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

STATE OF SOUTH CAROLINA, Plaintiff, v. UNITED STATES; UNITED STATES DEPARTMENT OF ENERGY; DR. ERNEST MONIZ, in his official capacity as Secretary of Energy; NATIONAL NUCLEAR SECURITY ADMINISTRATION; and LT. GENERAL FRANK G. KLOTZ, in his official capacity as Administrator of the National Nuclear Security Administration and Undersecretary for Nuclear Security; Defendants.	)	Civil Action No._____

COMPLAINT

The State of South Carolina (South Carolina or State) sets forth and complains as follows:

INTRODUCTION

1. This matter arises out of agency action by the United States and the United States Department of Energy (DOE) and the National Nuclear Security Administration (NNSA) that fails to comply with applicable law regarding the mixed oxide fuel fabrication facility project (MOX Facility or Project) currently under construction at the Savannah River Site (SRS) in

Aiken County, South Carolina. *See* 50 U.S.C.A. § 2566(h)(2) ("The term 'MOX facility' means the mixed-oxide fuel fabrication facility at the Savannah River Site, Aiken, South Carolina.").

2. Section 2566 of Title 50 of the United States Code (Section 2566) imposes procedural and substantive requirements on DOE and NNSA regarding the construction and production schedule for the MOX Facility and requires DOE and NNSA to undertake certain corrective action measures should the MOX production objectives not be met.

3. DOE and NNSA have failed and continue to refuse to comply with their duties and obligations under Section 2566.

PARTIES

4. South Carolina is a sovereign state of the United States and home to SRS, which borders the Savannah River and covers approximately 310 square miles, encompassing parts of Aiken, Barnwell, and Allendale counties. South Carolina also is the owner of property located within, nearby, and adjacent to SRS, including at least one road traversing the site, thereby making it susceptible to the "risk inherent in storing nuclear materials." Ex. 1, DOE, *Am. Interim Action Determination* 1 (Oct. 13, 2011). Congress has declared that "the State of South Carolina [has] a compelling interest in the safe, proper, and efficient operation of the plutonium disposition facilities at the Savannah River Site." Bob Stump National Defense Authorization Act for Fiscal Year 2003 (NDAA FY03), Pub. L. No. 107-314, 116 Stat. 2458, Subtitle E, § 3181. Furthermore, "the MOX facility will also be economically beneficial to the State of South Carolina, and that economic benefit will not be fully realized unless the MOX facility is built." *Id.*

5. Defendant United States is the federal government of the United States of America, and includes its Federal corporations, departments, agencies, commissions, boards,

instrumentalities, entities, and officials acting in their official capacities of same, including DOE and NNSA.

6. Defendant DOE is a federal agency of the United States and is responsible for, among other things, the administration of federal programs concerning the production of nuclear materials for the weapons program and their disposition. *See* 42 U.S.C.A. §§ 7111 *et seq*. DOE is the owner of SRS. Defendant Dr. Ernest Moniz is the United States Secretary of Energy (Secretary of Energy) and is sued in his official capacity. The Secretary of Energy is responsible for the administration, operations, and activities of DOE, including the administration of programs related to the MOX Facility at SRS.

7. Defendant NNSA is a separately organized agency within the DOE created by Congress in 2000. 50 U.S.C.A. § 2401. NNSA generally is responsible for the nation's nuclear weapons, nonproliferation, and naval reactors programs, *id.*, and specifically administers and manages activities related to the MOX Facility. Defendant Lieutenant General Frank G. Klotz is the Administrator of the NNSA and Undersecretary for Nuclear Security (Administrator) and is sued in his official capacity. The Administrator is responsible for the administration, operations, and activities of NNSA, including programs related to the MOX Facility.

JURISDICTION

8. This action arises under the Constitution of the United States; the Atomic Energy Defense Provisions, 50 U.S.C.A. §§ 2501 *et seq*.; the Federal Administrative Procedure Act, 5 U.S.C.A. §§ 701 *et seq*. (APA); the Mandamus and Venue Act, 28 U.S.C.A. § 1361; multiple National Defense Authorization Acts (NDAAs); and multiple appropriations acts. This Court has jurisdiction over this matter pursuant to 28 U.S.C.A. § 1331 (federal question), 28 U.S.C.A. §

1361 (mandamus), 28 U.S.C.A. §§ 2201 and 2202 (declaratory and injunctive relief), and 5 U.S.C.A. §§ 702, 704, and 706.

VENUE

9. Venue is proper in this Court pursuant to 28 U.S.C.A. § 1391(b) and Local Civil Rule 3.01(A)(1), as the facility and property that is the subject of this action is within the boundaries of the State of South Carolina and Aiken County.

GOVERNING LAW

United States Constitution

10. The Constitution provides that all "legislative Powers herein granted shall be vested in a Congress, which shall consist of a Senate and House of Representatives." U.S. Const. art. I § 1.

11. The Constitution further provides that the "[t]he executive Power shall be vested in a President," U.S. Const. art. II, § 1, and that "he shall take Care that the Laws be faithfully executed," U.S. Const. art. II, § 2.

12. The Appropriations Clause of the Constitution provides that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." U.S. Const. art. I, § 9, cl. 7.

Administrative Procedure Act

13. The APA entitles a party suffering a legal wrong because of agency action, or adversely affected by agency action, the right to judicial review. 5 U.S.C.A. § 702.

14. The APA provides judicial review of final agency actions for which there is no other adequate remedy in a court. 5 U.S.C.A. § 704.

15. A reviewing court shall (1) compel agency action unlawfully withheld or unreasonably delayed; and (2) hold unlawful and set aside agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, or in excess of statutory jurisdiction or authority, or without observance of procedure required by law. 5 U.S.C.A. § 706.

Mandamus

16. "The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C.A. § 1361.

Plutonium Disposition Statutes

17. Section 2566 of the Atomic Energy Defense Provisions, entitled, "Disposition of Weapons-Usable Plutonium at Savannah River Site" (Section 2566) sets forth the Congressional mandate for the "construction and operation of [the MOX Facility]." 50 U.S.C.A. § 2566(a).

18. Section 2566(h) defines the "MOX production objective" as meaning

> production at the MOX facility of mixed-oxide fuel from defense plutonium and defense plutonium materials at an average rate equivalent to not less than one metric ton of mixed-oxide fuel per year. The average rate shall be determined by measuring production at the MOX facility from the date the facility is declared operational to the Nuclear Regulatory Commission through the date of assessment.

