UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION  

STATE OF SOUTH CAROLINA, 
Plaintiff,  

v.  

UNITED STATES  
UNITED STATES DEPARTMENT OF 
ENERGY;  

RICK PERRY,  
in his official capacity as Secretary of Energy;  

NATIONAL NUCLEAR SECURITY 
ADMINISTRATION; and  

LISA E. GORDON-HAGERTY,  
in her official capacity as Administrator of the 
National Nuclear Security Administration 
and Undersecretary for Nuclear Security.  

Defendants.  

Case No. 1:18-cv-1431-JMC  

DECLARATION OF ROBERT B. RAINES  

I, Robert B. Raines, make the following declaration pursuant to the provisions of 28 U.S.C. § 1746.  

1. I am employed by the United States Department of Energy (DOE) at 1000 Independence Ave. SW, Washington DC as the Associate Administrator for Acquisition and Project Management. 

I have served in this capacity from August 2011 until the present.  

2. As part of my responsibilities, I am responsible for overseeing construction of large capital construction projects. The information contained in this declaration is based upon my personal knowledge and information that I have obtained in my official capacity.
3. On December 12, 2017, President Trump signed the National Defense Authorization Act for Fiscal Year 2018 (FY 2018 NDAA) into law. Pursuant to Section 3121 of the FY 2018 NDAA and section 309 of the Consolidated Appropriations Act, 2018, Congress authorized the Secretary of Energy to waive the requirement to use funds for construction and project support activities relating to the Mixed Oxide (MOX) facility at the Savannah River Site in Aiken, South Carolina.

4. On May 2, 2018, the Governor of South Carolina, wrote a letter to Secretary Perry, stating that if DOE were to fulfill the requirements of Section 3121 of the FY 2018 NDAA by providing the commitment and certifications to Congress, the State of South Carolina intended to resort to legal recourse to enjoin DOE and continue the MOX program. This letter from Governor McMaster is appended as Attachment A.

5. Pursuant to this authorization to terminate the MOX facility, on May 10, 2018, Rick Perry, the Secretary of Energy submitted to the congressional defense committees, i.e., the Honorable John McCain, Chairman on Armed Services of the United States Senate, and Honorable William “Mac” Thornberry, Chairman of the Committee on Armed Services of the U.S. House of Representatives, the commitment and three certifications required by Section 3121 of the FY 2018 NDAA and section 309 of the Consolidated Appropriations Act, 2018. These May 10, 2018 letters to the two congressional defense committee are appended as Attachments B, and C respectively.

6. Also on May 10, 2018, the Department of Energy provided the State of South Carolina with written notice that it had provided the commitment and three certifications required by Section 3121 of the FY 2018 NDAA to Congress that day. This e-mail to South Carolina is appended
as Attachment D.

7. Pursuant to the FY 2018 NDAA, after providing the required notifications to the congressional defense committees, the Secretary of Energy is authorized to waive the requirement to carry out construction and project support activities relating to the MOX facility and to terminate the MOX facility 30 days after issuance of the notifications. Section 309 of the Consolidated Appropriations Act, 2018.

8. On May 14, 2018, the National Nuclear Security Administration (NNSA) issued a Partial Stop Work Order, which is appended as Attachment E. The partial stop work order applies only to: “costs associated with hiring new staff, initiating new or awarding in-process procurements, replacing non-manual and manual staff renewal of expiring leases, and/or initiation of new construction activities.” Id. at 1. On May 21, 2018, in response to MOX Services’, the MOX project contractor, request for clarification, NNSA confirmed, inter alia, that the partial stop work order applies only to new hires, and does not apply to job offers accepted by employees prior to issuance of the partial stop work letter. NNSA letter to MOX Services dated May 21, 2018, Attachment F. The majority of the major equipment and materials necessary to complete the MFFF have already been procured. There are approximately 40 acres and 300,000 square feet of previously procured equipment and materials awaiting installation. Much of this material has been on hand for years. As such, the majority of the cost at the current phase and future phases of the Project is related to labor. NNSA clarified on May 21, 2018, that the partial stop work was only applicable to “new construction activities” not identified in the contractor’s FY18 work Execution Plan. MOX Services is continuing to carry out construction activities pursuant to its execution plan.
9. After the May 10, 2018 notification to the congressional defense committees, NNSA has held discussions with MOX Services concerning potential implementation of a Full Stop Work Order. MOX Services has confirmed that upon receipt of a Full Stop Work Order, it will begin issuing notices to all affected MOX employees advising them of potential termination within 60 days of receipt of such notification. MOX Services has informed NNSA it will be following such notification procedure in compliance with the Worker Adjustment and Retraining Notification (WARN) Act 29 U.S.C. 2101-2109. May 23, 2018 e-mail from Bobby Wilson, President of CB&I Project Services Group and Chairman of the Board of Governors for CB&I MOX Services joint venture to Robert Raines, Associate Administrator for Acquisition and Project Management, NNSA, appended as Attachment G.

