



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**Region 1
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Boston, MA 02109-3912**

June 17, 2022

Kelly Trice, President
Holtec Decommissioning International
Kristina P. Singh Technology Campus
1 Holtec Blvd.
Camden, NJ 08104

Dear Mr. Trice:

I write in response to your letter of May 24, 2022, in which you present a new alternative interpretation of Part I.B.2 of National Pollutant Discharge Elimination System (NPDES) Permit No. MA0003557, issued by EPA Region 1 for the Pilgrim Nuclear Power Station (PNPS) in Plymouth, Massachusetts.¹ In your letter, you state for the first time that you now believe that the discharge of “treated” wastewater from the spent fuel pool “complies with” the current NPDES permit and assert that this interpretation is “well within the plain language of the NPDES permit and would be consistent with the MOU and past discharge practices.” EPA does not agree with your position, as detailed below. First, your novel interpretation—through which you attempt to narrow the permit’s prohibition of wastewater discharges to “untreated” effluent—directly conflicts with the “plain language” of the permit. The provision at Part I.B.2 is clear on its face and provides in full that, “The discharge of pollutants in spent fuel pool water (including, but not limited to, boron) is not authorized by this permit.” NPDES Permit at Part I.B.2. Notably, to overcome the express terms of the permit and reach your new interpretation of Part I.B.2, you must insert the word “untreated” into this provision, but neither Part I.B.2 nor any other provision of the Permit specifies that Part I.B.2 only applies to “untreated” spent fuel pool water. Accordingly, for these reasons your reading of the permit is, in fact, *plainly inconsistent* with the unambiguous provisions of the permit.

Second, even if the provision were facially ambiguous and susceptible to differing interpretations, your interpretation contradicts the contemporaneous Response to Comments document (RTC) that accompanied EPA’s issuance of the Final Permit and that explained the bases for additions EPA made to the January 2020 Final Permit. The Draft Permit, which EPA issued in May 2015, did not include a provision comparable to Part I.B.2, *see* Draft Permit at Part I.E, but several commenters raised concerns during the public comment period about

¹ The NPDES permittee of record is Holtec Pilgrim, LLC. EPA understands that Holtec Decommissioning International, LLC, is the current holder of licenses issued by the Nuclear Regulatory Commission and that both Holtec Pilgrim and HDI are ultimately owned by the same parent company.

environmental impacts of discharges that could occur during decommissioning, including the potential for discharge of spent fuel pool water. *See* RTC at 272-77. In response to these comments, EPA added the provisions at Part I.B.2 through .4 and explained the reason for doing so. As EPA noted, Entergy had informed EPA of anticipated changes in cooling water usage due to the shutdown of PNPS, but had not informed EPA about other expected discharges, such as how and when it intended to dispose of spent fuel pool water and other wastewater related to decommissioning.² *Id.* In addition, in 2018, Entergy announced that it intended to sell PNPS to Holtec, who subsequently revealed that it would accelerate the decommissioning of PNPS but likewise did not provide EPA with detailed information about these discharges that might occur as a result. *Id.* EPA explained that, because neither Entergy nor Holtec had provided information to EPA to quantify or characterize discharges related to decommissioning activities, including decontamination, dismantlement, demolition of plant systems and structures, and disposal of spent fuel pool water, EPA could not evaluate at that time the potential impacts of such discharges and, consequently, could not develop appropriate permit limits and conditions. *Id.* EPA clarified, therefore, that the Final Permit only authorizes the post-shutdown discharges specified in Part I.A and “does not authorize the discharge of pollutants associated with the spent fuel pool water,” among other sources. *Id.* All the foregoing affirms EPA’s straightforward reading of the permit and constitutes evidence of EPA’s intent in fashioning the categorical prohibition against the discharge of spent fuel water, whether treated or untreated. The distinction Holtec attempts to draw now—between spent fuel pool water that has been treated and that which has not—is simply not reflected in the agency’s explanation for adding Part I.B.2 to the Final Permit. Nor does Holtec’s new interpretation recognize or address EPA’s authoritative interpretation in the Response to Comments. Moreover, Holtec appealed several provisions of the NPDES Permit to EPA’s Environmental Appeals Board in March 2020 but did not challenge Part I.B.2 or dispute in any way EPA’s statements in the Response to Comments regarding the provision. The opportunity for challenging Part I.B.2 has long passed, and EPA stands by, and reiterates, its interpretation in the permit record, which is consistent with EPA’s position repeated in our February 17, 2022, letter to you.

The 1975 Memorandum of Understanding (MOU) likewise does not provide support for your new interpretation. You selectively quote from the MOU but take the language out of context and entirely mischaracterize its applicability to the 2020 Permit. The statement you quote from the MOU addressed a period near the initial startup of a new nuclear power reactor, not one constructed almost 50 years ago. In addition, “past discharge practices” occurred under a different NPDES Permit, specifically a Permit issued in 1990 when the facility was operational and generating electricity, not when it was being decommissioned.

The 2020 Permit’s meaning is clear on its face and that meaning is expressly corroborated by the Response to Comments: discharges of pollutants in water stored in the spent fuel pool, dryer/separator pit, torus, or reactor cavity are *not* authorized by the current NPDES permit. As EPA has explained, Holtec Pilgrim may choose to seek authorization for such discharges of

² EPA now understands that Holtec intends to dispose of roughly 1.1 million gallons of water currently in the torus, the dryer/separator pit, and the spent fuel pool, which is considerably more than the radwaste system has traditionally discharged.

pollutants; EPA would analyze any such request in accordance with the CWA and NPDES regulations and may, if appropriate, authorize such a discharge via a permit modification or coverage under an applicable general permit. Any request must be accompanied by a sufficiently detailed characterization of the types of activities, effluent characteristics (including analytical data for all priority pollutants), treatment, and outfalls that the request for authorization covers. Although you shared some limited sampling results (pH, conductivity, total organic carbon, total suspended solids, and chlorides) with us during our virtual meeting on May 18, 2022, please be advised this information is not sufficient for EPA to make any regulatory decisions. While your letter presupposes that EPA authorization to discharge pollutants in this water would require the facility to make “significant changes in the plant design and add significant costs to the operation of PNPS,” EPA (and the public) has not had an opportunity to examine the pollutants and pollutant concentrations present in this water. Thus, neither you nor EPA can say with any degree of certainty at this time what treatment may be required or at what cost. EPA has not prejudged the outcome of any permit modification proceeding. Rather, if presented with a modification request and an appropriate characterization of the proposed discharges, EPA would analyze the submission in accordance with applicable Clean Water Act requirements, including that discharges must meet technology-based effluent limits or any more stringent limits necessary to meet state water quality standards. Any permit limits and conditions EPA develops would then be publicly noticed and made available for public comment prior to issuance of any final modification.

In summary, Holtec Pilgrim is not authorized under the current NPDES Permit to discharge pollutants in spent fuel pool water. If Holtec Pilgrim wishes to seek authorization from EPA for such discharges, Holtec must provide the information necessary for EPA to analyze the request and determine whether such a discharge would be in accordance with the CWA, NPDES regulations, and any other applicable federal law. *See, e.g.*, 40 CFR § 122.49. I hope this letter clarifies 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,

Ken Moraff, Director
Water Division

cc: Lealdon Langle, MassDEP