50 U.S.C.A. § 2566(h)(2).

19. Section 2566(h)(3) defines "defense plutonium" and "defense plutonium materials" as meaning "weapons-usable plutonium."

20. Section 2566(a)(1) required the Defendants to submit to Congress by February 1, 2003, "a plan for the construction and operation" of the MOX Facility.

21. Section 2566(a)(3) required the Defendants to submit a report to Congress by February 15 of every year (beginning in 2014) that addresses "whether the MOX production objective has been met" and assesses "progress toward meeting the obligations of the United States under the [PMDA]."

22. The MOX Facility is behind schedule by more than 12 months. Per Section 2566(b)(1) and (2), because the schedule is more than 12 months behind, the Defendants must submit to Congress a corrective action "to be implemented by the Secretary to ensure that the MOX facility project is capable of meeting the MOX production objective" and to "include corrective actions to be implemented by the Secretary to ensure that the MOX production objective is met."

23. As the Defendants were required to submit a corrective action plan on the MOX Facility pursuant to Section 2566(b)(1) or (2), Section 2566(b)(3) required the Defendants to "include established milestones under such plan for achieving compliance with the MOX production objective."

24. The Defendants have failed to meet the MOX production objective to date and cannot meet the MOX production objective in 2016.

25. Because the Defendants cannot meet the MOX production objective, all "transfers of defense plutonium and defense plutonium materials to be processed by the" MOX Facility are suspended by operation of law "until the Secretary certifies that the MOX production objective can be met." 50 U.S.C.A. § 2566(b)(5).

26. Section 2566(c) requires the removal of plutonium and materials from Savannah River Site "[i]f the MOX production objective is not achieved as of January 1, 2014," and further requires the Defendants to "remove from the State of South Carolina, for storage or disposal

elsewhere … not later than January 1, 2016, not less than 1 metric ton of defense plutonium or defense plutonium materials."

27. Section 2566(d)(1) states:

> If the MOX production objective is not achieved as of January 1, 2016, the Secretary shall, subject to the availability of appropriations, pay to the State of South Carolina each year beginning on or after that date through 2021 for economic and impact assistance an amount equal to $1,000,000 per day, not to exceed $100,000,000 per year, until the later of—
>
> (A) the date on which the MOX production objective is achieved in such year; or
>
> (B) the date on which the Secretary has removed from the State of South Carolina in such year at least 1 metric ton of defense plutonium or defense plutonium materials.

50 U.S.C.A. § 2566(d)(1).

BACKGROUND AND FACTS

SRS and the MOX Facility Project

28. Built in the 1950s, the United States and DOE-owned SRS "processes and stores nuclear materials in support of national defense and U.S. nuclear nonproliferation efforts" through several programs or "missions." DOE Office of Environmental Management Website, *Savannah River Site*, http://energy.gov/em/savannah-river-site (last visited January 6, 2016). DOE identifies SRS as "a key [DOE] industrial complex responsible for environmental stewardship, environmental cleanup, waste management and disposition of nuclear materials." *Id.*

29. SRS also serves as the construction site for DOE's MOX Facility, which DOE and NNSA identify as the "cornerstone of the surplus disposition mission." Ex. 2, DOE, *SPD Supplemental EIS* factsheet (July 19, 2012). "This mission, which converts excess weapons-usable plutonium into a form that can be used in commercial nuclear power reactors, establishes

SRS's vital role in plutonium management for DOE." *Id.* The MOX Facility will take surplus weapons-grade plutonium, remove impurities, and mix it with depleted uranium oxide to form MOX fuel pellets for reactor fuel assemblies that will be irradiated in commercial nuclear power reactors. *Id*.

30. To fulfill all of its missions, SRS employs about 11,000 workers, each of which, according to one study on the economic impact of SRS on the surrounding region, generates approximately 2.5 jobs in the local labor force market in the surrounding areas. Ex. 3, The O'Connell Ctr. for Executive Dev., Univ. of S.C., Aiken, Excerpt from *The Economic Impact of the Savannah River Site on Five Adjacent Counties in South Carolina and Georgia* 1-2 (2011).

Surplus Plutonium Disposition

31. With the end of the Cold War and the collapse of the Soviet Union, significant quantities of nuclear weapons, including large amounts of weapons grade plutonium, became surplus to the defense needs of the United States and Russia. Control of these surplus materials became an urgent U.S. foreign policy goal. Particular concern focused on plutonium from Soviet nuclear warheads, which the United States feared posed a major nuclear weapons proliferation risk.

32. The "United States has declared as excess to U.S. defense needs a total of 61.5 metric tons (67.8 tons) of plutonium." Ex. 4, *Final Surplus Plutonium Disposition Supplemental Environmental Impact Statement*, DOE/EIS-0283-S2 (April 2015) (*2015 SPD Supp. EIS*) at S-3, 1-9.

33. In an effort to consolidate and eventually reduce the United States' and Russia's surplus weapons-grade plutonium, the United States and Russia jointly developed a plan for the nonproliferation of weapons of mass destruction worldwide. *See* Ex. 5, Excerpt from D.J.

Spellman *et al.*, *History of the U.S. Weapons-Usable Plutonium Disposition Program Leading to DOE's Record of Decision* 2 (1997) (detailing important events and studies concerning surplus weapons-usable plutonium disposition in United States from end of Cold War to 1997).

34. Consistent with this joint plan, in the early 1990s, the United States began exploring options for the long-term storage and the safe disposition of weapons-usable plutonium declared surplus to national security needs. *Id*.

35. On or about January 24, 1994, then-Secretary of Energy Spencer Abraham created a DOE-wide project for the control and disposition of surplus fissile materials, which led to the creation of the Office of Fissile Materials Disposition later that year. *Id*. at 3.

36. Also in early 1994, DOE's National Laboratory and several independent experts began evaluating 37 different plutonium disposition technology options. *See* Ex. 6, NNSA *Report to Congress: Disposition of Surplus Defense Plutonium at Savannah River Site* 2-1 (Feb. 15, 2002) (hereinafter *Report to Congress*).

37. In December 1996, DOE issued the *Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement* (*PEIS*) detailing its extensive evaluation of alternatives for both the long-term storage of weapons-usable fissile materials and the disposition of surplus plutonium. *See* Ex. 7, DOE, *Record of Decision (ROD) for PEIS* (Jan. 21, 1997), 62 Fed. Reg. 3014. For disposition, DOE's "preferred alternative" consisted of a hybrid, or dual-path, strategy that proposed to immobilize a portion of the surplus plutonium in glass or ceramic materials and to irradiate the remaining plutonium in MOX fuel in existing domestic, commercial reactors. *Id*.; *see* Ex. 4, *2015 SPD Supp. EIS* at vii ("DOE decided to disposition 34 metric tons (37.5 tons) of surplus plutonium by fabricating it into MOX fuel in

a MOX Fuel Fabrication Facility (MFFF) to be constructed at the Savannah River Site (SRS), followed by use of the MOX fuel in domestic commercial nuclear power reactors.").