10. MOX Services has informed NNSA that upon receipt of a Full Stop Work Order, it estimates that it expects to take 10 working days to complete issuance of notification of potential termination to its employees. Id. It states that if it receives a Full Stop Work Order on June 11, 2018, it expects to complete service of notifications to its employees by Jun 22, 2018. Id. Under this scenario, MOX Services lay offs would begin no sooner than August 11. Id.
11. Shipments of defense plutonium to be processed at the MOX facility were suspended in 2014. Defendants Opposition to Motion for Summary Judgment, C.A. No. 16-391, Hanlon Declaration at ¶ 11, Ex. 38-8. They remain under suspension and no other shipments of plutonium scheduled to be processed by the MOX facility are contemplated at this time. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 24th day of May, 2018.

ROBERT B. RAINES
Attachment A

May 2, 2018 Letter From Governor of South Carolina
May 2, 2018

The Honorable Secretary Rick Perry  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585

Dear Secretary Perry:

I have met with you and Department of Energy (DOE) staff to discuss the mixed oxide ("MOX") solution for repurposing 13 metric tons of weapons-grade plutonium into usable fuel. As I have stated, the DOE has attempted to stop the MOX program for several years, electing to break federal law 50 U.S.C.A. §2566. Further, the DOE has ignored a recent federal court order requiring the DOE to continue the MOX program.

The DOE has also ignored South Carolina’s concerns, instead opting to pursue diluting the weapons-grade plutonium and permanently storing the waste, despite having no timeline, no location for the dilution process, and no licensed facility for storage. Now, the DOE is considering relying on a temporary budget proviso in the Fiscal Year 2018 National Defense Authorization Act to eliminate the current MOX program by (1) certifying a suitable MOX alternative exists and (2) providing a complete life-cycle cost estimate showing the new disposal plan will cost less than half the estimated cost of MOX. This proviso does not override the DOE’s federal statutory MOX obligations. Moreover, any such DOE certification is meritless as these conditions cannot be met.

First, the DOE has no alternative plan, only an idea. The DOE commissioned the National Academies of Science (NAS) to evaluate the "viability of the U.S. Department of Energy’s (DOE’s) conceptual plans for disposing of surplus plutonium in the Waste Isolation Pilot Plant (WIPP)...." The NAS experts are still meeting and will not provide a report before December of 2018 regarding the viability of the dilute and dispose plan. Additionally, the Environmental Protection Agency states that it has not reviewed the possible placement of diluted weapons-grade plutonium at the WIPP. (Attached EPA Letter). DOE’s dilution proposal is, at best, conceptual.

Second, the DOE cannot demonstrate that the dilute and dispose process will be cheaper as it has no proper evaluation of the MOX program’s costs. The September 2017 Government
Secretary Perry  
Page 2  
May 2, 2018

Accountability Report #17-390 states that the DOE has not completed a life-cycle cost estimate of the MOX program. (GAO-17-390, p. 23-25.) The DOE cannot realistically compare costs of the MOX program and its idea to dilute and dispose of weapon-grade plutonium without an accurate cost estimate of both programs.

Accordingly, if DOE moves forward with the certification process, **South Carolina will use all legal recourse available to enjoin the DOE and continue the MOX program.** History will repeat itself, as South Carolina sued the DOE in 2014 under President Obama’s administration, the first time the DOE tried to unlawfully halt the MOX program.

