

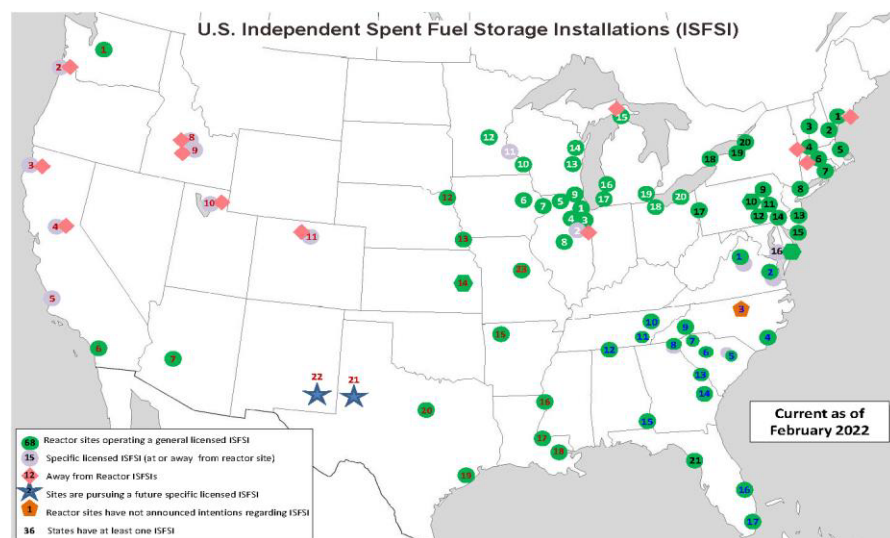
Beyond Nuclear

working for a world free from nuclear power and nuclear weapons



Background

In September 2021, the U.S. Nuclear Regulatory Commission (NRC) licensed Interim Storage Partners (ISP) to construct a consolidated “interim” nuclear waste storage facility in Andrews County, Texas. In May 2023, the NRC licensed Holtec International (Holtec) to build a similar facility less than fifty miles away in Lea County, New Mexico. The facilities would be located in the Permian Basin, where a substantial portion of America’s oil and gas extraction occurs.



Above, the two blue stars indicate the locations of Holtec and ISP’s proposed storage facilities. Map by NRC, available at <https://www.nrc.gov/reading-rm/doc->

The Licenses are Unlawful.

The Nuclear Waste Policy Act (NWPA) prohibits the federal government from taking title to commercial nuclear waste until the Department of Energy establishes a permanent geologic repository. Both the Holtec and ISP licenses contain conditional provisions enabling the facilities to store federally owned waste—commercial waste that the federal government has taken title to so

Impediments to Success: The ISP and Holtec “Interim” Storage Facility Licenses

as to assume responsibility for its safe transport and storage—in the event that Congress amends the NWPA. By including a condition that requires a change in law, and violates the NWPA as written, the licenses are inconsistent with the Administrative Procedure Act’s requirement that licensing decisions be made in accordance with the law of today.¹

The Courts Will Determine the Licenses’ Fate.

In 2022, the state of Texas, alongside mining company Fasken Land and Minerals, Ltd. (Fasken), challenged ISP’s license in the Fifth Circuit Court of Appeals. In August 2023, the Fifth Circuit vacated ISP’s license.² Fasken then challenged Holtec’s license, which the Fifth Circuit vacated on March 27, 2024. In June 2024, the NRC petitioned the Supreme Court for review of the Fifth Circuit’s decision to vacate ISP’s license. The Supreme Court granted certiorari, and oral arguments took place in March 2025. The Supreme Court reversed the Fifth Circuit’s decision on a procedural issue.³ Notably, the Court did not rule on whether the NRC had authority to issue a license to ISP. A similar case challenging the Holtec license is pending before the D.C. Circuit.⁴

Creating a Loophole Under the NWPA is Not the Solution.

Congress should **not** amend the NWPA to let the federal government take title to commercial waste before a repository exists. This would undermine the NWPA’s core purpose: to push the federal government to establish a permanent geologic repository. If nuclear power generators are not responsible for their waste, they will lose incentive to advocate for a repository, and “interim” storage will likely become permanent disposal. This would force communities near consolidated storage facilities to permanently host nuclear waste without the insulation from radiation exposure that underground isolation provides. Storing nuclear waste above ground renders it far more vulnerable to attacks and accidents, increasing the risk of radiation releases capable of contaminating the environment for millions of years.

¹ 5 U.S.C. § 706(2)(A).

² Texas v. NRC, 78 F.4th 827 (5th Cir. 2023) (cert granted, 145 S. Ct. 117 (2024)).

³ NRC v. Texas, 605 U.S. ____ (2025)).

⁴ Beyond Nuclear v. NRC, 113 F.4th 956 (2024).