38. In January 1997, DOE announced its intention to pursue this hybrid plutonium disposition strategy. *Id*. According to DOE, this strategy would entail the construction and operation of three major facilities for surplus plutonium disposition:

- A pit disassembly and conversion facility to convert surplus U.S. plutonium weapons components (pits) into an unclassified oxide form suitable for disposition and inspection.
- A MOX fuel fabrication facility to fabricate surplus plutonium oxide into MOX fuel for irradiation in existing U.S. commercial nuclear reactors.
- A plutonium immobilization plant to immobilize surplus non-pit plutonium in a ceramic material that is then surrounded by vitrified high-level radioactive waste.

Ex. 6, *Report to Congress*, at 2-1. This strategy would allow DOE to convert the surplus plutonium to forms that meet the "Spent Fuel Standard" recommended by the National Academy of Sciences by making the "material as inaccessible and unattractive for weapons use as the much larger and growing inventory of plutonium that exists in spent nuclear fuel from commercial power reactors." *Id.*

39. In October 1998, Congress enacted the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105-261, 112 Stat. 1920, which gave the U.S. Nuclear Regulatory Commission (NRC) licensing authority over the construction and operation of MOX fuel fabrication and other irradiation facilities.

40. In November 1999, after further evaluating the alternatives for surplus plutonium disposition, DOE issued the *Surplus Plutonium Disposition Final EIS* (*SPD EIS*) stating that the "purpose of and need for the proposed action is to reduce the threat of nuclear weapons proliferation worldwide by conducting disposition of surplus plutonium in the United States in

an environmentally safe and timely manner." Ex. 8, DOE, Excerpt from *SPD EIS*, Vol. I – Part A, at 1-3 (Nov. 1999). DOE again concluded that the "Preferred Alternative" was the hybrid approach to immobilize a portion of the surplus weapons-grade plutonium in glass and ceramic materials and to irradiate the remaining plutonium in MOX fuel in existing domestic, commercial reactors. *Id.* at 1-10 to 1-11. DOE selected SRS as the preferred site to implement both of these approaches and upon which to construct and operate the MOX Facility. *Id.*

41. In 1999, DOE signed a contract with a consortium, now Shaw AREVA MOX Services, LLC (MOX Services), to design, build, and operate the MOX Facility. *See* Ex. 9, DOE, Excerpt from *Surplus Plutonium Disposition Final EIS* (*SPD EIS*), Summary, at S-1 (Nov. 1999).

42. In January 2000, consistent with the conclusions in the *SPD EIS*, DOE officially decided to construct and operate the MOX Facility at SRS to fabricate MOX fuel using approximately 33 metric tons of surplus plutonium, as well as a new immobilization facility. Ex. 10, DOE, ROD for *SPD EIS* (Jan. 11, 2000), 65 Fed. Reg. 1608. DOE reasoned that pursuing this dual-track approach provided "the best opportunity for U.S. leadership in working with Russia to implement similar options for reducing Russia's excess plutonium" and would "send the strongest possible signal to the world of U.S. determination to reduce stockpiles of surplus weapons-usable plutonium as quickly as possible and in an irreversible manner." *Id.* at 1620.

43. In September 2000, the United States and Russia entered into the Plutonium Management and Disposition Agreement (PMDA) whereby each nation agreed to dispose of no less than 34 metric tons of weapons-grade plutonium. Ex. 11, PMDA (Sept. 1, 2000); *see* Ex. 12, Congressional Research Serv., Mem., *U.S.-Russia Plutonium Management Disposition Agreement*, dated Oct. 20, 2015 (describing history of PMDA) (hereinafter *CRS PMDA Report*).

44. Continuing on the path towards construction and operation of the MOX Facility, on or about February 28, 2001, MOX Services submitted a request to the NRC for a license to construct the MOX Facility at SRS. *See* Ex. 13, NRC, Excerpt from *Environmental Impact Statement on the Construction and Operation of a Proposed Mixed Oxide Fuel Fabrication Facility at Savannah River Site, South Carolina* 1-3 (Jan. 2005) (*NRC EIS*).

45. In late 2001, Congress enacted the National Defense Authorization Act for Fiscal Year 2002, Pub. L. No. 107-107, 115 Stat. 1378 (NDAA FY02). Section 3155 of NDAA FY02 was entitled "Disposition of Surplus Defense Plutonium at Savannah River Site, Aiken, South Carolina" (SRS Plutonium Disposition Provisions). Therein, Congress directed DOE to provide, not later than February 1, 2002, a plan for the disposal of surplus defense plutonium located at SRS and to be shipped to SRS in the future. NDAA FY02, § 3155.

46. The SRS Plutonium Disposition Provisions also required the Secretary of Energy to:

- Consult with the Governor of South Carolina regarding "any decisions or plans of the Secretary related to the disposition of surplus defense plutonium and defense plutonium materials located at [SRS]";
- Submit a report to the congressional defense committees providing notice for each shipment of defense plutonium and defense plutonium materials to SRS;
- If DOE decides not to proceed with construction of the immobilization facilities or the MOX Facility, prepare a plan that identifies a disposition path for all defense plutonium and defense plutonium materials; and
- Include with the budget justification materials submitted to Congress in support of DOE's budget for each fiscal year "a report setting forth the extent to which amounts requested for the [DOE] for such fiscal year for fissile materials disposition activities will enable the [DOE] to meet commitments for the disposition of surplus defense plutonium and defense plutonium materials located at [SRS]…."

47. Consistent with its duties under the SRS Plutonium Disposition Provisions, in January 2002, DOE decided not to proceed with the immobilization portion of the hybrid

strategy, leaving the construction and operation of the MOX Facility as the only strategy to dispose of surplus plutonium in the United States. In support of its decision, DOE stated that moving to a MOX-only disposition strategy followed "an exhaustive Administration review of non-proliferation programs, including alternative technologies to dispose of surplus plutonium to the meet the non-proliferation goals agreed to by the United States and Russia." Ex. 14, DOE, Release No. PR-02-007 (Jan. 23, 2002).

