

HENRY McMASTER
GOVERNOR

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

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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,

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

Henry McMaster

HM/rkt

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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR _ 2 2018

OFFICE OF
AIR AND RADIATION

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

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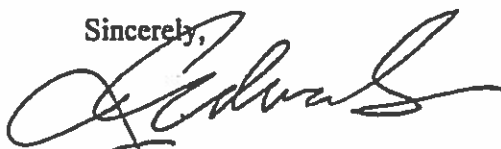
Part 191. *See* Pub. Law 102-579, Section 8(f) (Oct. 30, 1992). Based on the DOE's submission, the EPA then determines whether the DOE continues to be in compliance with those regulations. *Id.* Each CRA addresses changes and updated information from the period between the previous CRA and the new CRA. 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
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