



Savannah River Site Watch

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Historic Federal Court Ruling Allows Termination of Bungled Plutonium Fuel (MOX) Project at DOE's Savannah River Site to Proceed; Project Must be Shut Down in Orderly Manner, Worker Protected

"Repurposing" of MOX Facility to Produce Plutonium "Pits" for Nuclear Weapons will Require Justification and Extensive Environmental Impact Statements (EISs), with Public Involvement

Court Order of October 9 Linked Here:

http://www.srswatch.org/uploads/2/7/5/8/27584045/court_order_october_9_2018.pdf

Columbia, South Carolina – A federal appeals court in Richmond, Virginia has taken a decisive step by ruling that the U.S. Department of Energy could resume termination of the chronically troubled plutonium fuel (mixed uranium-plutonium oxide, or MOX) project at the DOE's Savannah River Site (SRS) in South Carolina.

The Fourth Circuit Court of Appeals ruled on an appeal by DOE's National Nuclear Security Administration to reverse a lower court ruling that had halted termination of the MOX project via a "preliminary injunction". In its one-sentence ruling of October 9, the court overturned that injunction and sided with NNSA: "Upon review of submissions relative to the motion for stay pending appeal, the court grants the motion."

DOE had attempted to terminate the MOX project on May 10 but the State of South Carolina brought a lawsuit against that in the federal district court in Columbia, SC and on June 7 that court issued its injunction halting MOX termination. NNSA then appealed to the Fourth Circuit Court of Appeals.

Oral arguments by the parties were heard in the appeals court on September 27, at which time the court's 3-judge panel revealed hostility to the state's positions to continue MOX construction. On September 28 NNSA asked the court to "stay" termination imposed by the lower court. The court acted as NNSA requested.

With this stunning loss by MOX boosters and the State of South Carolina, it is expected that DOE will promptly take steps to terminate MOX. In a September 14 letter, NNSA informed Congress that its intention was still to terminate the project.

After many efforts to terminate MOX, this decision is likely the very final end of the project. An in-depth ruling by the court is likely to come soon but this court decision essentially means the MOX project is finished. In recent funding legislation, Congress affirmed that DOE had the power to terminate MOX by waiving spending on construction. On September 21, DOE appropriations for Fiscal Year 2019 became law and funding for MOX dropped from \$335 million to \$220 million, an amount that DOE will now spend on project closure.

In an October 3 filing with the appeals court, the State of South Carolina admitted that resumption of MOX termination would be the final end of the beleaguered MOX project: “Should the stay be granted and the preliminary injunction lifted, DOE will terminate the MOX Facility—the very action the State is challenging—and regardless of any future decision by the district court or this Court, the damage will be irrevocably done. Although Appellants are keenly aware of this inevitable consequence, they disingenuously argue that the termination is not permanent because there is a negligible chance the Project could be restarted.”

The MOX facility was envisaged to turn surplus weapons plutonium into a new form of fuel for commercial nuclear reactors but the concept and construction were plagued from the start with design problems, construction problems, massive cost overruns and continuous schedule delays.

“The decisive ruling by the court is long awaited and will allow MOX termination to proceed, which is the best course of action given that the project failed long ago and was only kept alive by politicians protecting parochial job interests,” said Tom Clements, director the public interest organization Savannah River Site Watch. “As this is the final gasp for the problem-plagued MOX project, termination must begin in an orderly manner and workers must be given ample warning of layoffs, offered a good severance packet and help in finding new jobs,” added Clements.

DOE has been attempting to shut down the MOX project for many years, after over \$5 billion has been wasted on construction of the facility at SRS. Construction on the MOX project started in August 2007 and DOE estimates that construction would cost \$17 billion and not be finished until 2048. In Fiscal Year 2018, Congress allowed DOE to waive spending of money on construction and on May 10 DOE took that step.

NNSA has floated the idea to convert the MOX facility into a factory to make plutonium “pits” for nuclear weapons. But DOE has not prepared a Programmatic Environmental Impact Statement (PEIS) to justify such need and has not prepared an Environmental Impact Statement (EIS) on issues specific to the MOX facility’s “repurposing,” including the host of waste streams that such a facility would produce.

“DOE’s assertions that it will now begin conversion of the MOX facility to a nuclear bomb plant is an illusion given the lack of environmental impact documents,” said Clements. “DOE cannot move forward with any new pit plant until a detailed EIS is prepared and that would include lengthy public comment periods. There is no justification to bring this new nuclear weapons work to SRS and this proposal, once formally presented to the public, will be vigorously opposed.”

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Notes:

Ruling by Fourth Circuit Court of Appeals, allowing MOX termination to proceed, October 9 2018:
http://www.srswatch.org/uploads/2/7/5/8/27584045/court_order_october_9_2018.pdf

SRS Watch news release of September 28, 2018, on oral arguments before Fourth Circuit Court of Appeals, with links to key documents, including to mp3 file of Sept. 27, 2018 oral arguments:
http://www.srswatch.org/uploads/2/7/5/8/27584045/savannah_river_site_watch_on_mox_termination_court_hearing_of_september_27_2018.pdf

Appeal by DOE's National Nuclear Security Administration, requesting that Fourth Circuit Court of Appeals overturn district court "stay" halt to termination of MOX project, September 28, 2018:
http://www.srswatch.org/uploads/2/7/5/8/27584045/appeal_to_stay_district_court_mox_ruling_nnsa_sept_28_2018.pdf

Response by State of South Carolina to NNSA appeal, October 3, 2018:
http://www.srswatch.org/uploads/2/7/5/8/27584045/state_of_sc_filing_against_nnsa_appeal_on_mox_termination_oct_3_2018.pdf

Additional filing by NNSA, in response to State of South Carolina, October 4, 2018:
http://www.srswatch.org/uploads/2/7/5/8/27584045/nnsa_response_on_mox_stay_4th_circuit_october_4_2018.pdf