48. On or about February 15, 2002, DOE/NNSA submitted its *Report to Congress: Disposition of Surplus Plutonium at Savannah River Site*. Ex. 6, *Report to Congress*. The report's conclusions reiterated DOE's previous announcement 3 weeks prior that it was moving to the MOX-only approach at SRS for the United States' surplus plutonium disposition. *Id.* Advocating for the construction of the MOX Facility at SRS, the report provided an in-depth historical look at the plutonium disposition program and the myriad studies and reports conducted to find the "most advantageous option for disposition of U.S. surplus plutonium," ultimately concluding, once again, that constructing the MOX Facility at SRS was the "preferred option." *Id.*

49. On or about April 19, 2002, DOE amended the *PEIS* and *SPD EIS* RODs to reflect its decision to cancel the immobilization portion of the plutonium disposition strategy. Ex. 15, DOE, *Am. ROD for PEIS & SPD EIS* (April 19, 2002), 67 Fed. Reg. 19432.

50. Following the issuance of DOE/NNSA's report, Congress enacted statutory requirements for the construction and operation of the MOX Facility by DOE. NDAA FY03, Pub. L. No. 107-314, 116 Stat. 2458, § 3182, *subsequently codified by* the National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, 117 Stat. 1392, as 50 U.S.C.A. § 2566 (Section 2566).

51. Section 2566 is the Congressional mandate for the "construction and operation of [the MOX Facility]."

52. Section 2566 was enacted to codify the commitments of the United States and DOE to the State of South Carolina that while plutonium may be placed in South Carolina, such placement was not final disposition for long-term storage of plutonium in the State, but rather a temporary storage to implement the disposition method of MOX processing in the MOX Facility. Specifically, NNSA recognized in 2002 that "**[s]torage in place undercuts existing commitments to the states, particularly South Carolina**, which is counting on disposition as a means to **avoid becoming a permanent 'dumping ground' for surplus weapons-grade plutonium** by providing a pathway out of the site for plutonium brought there for disposition." Ex. 6, *Report to Congress* 5-2 (emphasis added).

53. In 2002, the Honorable Pietro (Pete) V. Domenici, then-United States Senator for the State of New Mexico, discussing the agreement to locate the MOX Facility in South Carolina to comply with the PMDA, acknowledged the assurance received from the United States and DOE for a full guarantee to the MOX Facility in expressing consternation that the State of South Carolina was reluctant to trust that DOE and the United States would honor their commitments, obligations, and duties to the State of South Carolina.

> Now, South Carolina is hesitating. The plutonium disposition agreement is being imperiled by the unwillingness of the State of South Carolina to reach an agreement with the Department of Energy on taking shipment of the plutonium identified for disposition and building the required facilities.
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> It is appropriate for the Governor of South Carolina to insist on every assurance that his State will be treated fairly, and will not simply become the permanent storage site for unwanted nuclear material if for some reason the plutonium agreement should fall apart.
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> ….

> The Governor has gotten the Secretary of Energy to provide South Carolina all of the assurances they never got from the Clinton administration, including full funding for the MOX program, a strict construction schedule, and a number of mechanisms, including statutory language and other measures, to ensure that the agreement will be legally enforceable.

Congressional Record (Senate), 148 Cong. Rec. S2820-03, 2002 WL 571890, 107th Congress, Second Session (April 17, 2002).

54. In support of 50 U.S.C.A. § 2566, Congress made the following findings:

> (1) In September 2000, the United States and the Russian Federation signed a Plutonium Management and Disposition Agreement by which each agreed to dispose of 34 metric tons of weapons-grade plutonium.
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> (2) The agreement with Russia is a significant step toward safeguarding nuclear materials and preventing their diversion to rogue states and terrorists.
>
> (3) The Department of Energy plans to dispose of 34 metric tons of weapons-grade plutonium in the United States before the end of 2019 by converting the plutonium to a mixed-oxide fuel to be used in commercial nuclear power reactors.
>
> (4) The Department has formulated a plan for implementing the agreement with Russia through construction of a mixed-oxide fuel fabrication facility, the so-called MOX facility, and a pit disassembly and conversion facility at the Savannah River Site, Aiken, South Carolina.
>
> (5) The United States and the State of South Carolina have a compelling interest in the safe, proper, and efficient operation of the plutonium disposition facilities at the Savannah River Site. The MOX facility will also be economically beneficial to the State of South Carolina, and that economic benefit will not be fully realized unless the MOX facility is built.
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> (6) The State of South Carolina desires to ensure that all plutonium transferred to the State of South Carolina is stored safely; that the full benefits of the MOX facility are realized as soon as possible; and, specifically, that all defense plutonium or defense plutonium materials transferred to the Savannah River Site either be processed or be removed expeditiously.

NDAA FY03, Subtitle E, § 3181.

55. By enacting Section 2566, Congress specifically approved the MOX Facility at SRS and directed DOE to proceed with its construction and operation.

56. DOE/NNSA recognized its duties under Section 2566 in its 2003 Amended *SPD EIS* ROD in which it stated:

> Finally, DOE/NNSA takes note of Division C, Title XXXI, Subtitle E of the recently enacted Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314, December 2, 2002). That Subtitle, entitled ''Disposition of Weapons-Usable Plutonium at Savannah River, South Carolina,'' directs the Secretary to submit to Congress a plan for and series of reports regarding construction and operation of a MOX facility at SRS under a specific timetable. It also directs the Secretary to take certain actions if that schedule is not being met, which depending on the circumstance may include preparation of a corrective action plan, cessation of further transfers of weapons-usable plutonium to SRS until the Secretary certifies that the MOX production objective can be met, removal of weapons-usable plutonium transferred to SRS, and payment of economic assistance to SRS from funds available to the Secretary. ***In DOE/NNSA's view, enactment of this legislation demonstrates strong congressional interest in seeing DOE/NNSA proceed with the MOX facility as promptly as is reasonably possible, and DOE/NNSA is proceeding accordingly.***

Ex. 16, DOE, *Am. ROD for SPD EIS* (April 24, 2003) (emphasis added), 68 Fed. Reg. 20134.

57. Based on the decision to construct and operate the MOX Facility at SRS, the United States and DOE began transferring plutonium to SRS for processing into MOX fuel and, until very recently, intended to transfer additional plutonium to SRS in the future. *See, e.g.*, Ex. 17, DOE, *Storage of Surplus Plutonium Materials at the Savannah River Site Supplemental Analysis* (Sept. 5, 2007).