South Carolina is still embroiled in litigation with the DOE. The State sued the DOE in 2016 for its failure to complete the MOX program or remove the weapons-grade plutonium stored in South Carolina. By federal statute, South Carolina should receive $1 million per day beginning January 1, 2016, for DOE’s failure. DOE continues to evade its obligations under the law, yet expects South Carolina citizens to trust its promise to one day begin a new process to remove the 13 metric tons of weapons-grade plutonium.

The DOE’s recent attempts to pacify South Carolina by dangling a possible “recommendation” to manufacture plutonium pits at the Savannah River Site (SRS) solves no current problem. A new project does not dispose of the 13 metric tons of weapons-grade plutonium on site, and a “recommendation” provides no current jobs. It will take upwards of 10 years to produce plutonium pits, well after the current SRS MOX employees have been terminated. I will utilize all available options to protect South Carolina from becoming a permanent plutonium waste repository.

Yours very truly,

\[Signature\]

Henry McMaster

HM\rkt

cc: Attorney General Alan Wilson  
The Honorable Lindsey Graham  
The Honorable Tim Scott  
The Honorable Joe Wilson
Attachment B

May 10, 2018 Letter from the Secretary of Energy to Honorable John McCain
Chairman on Armed Services of the United States Senate
Mr. Rick Lee, Chairman
Governor’s Nuclear Advisory Council
1200 Senate Street
460 Wade Hampton Building
Columbia, South Carolina 29201

Dear Mr. Lee,

Thank you for your letter of February 22, 2018 to Environmental Protection Agency Administrator Scott Pruitt regarding the Department of Energy’s (DOE) intention to use the Waste Isolation Pilot Plant (WIPP) for the disposal of plutonium currently intended for conversion to mixed oxide (MOX) fuel. I am responding for the Administrator.

You raise several issues in your letter, including concerns about a possible “dilute and dispose” method that a DOE representative discussed with the Governor’s Nuclear Advisory Council. I will address your issues generally in this response.

It is our understanding that Congress has directed the DOE to study the viability of the dilute and dispose process as a potential approach for the disposal of 34 metric tons (MT) of plutonium identified through the Plutonium Management and Disposition Agreement between the United States and Russia. The EPA is not aware of any other Congressional decision or definitive DOE action that would indicate that a final decision has been made to use a “dilute and dispose” approach for the 34 MT of plutonium.

There would be many steps and some time before the EPA formally becomes involved in exercising its regulatory responsibilities associated with the possible disposal of the 34 MT of plutonium at the WIPP. This includes the National Environmental Policy Act activities that the DOE would be required to do, in addition to the separate studies directed by Congress. As these different studies and analyses would be expected to take many years, it is premature for the EPA to address the issue of the disposal at WIPP of the 34 MT of plutonium.

You note that the EPA recently recertified that the WIPP is in compliance with the final disposal regulations at 40 CFR Part 191 and express the view that the DOE’s March 2014 Compliance Recertification Application (CRA) did not fully address a number of issues related to the potential disposal of an additional 6 MT of surplus non-pit plutonium (which is separate from the 34 MT of plutonium currently intended for conversion to MOX fuel). At the time of the March 2014 CRA, the DOE had not completed the process (e.g., the Environmental Impact Statement) necessary for the DOE to include the material in the WIPP waste inventory.

Under the Land Withdrawal Act, the DOE is required to submit to the EPA, every 5 years, documentation of the WIPP’s continued compliance with the EPA’s final disposal regulations at 40 CFR...
Part 191. See Pub. Law 102-579, Section 8(f) (Oct. 30, 1992). Based on the DOE's submission, the EPA then determines whether the DOE continues to be in compliance with those regulations. Id. Each CRA addresses changes and updated information from the period between the previous CRA and the new CRA. Because the final status of that material had not yet been determined, the DOE's March 2014 CRA did not address the 6 MT of surplus plutonium.

With the inclusion of the 6 MT of surplus plutonium in the 2016 WIPP inventory, the DOE determined that the surplus plutonium, after downblending, is defense related transuranic waste and is eligible for disposal at the WIPP. As a waste going to the WIPP, the DOE will need to appropriately incorporate the 6 MT of surplus plutonium in its CRA 2019 performance assessment and provide the EPA with the information necessary to evaluate its impacts on compliance with the applicable regulations. The EPA is working with the DOE to determine how the 6 MT and other issues will be addressed in the 2019 CRA.

