



Andrew Gottlieb  
Executive Director

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Massachusetts Department of Environmental Protection

Attn: MassDEP Surface Water Discharge Permitting Program

100 Cambridge St., Suite 900

Boston, MA 02114

**RE: Holtec International Preliminary Discharge Permit Denial**

Dear Commissioner Heiple:

The Association to Preserve Cape Cod (APCC) writes in strong support of the Massachusetts Department of Environmental Protection's tentative determination to deny Holtec International's request for a permit modification to discharge pollutants into Cape Cod Bay. We urge MassDEP to issue a final determination to deny the permit.

Founded in 1968, APCC is the Cape region's leading nonprofit environmental advocacy and education organization, working for the adoption of laws, policies and programs that protect, preserve and restore Cape Cod's natural resources. APCC focuses our efforts on the protection of groundwater, surface water, and wetland resources, preservation of open space, the promotion of responsible, planned growth and the achievement of an environmental ethic.

MassDEP's preliminary decision to deny Holtec's permit correctly interprets the Massachusetts Ocean Sanctuaries Act (OSA), which explicitly states that new industrial discharges, such as the new discharges proposed by Holtec as part of the Pilgrim Nuclear Power Station's decommissioning activities, are prohibited under state law in waters designated as ocean sanctuaries. The Cape Cod Bay Ocean Sanctuary was designated as such in 1971. Therefore, Holtec's proposal to discharge wastewater into the bay is subject to the requirements and restrictions of the OSA state law.

On February 15, 2023, APCC submitted a letter to EEA Secretary Rebecca Tepper and



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CZM Director Lisa Berry Engler that provides a comprehensive legal analysis establishing the relevance of the OSA to Holtec's permit application. It explains how discharging wastewater into Cape Cod Bay from the Pilgrim decommissioning process would be in direct violation of the OSA. **We have attached that February 15, 2023 correspondence along with this comment letter and request that it be included in the record for the public comment period for MassDEP's preliminary determination.**

MassDEP's basis for denial of the Holtec permit application, as required by state law, stands on firm legal ground and does not conflict with federal preemption rules. The rules on preemption as they relate to the Atomic Energy Act (AEA) are triggered if a state law expressly regulates radiation hazards. In that instance, the AEA preempts state law. However, if a state law on its face regulates a nuclear power plant with regard to actions other than radiation hazards, the AEA does not preempt state law. Unless there is a direct, targeted interference with the federal regulation of radiological hazards, the state law is not preempted. See *Northern States Power Co. v. Minnesota*, 447 F.2d 1143 (8th Cir. 1971); *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Comm.*, 461 U.S. 190 (1983).

The above distinction aptly applies to the Holtec discharge permit. The OSA regulates Holtec's proposed discharge of industrial pollutants into a state water designated as an ocean sanctuary, but it does not regulate radiological discharges. The OSA was enacted in 1971 by the State Legislature out of environmental concerns driven in large part by the threat of oil and gas exploration and industrial sources of pollution, not out of concern over nuclear issues. Compare *Entergy Nuclear Vermont Yankee, LLC v. Shumlin*, 733 F.3d 393 (2d Cir. 2013).

Importantly, the OSA does not leave Holtec without any options. Rather, it merely eliminates one of several options for the disposal of Pilgrim's decommissioning wastewater. The Nuclear Regulatory Commission does not dictate a single specific method for disposing of the wastewater; Holtec has the ability to choose other disposal methods that do not violate state law. In fact, the NRC's website states, "Holtec Decommissioning International (HDI) is responsible for determining how it will manage radioactive material in its liquid effluent. HDI may elect to use any of the methods allowed under the NRC's regulations, which allow discharge, shipment for disposal, or evaporation of the liquid and disposal of the resulting solid waste." See *Capron v. Office of the Attorney General of Massachusetts*, 944 F.3d 9 (1st Cir. 2019); compare *Kerr-McGee Chemical Corp. v. City of West Chicago*, 914 F.2d 820 (7th Cir. 1990).

We therefore urge MassDEP to move forward in finalizing its draft decision based on state law requirements and to issue a final permit denial to Holtec that prevents Pilgrim's wastewater



from being released into the Cape Cod Bay Ocean Sanctuary.

Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a long horizontal stroke.

Andrew Gottlieb  
Executive Director