58. On or about March 30, 2005, after its own evaluation and analysis, NRC issued a license for construction to MOX Services. Ex. 18, NRC Construction Authorization No.

CAMOX-001 (Mar. 30, 2005). NRC found that radiation exposure to the public is greater in a "no action" alternative than with the Project, noting that "continued storage would result in higher annual impacts" of public radiation exposure than implementation of the Project. Ex. 13, Excerpt from NRC EIS, at 4-96. NRC further found that:

> The primary benefit of operation of the proposed MOX facility would be the resulting reduction in the supply of weapons-grade plutonium available for unauthorized use once the plutonium component of MOX fuel has been irradiated in commercial nuclear reactors. ***Converting surplus plutonium in this manner is viewed as being a safer use/disposition strategy than the continued storage of surplus plutonium at DOE sites***, as would occur under the no-action alternative, since it would reduce the number of locations where the various forms of plutonium are stored (DOE 1997). Further, converting weapons-grade plutonium into MOX fuel in the United States — as opposed to immobilizing a portion of it as DOE had previously planned to do — lays the foundation for parallel disposition of weapons-grade plutonium in Russia, which distrusts immobilization for its failure to degrade the plutonium's isotopic composition (DOE 2002a). ***Converting surplus plutonium into MOX fuel is thus viewed as a better way of ensuring that weapons-usable material will not be obtained by rogue states and terrorist groups***. Implementing the proposed action is expected to promote the above nonproliferation objectives. Additionally, building and operating the proposed MOX facility is expected to result in a gain of scientific knowledge relative to the conversion of weapons-grade plutonium into reactor fuel.

Id. at 2-36 (emphasis added).

59. The NRC approval of the MOX Project was based in part on the "national policy decision to reduce supplies of surplus weapons-grade plutonium, as reflected in agreements between the United States and Russia." *Id.* at 2-39.

60. In 2005, an exchange occurred in the United States Senate between the Honorable Pete Domenici, Senator from the State of New Mexico, and the Honorable Lindsey Graham, Senator from the State of South Carolina, on the Conference Report for the Energy and Water

Development Appropriations Act regarding the Defendants failure to move the Project forward. The discussion reiterates and affirms the availability of the economic and impact assistance to the State of South Carolina and the statutory duties and obligations of the United States and DOE and NNSA to the State of South Carolina.

> Mr. GRAHAM.
> Mr. President, I rise today to express my concern regarding the Mixed Oxide fuel project. This project is vital to reduce the threat of terrorists or rogue nations obtaining nuclear weapon materials. By resulting in the disposal of 34 metric tons … of surplus weapon-grade plutonium, enough for thousands of nuclear weapons, the MOX program helps accomplish one of our most important nonproliferation goals. This plutonium, once converted into fuel for commercial nuclear power plants, is a real "swords into plowshares" program.
>
> Mr. DOMENICI.
> I have been a forceful advocate of the permanent disposal of the 34 tons of excess weapons-grade plutonium from the U.S. and Russian stockpiles. This material equals the same amount of plutonium as contained in 8,000 warheads. This is the largest non-proliferation effort undertaken by the U.S. and G-8 partners. In the Fiscal Year 1999 Energy and Water bill, I included $200 million in emergency/funding to provide the initial investment in the Plutonium Disposition program. Excess weapons grade plutonium in Russia is a clear and present danger. For that reason, the committee considers the Department's material disposition program of utmost importance.
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> Mr. GRAHAM.
> Despite this importance, **the Department of Energy has not requested full funding for this project in the President's Fiscal Year 2004, Fiscal Year 2005 and Fiscal Year 2006 budget request as originally proposed in the report to Congress** entitled "Disposition of Surplus Defense Plutonium at Savannah River Site, February 2002." The funding shortfalls will add to the existing 3-year delay caused by the negotiations between the Russian and U.S. Governments regarding liability for the project. However, with agreement between the U.S. and Russia on liability, the administration has no reason not to request full funding in next year's budget. It is vital that in the next budget the administration proposes fully funding the MOX program at a level that will bring this project closer to its original schedule.

Mr. DOMENICI.
I agree with the Senator from South Carolina that **the administration needs to fully fund this project in fiscal year 2007 and thereafter**. Without a viable disposal solution, the cleanup of the Hanford Site and arrangements for decreasing inventories of plutonium at Lawrence Livermore National Laboratory and the Pantex Plant will cost taxpayers hundreds of millions of dollars annually for storage and related security costs.

Mr. GRAHAM.
Never hesitant to support missions in support of our national defense, **the residents of South Carolina took considerable risk by allowing shipments of defense plutonium to be sent to the Savannah River Site** from Rocky Flats and other DOE sites **in advance of the construction of the MOX plant**. In addition to supporting DOE's efforts to consolidate plutonium and accomplish the goals of the plutonium disposition program, this agreement greatly assisted DOE's efforts to expeditiously close Rocky Flats, resulting in considerable cost savings for DOE.

In a sign of good faith to the State of South Carolina, **language was negotiated between the State of South Carolina and the Federal Government that required the Department of Energy to convert one metric ton of defense plutonium into fuel for commercial nuclear reactors by 2011 or face penalties of $1 million per day up to $100 million per year until the plutonium is either converted into the fuel or removed from the State**. It has never been the intention of South Carolina to receive penalty payments; the residents of the State simply sought reassurances that weapons-grade plutonium would not remain at SRS indefinitely. **South Carolina would not have accepted plutonium without this statute**. However, until the plant is operational, it is critical to maintain the protections provided in Section 4306 of the Atomic Energy Defense Act, 50 USC 2566. This is the reassurance the Federal Government gives to South Carolina that it is DOE's intention to see this project through.

Mr. DOMENICI.
I recognize the importance of that language. The appropriations bill includes a 3-year delay in the penalty payment language to reflect the delays caused by the Russians in negotiating a liability agreement. This delay does not allow DOE to withdraw support for the program. **Any effort to eliminate funding for this project will likely foreclose a disposal pathway for plutonium stored at Savannah River causing the Department to pay the State of**

> **South Carolina up to $100,000,000 per year in fines** starting in 2014.

Congressional Record (Senate), 151 Cong. Rec. S12740-01, 2005 WL 3039286, 109th Congress, First Session (Nov. 14, 2005) (emphasis added).

61. As early as 2006, if not earlier, the Defendants knew that they would not meet the MOX production objective until, at the earliest, March 2017. Ex. 19, DOE/NNSA Report to Congress (Oct. 3, 2011).

