do, either apply for, and obtain, a modification of its existing individual NPDES Permit pursuant to 40 CFR part 122 or apply for, and obtain, authorization under an applicable NPDES general permit. In addition, since such discharges are likely to be considered new and/or increased discharges from the facility, they would be subject to an antidegradation review by the Massachusetts Department of Environmental Protection. *See* 40 CFR § 131.12; 314 CMR 4.04. The other two options for

water disposition named in your letter and information sheet (evaporation or off-site transportation and disposal) are unlikely to require any change to your current NPDES Permit or alternative NPDES coverage in EPA Region 1, since they do not appear from your description to involve a discharge of pollutants to waters in EPA Region 1.¹

I hope this letter clarifies what your NPDES Permit does (and does not) allow and your options for ensuring compliance with the Clean Water Act. If you have any questions, feel free to contact Damien Houlihan at (617) 918-1586.

Sincerely,

Digitally signed
KENNETH MORAFF
by KENNETH MORAFF
Date: 2022.02.17
10:47:38 -05'00'

Ken Moraff, Director
Water Division

cc: NDCAP
Lealdon Langley, MassDEP

¹ NPDES coverage in another state might be required for option 3, if “disposition” in such case involves discharging pollutants to waters of the US. In addition, all three options require compliance with state and federal laws beyond the Clean Water Act.