I appreciate your bringing your concerns to the EPA's attention, and I want to assure you that the EPA will continue to fulfill its regulatory responsibilities relating to the WIPP. If you have any follow-up questions on this matter, please contact Lee Ann B. Veal, Director of the Radiation Protection Division, at veal.lee@epa.gov or 202-343-9448.

Again, thank you for your letter. I appreciate the opportunity to be of service and trust the information provided is helpful.

Sincerely,

Jonathan D. Edwards
Director
Office of Radiation and Indoor Air

cc: Lee Ann B. Veal, EPA/ORIA
    Tom Peake, EPA/ORIA
    Ray Lee, EPA/ORIA
    Jack Bowles, EPA/OCIR
    Wren Stenger, EPA/Region 6
    Beverly Banister, EPA/Region 4
    John Kiellings, NMED
    Todd Shrader, DOE/CBFO
    Jeff Carswell, DOE/CBFO
    Betsy Forinash, DOE/HQ
Attachment C

May 10, 2018 Letter from the Secretary of Energy to Honorable William “Mac” Thornberry, Chairman of the Committee on Armed Services of the U.S. House of Representatives
The Secretary of Energy  
Washington, DC 20585  

May 10, 2018

The Honorable William “Mac” Thornberry  
Chairman  
Committee on Armed Services  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Section 3121 of the National Defense Authorization Act for Fiscal Year 2018 (FY 2018 NDAA) and section 309 of the Consolidated Appropriations Act, 2018, permits the Secretary of Energy to waive the requirement to use funds for construction and project support activities relating to the Mixed Oxide (MOX) facility. This letter constitutes my execution of that waiver authority, consistent with section 3121 of the FY 2018 NDAA and section 309 of the Consolidated Appropriations Act, 2018.

I confirm that the Department is committed to removing plutonium from South Carolina intended to be disposed of in the MOX facility. We are currently processing plutonium in South Carolina for shipment to the Waste Isolation Pilot Plant (WIPP) and intend to continue to do so. At the same time, we are planning to install additional equipment for processing plutonium for removal from South Carolina and to increase the rate at which this removal can be carried out. We are also exploring whether any of the plutonium currently in South Carolina can be moved elsewhere for programmatic uses. I am also committed to ensuring a sustainable future for the Savannah River Site supporting the Department’s many enduring national security missions, such as tritium production or other nuclear security efforts.

I certify that an alternative option for carrying out the plutonium disposition program for the same amount of plutonium intended to be disposed of in the MOX facility exists. The Department’s alternative method for carrying out the 34 metric ton plutonium disposition program, the Dilute and Dispose approach, was evaluated using the National Nuclear Security Administration’s Business Operating Procedure entitled “Analysis of Alternatives” and dated March 14, 2016 (BOP-03,07) and met its requirements. Furthermore, I certify that the remaining Lifecycle cost for the Dilute and Dispose approach will be less than approximately half of the estimated remaining lifecycle cost of the MOX fuel program. The Department’s independent cost estimate concluded that the remaining Dilute and Dispose lifecycle cost is $19.9 billion. The Department estimated the remaining lifecycle cost of the MOX fuel program to be $49.4 billion. The independent cost estimate for the Dilute and Dispose lifecycle cost was determined in a manner comparable to the cost estimating and assessment best practices of the Government Accountability Office, as found in the document entitled “GAO Estimating...
and Assessment Guide" (GAO-09-36P), and the estimates used were of comparable accuracy.

Finally, I certify that the Department will work with the State of New Mexico to address the capacity issues related to the receipt of the full 34 metric tons at WIPP. This can be accomplished by more accurately calculating the volumes disposed of at WIPP. A proposed permit modification to implement this new approach was discussed with stakeholders prior to being submitted to the New Mexico Environment Department on January 31, 2018.

I appreciate the waiver authority Congress has provided me in the FY 2018 NDAA to cease MOX construction. Consistent with that authority and the certification provided in this letter, the Department will begin pursuing the Dilute and Dispose approach to plutonium disposition.

If you have any questions, please contact Marty Dannenfelser, Deputy Assistant Secretary for House Affairs, at (202) 586-5450.