62. Construction began on the MOX Facility on or about August 1, 2007.

63. Since 2007, Congress has invested billions of dollars in the MOX Facility. DOE knew and understood that beginning construction at that time and based on the design completion at that time involved a significant chance that the construction cost would significantly increase above DOE's then-estimated project cost. *See* Ex. 12, *CRS PMDA Report*.

64. In the discussions regarding energy appropriations for the 2007 fiscal year, the Honorable John Spratt, Congressman from the State of South Carolina, made the following statement regarding the MOX Facility.

> Mr. SPRATT.
>
> In 2002, the state of South Carolina, in an arrangement with the Department of Energy and Congress, agreed to allow 34 tons of weapons grade nuclear material for MOX processing be stored at the Savannah River Site. **In exchange, the state of South Carolina received assurances that the MOX fuel plant would be completed on schedule. And to be sure, we put in place penalty payments for the Department of Energy if the MOX fuel plant's construction delayed beyond 2011**.
> ….
> For four years, we have been told by the Department of Energy that liability concerns for U.S. contractors in Russia were the hold-up for the MOX facility-a problem we believed was resolved last summer. Unfortunately, earlier this year it came to light that there was a more fundamental problem. In February, the Russians informed U.S. officials that they would only move forward with

> the MOX fuel facility in Russia if the MOX fuel could be used in new so-called fast reactors, which pose proliferation concerns, or if the international community paid for the whole project. This development called into question the nonproliferation benefits that the U.S. might expect from MOX.
>
> I can understand Chairman Hobson's concern about these changes to the MOX fuel program. In fact, I share them. But that does not change the fact that **without the MOX program, South Carolina is stuck with 34 tons of weapons grade plutonium with no clear pathway for disposal**. When South Carolina agreed to take the Nation's plutonium, it did not do so to become plutonium's final burial place. **We only took the plutonium with the promise that a processing facility and ultimate removal would be forthcoming. The penalty payments imposed on the Department of Energy were our ace in the hole to make sure this happened**. In the Defense Authorization bill, we even included language attesting to the fact that the South Carolina MOX facility was worth doing on its own, separate of the Russian facility if need be.

Congressional Record (Senate), 151 Cong. Rec. S12740-01, 2005 WL 3039286, 109th Congress, First Session (Nov. 14, 2005) (emphasis added).

65. In 2008, the Defendants revised their projection for achievement of the MOX production objection to "2017 or early 2018." Ex. 19, DOE/NNSA Report to Congress (Oct. 3, 2011).

66. In 2010, the United States and Russia amended the PMDA agreeing to begin plutonium disposition in 2018 and confirming that the MOX approach was the only option for plutonium disposition. The amended PMDA entered into force on July 13, 2011. *See* CRS PMDA Report.

67. In 2011, the Defendants informed Congress that they believed they would meet the MOX production objective by March 2018. Ex. 19, DOE/NNSA Report to Congress (Oct. 3, 2011).

68. In July 2012, after 5 years of analysis and public comment, DOE issued a Draft SPD Supplement EIS regarding its study of alternatives for additional surplus plutonium for which a disposition pathway had not yet been chosen. Ex. 20, DOE, Excerpt from *Draft SPD Supplemental EIS* (July 2012). DOE stated that the "purpose and need for action remains, as stated in the [SPD EIS issued in 1999], to reduce the threat of nuclear weapons proliferation worldwide by conducting disposition of surplus plutonium in the United States in an environmentally sound manner, ensuring that it can never again be readily used in nuclear weapons." *Id.* at S-2.

69. After analysis of all the alternatives, DOE once again concluded that the "MOX Fuel Alternative is DOE's Preferred Alternative for surplus plutonium disposition." *Id*. at S-33. DOE added that "[i]t is important that [the MOX Facility] begin operations to demonstrate progress to the Russian government, meet U.S. legislative requirements, and reduce the quantity of surplus plutonium and the concomitant cost of secure storage." *Id.* at S-12.

70. Recent agreements by the United States and Russia also reflect these nations' support of MOX. Effective July 13, 2011, the United States and Russia amended the PMDA, agreeing to begin plutonium disposition in 2018 and, importantly, that the **MOX approach was the only option for plutonium disposition**. *See* Ex. 21, PMDA, as amended by 2010 Protocol.

71. The original deadline to achieve the MOX production objective was 2011. In 2005, the Section 2566(d) MOX production objective deadline was amended to extend that deadline by three years. Pub. L. No. 109-103, 119 Stat. 2247, § 313(3)(B).

72. In 2013, the MOX production objective deadline was further extended by another two years. Pub. L. No. 112-239, 126 Stat. 1633, § 3116(3)(B).

73. In 2014, the Defendants sought to undermine and abandon the Project, as reflected in the President's Budget Proposal for Fiscal Year 2015 recommending that the MOX Facility be funded at a reduced level sufficient to place the Project into "cold standby." Although not specifically defined in the Budget Proposal, based on DOE's expressed intentions, "cold standby" is equivalent to an indefinite suspension of construction and the Project. *See South Carolina v. U.S. Dep't of Energy*, 1:14-cv-00975-JMC. Notwithstanding the absence of any change in current funding or Congressional authorization to suspend the Project, DOE and NNSA announced their intentions to accelerate the President's proposal and place the MOX Facility into immediate cold standby before the end of Fiscal Year 2014. In other words, DOE and NNSA sought to abandon the Project, relegating South Carolina to a permanent repository for the plutonium.

74. On or about March 6, 2014, United States Senators Lindsey O. Graham (S.C.), Tim Scott (S.C.), Mary Landrieu (La.), Richard Burr (N.C.), Kay Hagan (N.C.), Saxby Chambliss (Ga.), and Johnny Isakson (Ga.) wrote a letter to Secretary Moniz stating:

> The President's budget request funds the plutonium disposition program at a level that would place the [MOX Facility] project in cold standby….
>
> Under both the FY2014 National Defense Authorization Act and the FY2014 Consolidated Appropriations Act, funding is provided for construction activities at the MOX facility….
>
> Further, the budget submission claims the "Administration remains committed to the U.S.-Russia Plutonium Management and Disposition Agreement." We remind you that under the terms of this agreement, MOX is the only acceptable disposition path for the 34 metric tons of American weapons grade plutonium. If the Administration does remain committed to this agreement, it does not make sense to stop construction of this facility at this time.

Ex. 22, Ltr. to Secretary Moniz, dated March 6, 2014.

