



Savannah River Site Watch

**Savannah River Site Watch
For Immediate Release
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Federal Appeals Court in Richmond, VA Issues Final Ruling Allowing DOE's Termination of the Plutonium Fuel (MOX) Project at SRS; Determines Federal Court in South Carolina Mistaken in Blocking MOX Termination

Expected Ruling Affirms Earlier Temporary Decision, Necessary Step in Final Death of MOX Debacle

Columbia, SC – A federal appeals court in Virginia has issued a final, strongly worded ruling affirming the U.S. Department of Energy's termination of the bungled plutonium fuel (MOX) project at the Savannah River site in South Carolina.

The long-awaited ruling, dated January 8, 2019, determines that a judge in the district court in Columbia, SC was incorrect in her June 7, 2018 ruling that blocked DOE's efforts that had begun termination of the MOX boondoggle. The unanimous, strongly worded ruling by a 3-judge panel states that "we vacate the preliminary injunction imposed by the district court and remand the case for further proceedings not inconsistent with this opinion."

"We welcome the ruling of the court, which affirms DOE's on-going termination of the MOX boondoggle," said Tom Clements, director of Savannah River Site Watch. "MOX termination has now passed the point of no return and attention must now be focused on determining if any fraud, waste, abuse and mismanagement occurred by DOE managers or design and construction contractors such as Orano CB&I MOX Services," added Clements.

The ruling serves as a rebuke of the lower court judge, who never showed an adequate grasp of the myriad of facts and details surrounding the failed MOX project, according to SRS Watch.

DOE instituted MOX project termination with a "Partial Stop Work Order" on May 14, 2018 and the State of South Carolina brought a case in the Federal District Court in Columbia, SC on May 25, seeking a "preliminary injunction" halting MOX termination. The district court judge granted the preliminary injunction, which the Department of Energy appealed to the Fourth Circuit Court of Appeals.

On October 9, 2018, the Fourth Circuit Court of Appeals handed DOE a big victory and issued an initial order that "stayed" the preliminary injunction of the lower court. That appellate court ruling allowed MOX termination to proceed. But a final ruling on the matter did not come in 2018.

Now, the appeals court has issued its final ruling, ending any legal question about DOE's ability to carry out MOX termination in compliance with requirements of Congress, according to SRS Watch.

"This ruling by the appellate court is thankfully one of the very last nails in the coffin of the problem-plagued MOX project," said Clements. "Now, all termination activities at the MOX project must continue apace and the taxpayer must be relieved of the burden the mismanaged project caused. If DOE aims to repurpose the MOX building for production of plutonium pits for nuclear weapons, it must first conduct an in-depth Programmatic Environmental Impact Statement that would assess DOE's need for new pit capacity and analyze environmental impacts of such a provocative and unjustified project, and allow for public comment," added Clements.

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Notes:

1-page "Judgment" of Fourth Circuit Court of Appeals, vacating lower court ruling, Jan. 8, 2019:

http://www.srswatch.org/uploads/2/7/5/8/27584045/fourth_circuit_judgment_on_mox_termination_case_jan_8_2019.pdf

21-page Ruling of Fourth Circuit Court of Appeals, affirming MOX termination and pointing out mistake of the lower court, Jan. 8, 2019:

http://www.srswatch.org/uploads/2/7/5/8/27584045/fourth_circuit_final_ruling_vacating_lower_court_on_mox_termination_jan_8_2019.pdf

Court docket report – Case 18-1684:

01/08/2019 [43](#) JUDGMENT ORDER filed. Decision: Vacated and remanded. Originating case number: 1:18-cv-01431-JMC. Entered on Docket Date: 01/08/2019. [1000435069] Copies to all parties and the district court/agency. [18-1684] DL [Entered: 01/08/2019 10:56 AM]

**General Docket
United States Court of Appeals for the Fourth Circuit**

Court of Appeals Docket #: 18-1684	Docketed: 06/18/2018
Nature of Suit: 2899 Other Statutes	Termed: 01/08/2019
State of South Carolina v. US	