Sincerely,

Rick Perry

Rick Perry

cc: The Honorable Adam Smith
    Ranking Member
Attachment D

May 10, 2018 E-Mail Notice to the State of South Carolina that DOE Had Provided the Commitment and Three Certifications Required by Section 3121 of the FY 2018 NDAA to Congress
Dear Trey,

Today, Secretary Perry executed the waiver to terminate construction of the Mixed-Oxide Fuel Fabrication Facility (MOX) at the Savannah River Site (SRS) in Aiken, SC. In accordance with Congressional direction in the 2018 National Defense Authorization Act (NDAA) and FY 2018 Omnibus Appropriation Bill, the Secretary submitted a certification to the congressional defense committees waiving the use of funds for construction and project support activities relating to the Mixed Oxide (MOX) facility.

Pursuant to the requirements under Section 3121(b) of the FY 2018 NDAA, the Secretary’s certification:

- Confirms that the Department of Energy is committed to removing plutonium intended to be disposed of in the MOX facility from South Carolina and ensure an enduring mission of the Savannah River Site (SRS);

- Certifies that an alternative option for carrying out the plutonium disposition program for the 34 metric tons (MT) intended to be disposed of in the MOX facility exists and the remaining lifecycle costs for the alternative option will be less than half of the estimated remaining lifecycle cost of the MOX fuel program; and

- States that the Department is seeking a permit modification that would address the capacity of the Waste Isolation Pilot Plant (WIPP) for receipt of transuranic waste, including waste that would result from the dilute and dispose option.

The Department of Energy is committed to meetings its obligation to the State of South Carolina to securely process and remove plutonium from the State. The Savannah River Site plays a key role in our national security and the Department remains committed to its enduring mission.

We would like to brief you at your earliest convenience. Please let me know when that might be possible and we will work to schedule a brief with our subject matter experts.

Regards,

Stuart Eason
NNSA Intergovernmental Affairs Specialist
1000 Independence Ave. SW,
Washington D.C. 20585
O: (202) 586-0405   C: (571) 474-5712
logo-nnsa-top
Attachment E

NNSA Partial Stop Work Order
May 14, 2018

Rox Norton
Vice President, Contracts and Supply Chain Management
CB&I AREVA MOX Services, LLC
Savannah River Site
P.O. Box 7097
Aiken, SC 29804-7097

SUBJECT: Contract DE-AC02-99CH10888 (Mixed Oxide Fuel Fabrication Facility).
Partial Stop Work Order

REFERENCES: Contract DE-AC02-99CH10888 (Mixed Oxide Fuel Fabrication Facility)

Dear Mr. Norton:

In accordance with Contract Section F.3, Federal Acquisition Regulation (FAR) 52.242-15 Stop-
Work Order (Aug 1989) — Alternate I (Apr 1984), NNSA hereby issues this partial stop work
order. This order is effective immediately and shall remain in effect for 90 days after the issuance
of this letter, unless sooner canceled or otherwise dispositioned by the Government.

The Contractor shall immediately comply with the terms of this order, and take all reasonable steps
to minimize the incurrence of costs allocable to the work covered by the order during the period of
work stoppage. This partial stop work order applies to costs associated with hiring new staff,
initiating new or awarding in-process procurements, replacing non-manual and manual staff,
renewal of expiring leases, and/or initiation of new construction activities.

The contractor shall also preserve and provide NNSA access to all records, data, and any other
information (regardless of form or storage medium) generated or acquired under referenced
contract. The Contractor shall not delete or otherwise dispose of any films, correspondence,
records, data or any other information (regardless of form, storage medium, or location).

All other terms and conditions of the contract are unchanged by this direction. Any incurred costs
inconsistent with this direction shall be contrary to the terms and conditions of the contract and
will therefore be considered unallowable.

If you have any questions or comments, please contact the undersigned at 505-845-5701.