75. On March 18, 2014, in light of DOE's stated intentions, the State of South Carolina filed a lawsuit against the DOE, NNSA, and its officials to force DOE and NNSA to comply with the legal obligations, international agreement with Russia, and public policy for the expeditious disposal of weapons-grade plutonium. *South Carolina v. U.S. Dep't of Energy*, 1:14-cv-00975-JMC (dkt.# 1).

76. After the filing of the above lawsuit, DOE and NNSA agreed to continue construction of the Project in compliance with law, and the pending case was resolved through a stipulation of dismissal and was dismissed without prejudice. *South Carolina v. U.S. Dep't of Energy*, 1:14-cv-00975-JMC (dkt.# 19).

77. Congress has specifically required the DOE and NNSA to utilize any MOX-specific appropriations for the construction of the MOX Facility, denying and rebuffing the attempts by DOE and NNSA to utilize Congressional appropriations to terminate to the Project.

78. Currently, the MOX Facility is approximately 68% complete and employs approximately 1,800 persons residing in and around Aiken, South Carolina and surrounding communities. *See* Ex. 23, Ltr. of Trice to Congressman Wilson, dated Oct. 9, 2015.

79. DOE and NNSA have continuously sought to undermine and abandon the construction of the MOX Facility.

80. On September 4, 2015, South Carolina Attorney General Alan Wilson sent a letter to DOE Secretary Moniz. Ex. 24, Ltr. of Att'y General Wilson to Secretary Moniz, dated Sept. 4, 2015. The letter stated in part:

> Nevertheless, I have watched with great concern over the last year and a half as the highest level advisors and senior administrative staff at DOE and its National Nuclear Security Administration (NNSA) have continued to conspire to terminate the MOX Project. Even more troubling, I have learned that the DOE will attempt once again take action to halt construction of the MOX Facility

> despite its statutory obligations, international obligations, and the Congressional directive to continue construction, and further to do so without any viable alternative for the disposition or removal from South Carolina of the plutonium stored at SRS. I further understand that DOE officials have openly and repeatedly discounted DOE's statutory obligations to South Carolina.
>
> I reiterate the importance of the MOX Facility and encourage you to carefully consider the commitments the United States has made to the State of South Carolina. **I would appreciate your assurance that, despite all current indications, DOE will abide by its legal duties, Congressional directives, and meet its statutory obligations to South Carolina. Unfortunately, in light of DOE and NNSA actions and inactions, there is little confidence in the State that these legal obligations will be honored.**

Id. at 1-2 (emphasis added). DOE and NNSA did not respond to the letter and continue to "take action to halt construction of the MOX Facility" and undermine and abandon the Project.

81. The United States, DOE, and NNSA have no viable and legally authorized or approved alternative to the disposition of defense plutonium or defense plutonium materials other than through the MOX Facility.

82. The United States, DOE, and NNSA have failed to remove defense plutonium or defense plutonium materials per the mandatory direction of Congress and the governing statute, Section 2566, and have failed to comply with the economic and impact assistance payments to the State of South Carolina per the mandatory direction of Congress and the governing statute, Section 2566.

83. The Defendants' actions and inactions are adversely affecting the State's "compelling interest in the safe, proper, and efficient operation of the plutonium disposition facilities at the Savannah River Site," Pub. L. No. 107-314, 116 Stat. 2458, Subtitle E, § 3181, as well as other interests of the State.

FOR A FIRST CAUSE OF ACTION
(Separation of Powers)

84. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this cause of action.

85. Pursuant to Article I, section 1 of the United States Constitution, all legislative powers are vested in Congress, while pursuant to Article II, section 2, the President of the United States is vested with the responsibility to faithfully execute laws enacted by the legislative branch.

86. As part of the NDAA FY03, subsequently codified in 50 U.S.C.A. § 2566, Congress directed the Secretary of Energy to submit a plan for the construction and operation of a MOX facility at the Savannah River Site located near Aiken, South Carolina, including reporting deadlines, construction deadlines, and operational deadlines. The DOE and NNSA, as executive branch agencies, must execute and follow the legislative directions of Congress.

87. The Defendants have failed to meet their mandatory statutory obligations under Section 2566 and in doing so have affirmatively undermined the Project and therefore failed to faithfully execute the laws enacted by Congress and by which the President and these executive Defendants are bound. As in *In re Aiken Cty.*, 725 F.3d 255 (D.C. Cir. 2013), where the Nuclear Regulatory Commission failed to follow a clear Congressional command regarding the Yucca Mountain nuclear waste repository, the Defendants are "simply flouting the law." *Id.* at 259.

88. For the foregoing reasons, the State of South Carolina is entitled to a declaration and order that Defendants' actions and inactions violate the Constitution and requiring DOE and NNSA to comply with the requirements of Section 2566.

FOR A SECOND CAUSE OF ACTION
(50 U.S.C.A. § 2566(c))

89. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this cause of action.

90. The Defendants failed to meet the MOX production objective by January 1, 2014.

91. In March 2014, DOE and NNSA admitted that they would not meet the Congressional mandate of Section 2566:

> The Department will not meet the MOX production objective as defined in P.L. 107-314, Bob Stump National Defense Authorization Act for Fiscal Year 2003, as most recently amended by P.L. 112-239, the National Defense Authorization Act for Fiscal Year 2013….

Ex. 25, *FY2015 Budget Justification* at 527.

92. The Defendants failed to remove one (1) metric ton of defense plutonium or defense plutonium materials by January 1, 2016.

93. The Defendants failed to meet the MOX production objective by January 1, 2016.

94. At the time of filing this Complaint, Defendants have failed to remove any defense plutonium or defense plutonium materials from the State during calendar year 2016.

95. The Defendants have a nondiscretionary, mandatory duty and obligation to the State of South Carolina pursuant to Section 2566 which has been unlawfully withheld and for which no other remedy exists.

96. For the foregoing reasons, South Carolina is entitled to a declaration and order (1) enjoining and requiring Defendants to immediately remove one (1) metric ton of defense plutonium or defense plutonium materials from the State pursuant to Section 2566(c); and (2) enjoining Defendants from moving, transferring, or agreeing to, allowing, facilitating,

authorizing, or taking any similar conduct or action resulting in the movement or transfer of any defense plutonium or defense plutonium material to the Savannah River Site, regardless of origin, until this Court enters an order finding that Defendants are in full compliance with Section 2566 and is achieving the MOX production objective.

FOR A THIRD CAUSE OF ACTION
(50 U.S.C.A. § 2566(d))

97. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this cause of action.

98. The Defendants failed to remove one (1) metric ton of defense plutonium or defense plutonium materials by January 1, 2016.