Appeal From: United States District Court for the District of South Carolina at Aiken
Fee Status: us

Case Type Information:

- 1) Civil U.S.
- 2) United States
- 3) null

Originating Court Information:

District: 0420-1 : [1:18-cv-01431-JMC](#)

Court Reporter: Peppa Caskey, Court Reporter Coordinator

Court Reporter: Jenny Williams, Official Court Reporter

Presiding Judge: J. Michelle Childs, U. S. District Court Judge

Date Filed: 05/25/2018

Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:
06/07/2018	06/07/2018	06/15/2018	06/18/2018

08/24/2018 34 Receipt of paper copy of REPLY BRIEF filed at [\[33\]](#) by Lisa E. Gordon-Hagerty, National Nuclear Security Administration, Rick Perry, United States Department of Energy and US. Number of pages: [25]. Sufficient: Yes. Number of Copies: [4]. Received by clerk date: 08/24/2018. [1000356702] [18-1684] AW [Entered: 08/28/2018 11:20 AM]

09/24/2018 [35](#) SUPPLEMENTAL AUTHORITIES by Lisa E. Gordon-Hagerty, National Nuclear Security Administration, Rick Perry, United States Department of Energy and US. [1000372268]. [18-1684] Andrew Rohrbach [Entered: 09/24/2018 12:18 PM]

09/27/2018 36 ORAL ARGUMENT heard before the Honorable Paul V. Niemeyer, Robert B. King and James A. Wynn, Jr.. Attorneys arguing case: Andrew Alperin Rohrbach for Appellants United States Department of Energy, US, Rick Perry, National Nuclear Security Administration and Lisa E. Gordon-Hagerty and Randolph R. Lowell for Appellee State of South Carolina. Courtroom Deputy: Julie Hall. [1000374855] [18-1684] JH [Entered: 09/27/2018 01:03 PM]

09/28/2018 [37](#) MOTION by Lisa E. Gordon-Hagerty, National Nuclear Security Administration, Rick Perry, United States Department of Energy and US for stay pending appeal. Date of action to be stayed, if applicable: June 7, 2018..

Date and method of service: 09/28/2018 ecf.
[1000375952] [18-1684] Andrew Rohrbach [Entered:
09/28/2018 05:13 PM]

- 10/01/2018 [38](#) NOTICE ISSUED to State of South Carolina requesting response to Motion for stay pending appeal [\[37\]](#)Response due: 10/03/2018 at 2:00 p.m.[1000376084]. [18-1684] AW [Entered: 10/01/2018 08:57 AM]
- 10/03/2018 [39](#) RESPONSE/ANSWER by State of South Carolina to notice requesting response [\[38\]](#), Motion [\[37\]](#). Nature of response: in opposition. [18-1684] Randolph Lowell [Entered: 10/03/2018 01:34 PM]
- 10/04/2018 [40](#) REPLY by Lisa E. Gordon-Hagerty, National Nuclear Security Administration, Rick Perry, United States Department of Energy and US to response [\[39\]](#), Motion for stay pending appeal [\[37\]](#).. [18-1684] Andrew Rohrbach [Entered: 10/04/2018 07:02 PM]
- 10/09/2018 [41](#) COURT ORDER filed [1000380993] granting Motion for stay pending appeal [\[37\]](#) Copies to all parties. [18-1684] AW [Entered: 10/09/2018 12:05 PM]
- 01/08/2019 [42](#) PUBLISHED AUTHORED OPINION filed. Originating case number: 1:18-cv-01431-JMC. [1000435064]. [18-1684] DL [Entered: 01/08/2019 10:54 AM]
- 01/08/2019 [43](#) JUDGMENT ORDER filed. Decision: Vacated and remanded. Originating case number: 1:18-cv-01431-JMC. Entered on Docket Date: 01/08/2019. [1000435069] Copies to all parties and the district court/agency. [18-1684] DL [Entered: 01/08/2019 10:56 AM]