



Savannah River Site Watch

Savannah River Site Watch

<http://www.srswatch.org/>

For Immediate Release

September 28, 2018

Federal Appellate Panel Hears MOX Termination Case; Indications are that Last-Ditch Plea by the State of South Carolina to Force DOE to Continue the Plutonium Fuel (MOX) Construction Project at SRS Will be Rejected

As New Fiscal Year Approaches, Termination of the MOX Boondoggle Seems More Certain Than Ever

Archive of Oral Argument before Fourth Circuit Court of Appeals, September 27, 2018:

<https://www.ca4.uscourts.gov/OAarchive/mp3/18-1684-20180927.mp3>

Columbia, South Carolina – A federal judicial panel reviewing the fate of the U.S. Department of Energy’s plutonium fuel (MOX) construction project appears to favor the position of allowing DOE to move forward with terminating the bungled project.

On September 27, a 3-judge panel with the Fourth Circuit Court of Appeals in Richmond, VA heard oral arguments by DOE’s National Nuclear Security Administration (NNSA), which appealed a decision by a federal district court in Columbia, SC that blocked DOE’s termination of the problem-plagued MOX project at the Savannah River Site in South Carolina.

The State of South Carolina brought the case in district court on May 25, 2018, after DOE began termination the MOX project on May 10, 2018, via letter sent to Congress by Secretary of Energy Rick Perry. On June 7, federal district Judge Michelle Childs granted the state’s request for a preliminary injunction, stopping DOE’s NNSA from terminating the MOX plant. NNSA appealed that decision to the Fourth Circuit Court of Appeals.

In their questioning and comments, all of the judges expressed doubt about the “standing” of the State of South Carolina in the matter and that the fate of the problem-plagued MOX project was in the hands of DOE and the Congress and not the state. The judges acknowledged the impact to South Carolina in the event of jobs reductions at the MOX project but that concern about jobs did not give the state standing.

The judges expressed concern about NNSA's assertion that \$1 million per day is being waste on MOX and seemed to affirm that the state has no claim of harm as long as plutonium remains safely stored in South Carolina and as long as DOE is pursuing non-MOX plutonium disposition options.

"The comments and questions by the federal judicial panel on the MOX termination issue clearly reveal their thinking – that DOE will be allowed to proceed with the termination of the mismanaged MOX project and that the lower court's injunction stopping MOX termination will be overturned," said Tom Clements, director of Savannah River Site Watch. "We appear to be entering the very final stages of a painful multi-year effort to terminate MOX, a process that has been slowed by big-spending politicians and contractors that profit from wasteful spending on the bungled project. Senator Lindsey Graham has failed in his last bid to keep the MOX project alive and we anticipate project closure will shortly commence, once the court issues its decision. We congratulate DOE on reaching this decisive point in MOX termination but do not support conversion of the MOX plant to a facility to make plutonium pits for nuclear weapons."

It is unknown when the federal appeals court will rule but as the case seems straight forward it is expected that a ruling will come soon and that DOE can formally proceed with MOX termination. "We expect MOX termination activities are now beginning and will be officially put in place once the court issues its decision," said Clements. "The final end to the MOX boondoggle is near at hand and those concerned about ending wasteful federal spending on a dead-end project and pursuit of better nuclear non-proliferation policies should be celebrating," added Clements.

On September 21, President Trump approved DOE spending for Fiscal Year 2019, cutting MOX construction funding from \$335 million to \$220 million. DOE views the \$220 million as an amount to be used to close out the MOX project. The funding bill also allows the secretary of energy, as stated in the National Defense Authorization Act of Fiscal Year 2019, to waive spending on MOX construction. Secretary Perry had exercised that MOX termination right on May 10 and the construction waiver was reaffirmed in a September 14 letter to Congress by NNSA Administrator Lisa Gordon-Hagerty.

As the Fiscal Year 2019 begins on October 1, it is essential that CB&I Orano MOX Services inform workers that a huge downsizing of the project is at hand and that a large number of workers will be laid off no matter when formal steps for project termination begin.

"It is highly irresponsible that MOX Services has not been informing MOX workers of the looming project downsizing and that termination was likely to take place," said Clements. "MOX workers merit better treatment by MOX Services and should have been formally informed that project downsizing was looming. We full support a good severance package for laid-off workers, help finding new jobs and assistance in relocation."

In another case heard before the court on September 27 – case #18-1148 – a separate judicial panel heard arguments about removal of 1 metric ton of plutonium from South Carolina. It appeared that the judge's favored removal of the material, as supported by the State of South Carolina, unless DOE could make a case that it needed more time to do so or if there was not an appropriate facility to which to take it. It appears that DOE could temporarily "stage" the 1 MT of plutonium from SRS at the DOE's

Device Assembly Facility in Nevada. SRS Watch and others have complained that packaging and shipment of the plutonium just to please the district court in Columbia, SC poses safety and security risks that can be avoided by leaving the plutonium at SRS, where about 13 MT of plutonium are now stored in the old K-Reactor.

###

Notes:

Archived audio of oral arguments on MOX termination before Fourth Circuit Court of Appeals, September 27, 2018:

<https://www.ca4.uscourts.gov/OAarchive/mp3/18-1684-20180927.mp3>

On Fourth Circuit Court of Appeals website, see archived audio for case #18-1684 in “Listen to Oral Arguments”: <https://www.ca4.uscourts.gov/oral-argument/listen-to-oral-arguments>

September 14, 2018 MOX waiver letter, filed with Fourth Circuit Court of Appeals:

http://www.srswatch.org/uploads/2/7/5/8/27584045/letter_to_court_on_mox_waiver_sept_24_2018.pdf

Letter filed with Fourth Circuit Court of Appeals, September 24, 2018, informing court that the language allowing waiver of spending money on MOX construction was include in the National Defense Authorization Act of Fiscal Year 2019:

http://www.srswatch.org/uploads/2/7/5/8/27584045/letter_to_court_about_ndaa_language_sept_24_2018.pdf

Waiver letter to Congress of May 10, 2018, signed by Secretary Perry, DOE’s initial attempt in 2018 to official halt spending on the MOX boondoggle:

http://www.srswatch.org/uploads/2/7/5/8/27584045/waiver_secretary_perry_letter_may_10_2018.pdf

Energy & Water (DOE) funding for Fiscal Year 2019 Conference Report is at:

<https://www.appropriations.senate.gov/imo/media/doc/Conference%20Report%20to%20accompany%20H.R.%205895.pdf>

Energy & Water (DOE) funding for Fiscal Year 2019 Joint Explanatory Statement is at:

<https://www.appropriations.senate.gov/imo/media/doc/Joint%20Explanatory%20Statement%20H.R.%205895.pdf>

National Defense Authorization Act for Fiscal Year 2019 report with waiver language - Section 3119:
"USE OF FUNDS FOR CONSTRUCTION AND PROJECT SUPPORT ACTIVITIES RELATING TO MOX
FACILITY": <https://www.congress.gov/115/crpt/hrpt874/CRPT-115hrpt874.pdf>