99. The Defendants failed to meet the MOX production objective by January 1, 2016.

100. At the time of filing this Complaint, Defendants have failed to remove any defense plutonium or defense plutonium materials from the State during calendar year 2016.

101. The National Defense Authorization Act for Fiscal Year 2016, Public Law No. 114-92 (NDAA of 2016), was enrolled as law on November 25, 2015.

102. Section 3101 of the NDAA of 2016 authorizes appropriations "to the Department of Energy for fiscal year 2016 for the activities of the [NNSA] in carrying out programs as specified in the funding table in section 4701."

103. Section 3119 of the NDAA of 2016 provides that "using funds" authorized in the NNDA of 2016 for the MOX Facility, "the Secretary of Energy shall carry out construction and project support activities relating to the MOX [F]acility."

104. Section 3121 of the NDAA of 2016 provides that "[n]one of the funds authorized to be appropriated by [the NDAA of 2016] or otherwise made available for fiscal year 2016 for

defense nuclear nonproliferation activities may be obligated or expended to enter into a contract with, or otherwise provide assistance to, the Russian Federation."

105. Section 4701 of the NDAA of 2016 authorizes appropriations in the following amounts for the following program areas:

Defense Nuclear Nonproliferation Programs	
Defense Nuclear Nonproliferation R&D	
Global material security	$422,949,000
Material management and minimization	$311,584,000
Nonproliferation and arms control	$126,703,000
Defense Nuclear Nonproliferation R&D	$419,333,000
Nonproliferation Construction	
99-D-143 Mixed Oxide (MOX) Fuel Fabrication Facility, SRS	$345,000,000
Analysis of Alternatives	$5,000,000
Total, Nonproliferation construction	$350,000,000
Total, Defense Nuclear Nonproliferation Programs	$1,630,569,000
Legacy contractor pensions	$94,617,000
Nuclear counterterrorism and incident response program	$234,390,000
Use of prior-year balances	-$18,076,000
Total, Defense Nuclear Nonproliferation	**$1,941,500,000**

106. Section 4701 of the NDAA of 2016 authorizes appropriations for the construction of the MOX Facility in an amount of $345,000,000.

107. Section 4309 of the NDAA of 2016 requires DOE (and NNSA) to provide to Congress a five-year management plan on defense nuclear nonproliferation to include the following:

> (i) material management and minimization, particularly with respect to removing or minimizing the use of highly enriched uranium, plutonium, and radiological materials worldwide (and identifying the countries in which such materials are located), efforts to dispose of surplus material, converting reactors from highly enriched uranium to low-enriched uranium (and identifying the countries in which such reactors are located);
> (ii) global nuclear material security, including securing highly enriched uranium, plutonium, and radiological materials worldwide (and identifying the countries in which such materials are located), and providing radiation detection capabilities at foreign ports and borders;
> (iii) nonproliferation and arms control, including nuclear verification and safeguards;
> (iv) defense nuclear research and development, including a description of activities related to developing and improving technology to detect the proliferation and detonation of nuclear weapons, verifying compliance of foreign countries with commitments under treaties and agreements relating to nuclear weapons, and detecting the diversion of nuclear materials (including safeguards technology)….

108. The Consolidated Appropriations Act of 2016, Public Law No. 114-113 (CAA of 2016), was enrolled as law on December 18, 2015.

109. Title III of the CAA of 2016 contains the following appropriation for Defense Nuclear Nonproliferation:

> For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other incidental expenses necessary for defense nuclear nonproliferation activities, in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, $1,940,302,000, to remain available until expended.

110. Except for the $345,000,000 for MOX Facility construction, none of the "General Provisions—Department of Energy" in the CAA of 2016 prohibit the utilization of the authorized and appropriated Defense Nuclear Nonproliferation funds to remove defense plutonium or defense plutonium materials from the State as required by Section 2566 or for payment of the economic and impact assistance to the State as required by Section 2566.

111. The Defendants have a nondiscretionary, mandatory duty and obligation to the State of South Carolina pursuant to Section 2566 which has been unlawfully withheld and for which no other remedy exists.

112. For the foregoing reasons, South Carolina is entitled to a declaration and order enjoining and requiring Defendants to pay to the State of South Carolina, by and through the Attorney General of the State of South Carolina, economic and impact assistance in the amount of One Million Dollars ($1,000,000) per day, beginning on January 1, 2016, until the earlier of the first 100 days of calendar year 2016 or the date the Defendants remove an additional one (1) metric ton of defense plutonium or defense plutonium materials from the State pursuant to Section 2566(d).

PRAYER FOR RELIEF

WHEREFORE, the State of South Carolina prays that the Court grant the following relief:

A. A declaration and order that Defendants' actions and inactions violate the Constitution and requiring Defendants to comply with Section 2566.

B. A declaration and order enjoining and requiring Defendants to immediately remove one (1) metric ton of defense plutonium or defense plutonium materials pursuant to its obligations pursuant to Section 2566(c) and enjoining Defendants from moving, transferring, or

agreeing to, allowing, facilitating, authorizing, or taking any similar conduct or action resulting in the movement or transfer of any defense plutonium or defense plutonium material to the Savannah River Site, regardless of origin, until this Court enters an order finding that Defendants are in full compliance with Section 2566 and is achieving the MOX production objective.

C. A declaration and order enjoining and requiring Defendants to pay to the State of South Carolina, by and through the Attorney General of the State of South Carolina, economic and impact assistance in the amount of One Million Dollars ($1,000,000) per day, beginning on January 1, 2016, until the earlier of the first 100 days of calendar year 2016 or the date the Defendants remove an additional one (1) metric ton of defense plutonium or defense plutonium materials from the State pursuant to Section 2566(d).

D. A declaration and order retaining jurisdiction over this matter regarding the Defendants' compliance with Section 2566 and this Court's order, including the prohibition on the transfer of defense plutonium or defense plutonium materials, compliance with Section 2566(c), and payment of the economic and impact assistance pursuant to Section 2566(d).

E. A declaration and order enjoining and requiring Defendants to provide a status report to this Court on the 101st day of each year in 2017, 2018, 2019, 2020, and 2021 that states (1) whether the MOX production objective has been met, (2) whether one metric ton of defense plutonium or defense plutonium material has been removed during that calendar year, and (3) whether a legal constraint exists prohibiting the provision of economic and impact assistance due the State of South Carolina.

F. A declaration and order requiring Defendants to pay the attorneys' fees and costs of the State of South Carolina for this action.

G. An order granting such other relief as the Court may deem just and proper.

Respectfully submitted,

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