



**SOUTH CAROLINA
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VIA CERTIFIED MAIL AND ELECTRONIC MAIL

The Honorable Christopher Wright
Secretary, U.S. Department of Energy
Forrestal Building
1000 Independence Avenue
Washington, DC 20585

The Honorable Brandon M. Williams
Administrator, National Nuclear Security Administration
Forrestal Building
1000 Independence Avenue
Washington, DC 20585

Dear Secretary Wright and Administrator Williams:

I am writing on behalf of my clients Nuclear Watch New Mexico, Mr. Thomas Clements, and his organization, Savannah River Site Watch and Mr. Pete LaBerge, who resides in close proximity to the Savannah River Site in South Carolina. The South Carolina Environmental Law Project successfully litigated claims under the National Environmental Policy Act (NEPA) on behalf of most of these clients, and others, that resulted in the National Nuclear Security Administration's (NNSA) ongoing preparation of the latest Plutonium Pit Production Programmatic Environmental Impact Statement (PEIS).

In a generally analogous NEPA situation, my clients are concerned that the Department of Energy (DOE) and NNSA are radically changing course in their surplus plutonium disposition program without preparing a necessary supplemental programmatic environmental impact statement.

There has been an extensive history of DOE/NNSA NEPA compliance throughout the evolution and expansion of its surplus plutonium disposition program. The purposes, needs, alternatives and conclusions that have been memorialized over the past thirty years remain relevant both to present day concerns as well as informing what has and has not been evaluated previously.

The 1996 Storage and Disposition of Weapons-Usable Fissile Materials Final PEIS began by recognizing that "[t]he global stockpiles of weapons-usable fissile materials pose a danger to

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national and international security in the form of potential proliferation of nuclear weapons and potential environmental, safety, and health consequences if the materials are not properly safeguarded and managed.” DOE/EIS-0229 at S-1. That conclusion remains valid. At this fundamental programmatic level, the authors recognized that “[r]eprocessing and extraction of Pu from spent fuel is not proposed, and is beyond the scope and the fundamental nonproliferation purpose of the program covered by the PEIS.” *Id.* at S-6.

The then-preferred alternative for surplus Pu disposition involved two paths: (1) immobilizing Pu materials using vitrification or ceramic immobilization and (2) converting Pu materials into Mixed Oxide (MOX) fuel for use in existing reactors. *Id.* at S-9. Regardless of the path, however, “[u]nder th[e] Preferred Alternative, the U.S. policy not to encourage the civil use of Pu and, accordingly, not to itself engage in Pu reprocessing for either nuclear power or nuclear explosive purposes will not change.” *Id.* at S-9.

Later decisions related to site selection of the MOX Fuel Fabrication Facility and cancelling the immobilization path occurred in 1999 and 2002, respectively. In 2015, the Final Surplus Plutonium Disposition Supplemental EIS, (DOE/EIS-0283-S2) evaluated the “dilute and dispose” program for disposing of 13.1 MT of plutonium at the Waste Isolation Pilot Plant (WIPP) in southern New Mexico. The preferred alternative, issued in 2015, contemplated the disposition of 6 MT of plutonium. 80 Fed. Reg. 80348-49 (Dec. 24, 2015). The amount was later increased to 13.1 MT when NNSA issued an Amended Record of Decision in 2020. 85 Fed. Reg. 53350-53353 (Aug. 28, 2020).

The most recent analysis, the 2023 Surplus Plutonium Disposition Program Final EIS (DOE/EIS-0549) (SPDP EIS), echoed the 1996 PEIS when it stated its purpose and need as follows: “to safely and securely disposition plutonium that is surplus to the Nation’s defense needs so that it is not readily usable in nuclear weapons.” DOE/EIS-0549 at S-5. Among the past alternatives summarized in the 2023 SPDP EIS was the confirmation of the prior dismissal of “[r]eprocessing using plutonium fuel in existing or new evolutionary advance light water reactors with chemical reprocessing of spent fuel[.]” *Id.* at S-31. The analysis reiterated the termination of the MOX program and confirmed the disposition of 34 MT of weapons-grade plutonium at WIPP. *Id.* at S-3-S-5, S-32. The record of decision for this analysis was issued in April of 2024. 89 Fed. Reg. 28763-67 (Apr. 19, 2024).

That 2024 formal NEPA decision was upended by President Trump’s May 23, 2025, Executive Order 14302 "Reinvigorating the Nuclear Industrial Base" that officially terminated DOE’s "dilute and dispose" program. It also directed DOE to establish a program to supply surplus plutonium in a form usable by the commercial sector—specifically for advanced nuclear technologies and small modular reactors. Of particular note, the EO focused extensively on “recycling” and “reprocessing” spent nuclear fuel and contemplated agreements “with domestic nuclear energy companies” that “discuss and implement methods to enhance the capacity to manage spent nuclear fuel, including the recycling and reprocessing of spent nuclear fuel...” EO 14302 Sec. 2, Sec. 3. (a), (h).

