



U.S. Department of Justice

Civil Division

Washington, DC 20530

September 30, 2016

VIA ELECTRONIC FILING

The Honorable J. Michelle Childs
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Re: State of South Carolina v. United States, et al., No. 1:16-cv-391

Dear Judge Childs:

Defendants submit this letter in response to South Carolina's letter of September 15, 2016, ECF No. 53, and to update the Court on the state of down-blending operations at the Savannah River Site ("SRS"). Attached to this letter, please find a press release issued today by the Department of Energy. The press release explains that down-blending operations have resumed at SRS. *See* Gunter Decl. ¶ 17, ECF No. 38-2 ("SRS plans to resume the down-blending of plutonium materials in K Area in September 2016.").

In addition, counsel for Defendants has reviewed the Semi-Annual Notification ("Notification") attached to South Carolina's September 15 filing. The Notification explains that "no Transuranic (TRU) waste shipments are yet scheduled for shipment to the Waste Isolation Pilot Plant (WIPP)." ECF No. 53, at 2. It goes on to state that "[o]nce exact dates are established for the reception of waste and shipping campaigns are determined, this notification will be revised." *Id.*

It appears that South Carolina is suggesting that the Notification is inconsistent with statements Defendants have previously made to the Court. *See* ECF No. 53, at 1. That is incorrect. As Defendants' own filing acknowledges, the declaration submitted by Henry Allen Gunter states that "WIPP *emplacement operations* are currently planned to resume in late calendar year 2016." Gunter Decl. ¶ 15, ECF No. 38-2 (emphasis added); *see also id.* at 6 n.7 ("Waste *emplacement operations* are expected to resume in late 2016.") (emphasis added); Hrg. Tr. 68:22-25 (same, citing Gunter Declaration); MSJ Opp., ECF No. 38, at 5 (same, citing Gunter Declaration). The Notification does not discuss waste emplacement operations at WIPP.

As Defendants have explained, once WIPP resumes operations, "[s]hipment of this material [from SRS] will be placed in the appropriate place in the queue of waste to be

transferred to WIPP.” Gunter Decl. ¶ 15, ECF No. 38-2. *See also id.* ¶ 17 (“Under the Record of Decision, this plutonium will be shipped to WIPP after the currently suspended waste-emplacement operations resume at WIPP later this year, and will be placed in the appropriate place in the queue of waste to be shipped to WIPP.”).

Sincerely,

A handwritten signature in black ink, appearing to read "Spencer E. Amdur". The signature is fluid and cursive, with a long horizontal stroke at the end.

Spencer E. Amdur
Trial Attorney
Civil Division, Federal Programs Branch
United States Department of Justice