Sincerely,

Geary Pyles
Procuring Contracting Officer

NA-APM-18-0157

NA-APM-18-0157
cc:
S. Cannon, NA-APM-1.4
L. Nyman, NA-APM-1.4
S. Hamlett, NA-APM-1.4
A. Rischieter, NA-APM-1.4
M. Noone, NNSA-SRFO
D. Del Vecchio, MOX Services
G. Rousseau, MOX Services
R. Ridgeway, MOX Services
P. Whittingham, MOX Services
R. Ector, MOX Services
MOXPMODCA@srs.gov
Attachment F

NNSA Letter to MOX Services
Dated May 21, 2018
May 21, 2018

Mr. Rex Norton
Vice President, Contracts and Supply Chain Management
CB&I AREVA MOX Services, LLC
Savannah River Site
P.O. Box 7097
Aiken, SC 29804-7097

SUBJECT: Contract DE-AC02-99CH10888 (Mixed Oxide Fuel Fabrication Facility). Partial Stop Work Order Clarifications

REFERENCES: (1) NA-APM-18-0157 Pyles to Norton, Partial Stop Work Order issued, May 14, 2018

Dear Mr. Norton:

In response to your request for clarifications regarding the subject Partial Stop Work Order, the following is provided:

1. The contractor shall rescind any new job offers made after receiving the May 14, 2018 Partial Stop Work Order. The contractor shall not make any new job offers.
2. The contractor shall rescind any open job offers that were not accepted by May 14, 2018.
3. The contractor may honor new hire offers that were accepted before May 11, 2018.
4. The contractor may purchase construction supplies only if:
   a. Necessary for immediate construction scope;
   b. The lead time for delivery is less than 30 days;
   c. The quantity is limited to what is necessary to support construction efforts performed in the next 30 days or less.
5. The contractor may extend project services/supplies necessary for maintenance of the facility such as janitorial, certain software licenses, security/alarm systems, subject to the following criteria:
   a. The extensions are on a month-to-month basis.
   b. The contractor shall request NNSA pre-approval for any proposed extensions exceeding one month.
6. The contractor shall cancel planned travel, and obtain pre-approval for any travel deemed necessary. The near-term travel for Mr. Fazio beginning on May 19, 2018, ending on May 23, 2018, is approved.
7. The contractor shall not incur costs associated with the procurement of materials and/or installation of a perimeter fence at this time.
8. The contractor shall not incur any new construction costs other than those identified in the approved FY18 Execution Plan.

NA-APM-18-0160
9. Software License renewals are approved for those licenses that expire during the partial stop work period.

All other terms and conditions of the contract and the referenced Partial Stop Work Order are unchanged by this direction. Nothing in this direction may be construed as a determination as to the allowability of incurred costs. Any incurred costs inconsistent with this direction shall be contrary to the terms and conditions of the contract and Partial Stop Work Order and will therefore be considered unallowable.

If you have any questions or comments, please contact the undersigned at 505-845-5701.

Sincerely,

Geary Pyles
Procuring Contracting Officer

cc:
S. Cannon, NA-APM-1.4
B. Leugemors, NA-APM-1.4
L. Nyman, NA-APM-1.4
S. Hamlett, NA-APM-1.4
A. Rischieter, NA-APM-1.4
M. Noone, NNSA-SRFO

D. Del Vecchio, MOX Services
G. Rousseau, MOX Services
R. Ridgeway, MOX Services
P. Whittingham, MOX Services
R. Fector, MOX Services

NA-APM-18-0160
Attachment G

May 23, 2018 E-mail from Bobby Wilson, President of CB&I Project Services Group and Chairman of the Board of Governors for CB&I MOX Services Joint Venture to Robert Raines, Associate Administrator for Acquisition and Project Management, NNSA
From: Wilson, Bobby [mailto:Bobby.Wilson@cbi-psg.com]
Sent: Wednesday, May 23, 2018 5:52 PM
To: Raines, Robert <Robert.Raines@NNSA.doe.gov>
Cc: David.c.jones@orapo.group
Subject: Re: WARN ACT Information

Bob,
Confirming our discussion -
If termination is June 11th we will issue WARN notices as soon as possible the week of the 11th and expect to complete by the end of the week of 18th.

The affected employees that we discussed (based on reducing to 150 craft) is estimated to be 600-900.

An estimated 500 of the 900 will be craft. So, the non-manual number of affected employees is approximately 100-400.

Once WARN notices are issued, employee termination will begin 60 days later.

Hope this helps. Please let me know if you need additional information.

Bobby

Sent from my iPhone