These directives constitute a vast change in the prior decisions and purposes of the DOE/NNSA surplus plutonium disposition program that has been in place since at least 1996. None of the alternatives in the 1996 PEIS or any subsequent analyses included providing surplus plutonium to private entities for processing, reprocessing and reuse. This change is also contrary to the larger nuclear non-proliferation policy of the United States restricting the commercial use of plutonium that has been in place for approximately fifty years.

NEPA requires an agency to issue a supplemental Environmental Impact Statement “if the agency ‘makes substantial changes in the proposed action that are relevant to environmental concerns’ or if ‘[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.’” *Defenders of Wildlife v. North Carolina Dep’t of Transp.*, 762 F.3d 374, 394 (4th Cir. 2014); *see also, Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371-72, 109 S.Ct. 1851, 1858-59, 104 L.Ed.2d 377 (1989) (accord). This requirement is still in place under DOE’s recently adopted NEPA compliance procedures. *See* DOE NEPA Implementing Proc. Secs. 3.8, 3.9 (Feb. 2, 2026). Plutonium reuse, recycling and reprocessing were not contemplated in the earlier NEPA analyses and the potential environmental effects from these processes, including environmental effects from attendant security and terrorism concerns, must be studied.

In October 2025, another next step down the path of providing weapons-grade plutonium to private corporations was taken when DOE issued a "Surplus Plutonium Utilization Program" request for applications, offering up to 19.7 metric tons of weapons-grade plutonium to private sector energy firms. Instead of DOE and/or NNSA preparing to update its NEPA analyses to study how these dramatic changes in policy may affect the quality of the environment, DOE stated that “[t]here are no plans for a programmatic [NEPA] document.” Surplus Plutonium Q&A document, Answer to Question 3, p. 1. And while DOE acknowledged that it anticipated “performing NEPA evaluations on an individual project basis,” the purported promulgation of a categorical exclusion earlier this year, with public comment only an afterthought, portends the avoidance of any robust or public analysis, such as the preparation of a supplemental programmatic environmental impact statement and perhaps even the supplementation of other, later environmental impact statements.

In February of this year, the Department purported to promulgate a categorical exclusion for advanced nuclear reactors (DOE-HQ-2025-0405) that will doubtless be invoked for many of these projects. The categorical exclusion, however, violates the Administrative Procedures Act for the following reasons: the exclusion purports to apply to various experimental technologies that will significantly and negatively affect the quality of the human environment; the exclusion is overbroad regarding the various types and scope of projects it purports to exempt including various reactor types and various applications; the exclusion itself fails to follow NEPA’s requirement to take a “hard look” at potential environmental impacts including waste generation, transportation, and disposal, risks from terrorists attacks on the various facilities as well as theft and use of weapons-grade plutonium, and local environmental effects associated with construction and land use.

Also, in support of its new plutonium utilization program, DOE announced in March its “decision to restart HB-Line operations at the Savannah River Site (SRS) in South Carolina.” This activity

was stated to provide “the capability to power America’s nuclear future by recycling surplus plutonium and partnering with industry to produce uranium-plutonium mixed oxide (MOX) fuel for advanced nuclear reactors. The facility is an integral part of H-Canyon, the only chemical separations facility of its kind in the United States.”

Finally, in late May, a recent program development became public knowledge only when several commercial entities announced that they had been selected for advanced negotiations as part of the Surplus Plutonium Utilization Program. Those entities have proposed to construct various types of nuclear reactors as well as plutonium processing and fuel fabrication facilities. All of these entities could utilize the surplus weapons-grade plutonium in their operations despite an absence of NEPA review.

It is incontrovertible that the provision of plutonium disposition in the quantities at issue here is a major Federal action and that plutonium processing and disposition, much less plutonium processing, use, recycling and reprocessing that directly flow from this utilization program, have significant foreseeable environmental effects. The vast differences between the purposes, needs, alternatives and constraints of past NEPA analyses and what is now being actively pursued is evident. NEPA mandates that a thorough, programmatic study of environmental impacts of plutonium disposition should include a study of the alarming prospect of many private entities being in possession of weapons-grade plutonium. A programmatic study would also benefit future projects as later analyses could be tiered from the wholesale review.

Before bringing suit on the Pit Production PEIS, my clients wrote to NNSA five times reminding the agency of its legal obligations under NEPA. They never received a response. It is my hope that we can avoid a similar predicament. My clients request that DOE and NNSA respond to this letter within 30 days. If NNSA and DOE do not elect to engage, my clients will evaluate what legal actions may be necessary and proceed accordingly.

Thank you in advance for your consideration.

Sincerely,

Benjamin D. Cunningham

cc (via email only):

Interested Members of Congress

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