



October 31, 2018

Ms. Lisa E. Gordon-Hagerty
Under Secretary for Nuclear Security and NNSA Administrator
U.S. Department of Energy
National Nuclear Security Administration
1000 Independence Ave., SW
Washington, DC 20585

Subject: Requirement for preparation of a Programmatic Environmental Impact Statement for expanded plutonium pit production

Dear Ms. Gordon-Hagerty:

We three public interest organizations, Nuclear Watch New Mexico, Savannah River Site Watch and Tri-Valley CAREs, are writing out of concern that the National Nuclear Security Administration (NNSA) explicitly plans to expand plutonium pit production but has made no visible effort to begin the legally required National Environmental Policy Act (NEPA) process for a major federal action as defined at 40 CFR 1508.18.

You declared on May 10, 2018, that NNSA would produce at least 30 pits per year at the Los Alamos National Laboratory (LANL) and at least 50 pits per year at the Savannah River Site (SRS) by 2030. NEPA clearly requires that proposed major federal actions be subject to public environmental review.¹ Further, NNSA has a legal duty to apply NEPA early in the process.² Moreover, until NNSA issues a formal Record of Decision at the end of a NEPA process, it may not take actions that will “Limit the choice of reasonable alternatives” or “prejudice the ultimate decision on the program”³ before it directs “irreversible and ir retrievable resources”⁴ toward that end. If NNSA continues to move forward with expanded pit production capacity at the Los Alamos National Laboratory and the Savannah River Site, it must begin preparation of a Programmatic Environmental Impact Statement (PEIS), as mandated by NEPA, without delay.

A PEIS is legally required given that NNSA seeks to raise production above the currently sanctioned cap of 20 pits per year and establish new pit production at a second site. Moreover, we assert that a Programmatic Environmental Impact Statement is the proper level of NEPA review because the proposed action by NNSA meets all four of the programmatic review criteria. Embarking upon expanded plutonium pit production would simultaneously (a) adopt an official policy, (b) adopt a formal plan, (c) adopt an agency program, and, of

¹ 42 USC 4321 et seq., Sec.102(2)(c)

² 40 CFR, Part 1501, §1501.2 *Apply NEPA early in the process*

³ 40 CFR, Part 1501, §1506.1 *Limitations on actions during NEPA process*

⁴ 40 CFR, Part 1502, §1502.16 *Environmental consequences*

particular note, (d) approve multiple major, similar and connected actions at two different sites.⁵ We also point to the fact that the proposed action will inevitably involve potential environmental impacts, such as wastes, that may affect additional sites across the nation-wide nuclear weapons complex. Finally, we cite the DOE's own NEPA regulations that "When required to support a DOE programmatic decision (40 CFR 1508.18(B)(3)), DOE shall prepare a programmatic EIS or EA (40 CFR 1502.4)." ⁶

Expanding the Plutonium Pit Production Rate

As background, the Department of Energy's 1996 Record of Decision for the Stockpile Stewardship and Management PEIS reestablished plutonium pit production at LANL, but specifically capped it at no more than 20 pits per year.⁷ NNSA tried (but failed) to raise that production cap through subsequent NEPA processes, while explicitly acknowledging its NEPA obligation. For example, the January 11, 2008 Notice of Availability for the final Complex Transformation PEIS stated:

It is a supplement to the *Stockpile Stewardship and Management Programmatic Environmental Impact Statement* (SSM PEIS, DOE/EIS-0236). NNSA prepared the SPEIS in accordance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulations that implement the procedural provisions of NEPA (40 CFR Parts 1500-1508), and DOE procedures implementing NEPA (10 CFR Part 1021).⁸

This is also mirrored in an earlier attempt by NNSA to expand plutonium pit production:

Pursuant to National Environmental Policy Act of 1969, as amended (42 USC 4321 et seq.), and DOE Regulations Implementing National Environmental Policy Act (10 CFR Part 1021), NNSA has prepared a Supplement to the Programmatic Environmental Impact Statement on Stockpile Stewardship and Management for a Modern Pit Facility....⁹

⁵ *Final Guidance for Effective Use of Programmatic NEPA Reviews*, Council on Environmental Quality, December 2014, pp. 13-14, https://www.energy.gov/sites/prod/files/2014/12/f19/effective_use_of_programmatic_nepa_reviews_18dec2014.pdf

⁶ 10 CFR PART 1021, DOE NEPA Implementing Procedures, §1021.330. Regarding whether it should be a programmatic EIS or an environmental assessment (EA), precedence strongly suggests a programmatic EIS (see the Complex Transformation and Modern Pit Facility supplemental PEISs cited in this letter).

⁷ SSM PEIS Record of Decision, 61 FR 68014, December 26, 1996, apparently not available on the internet

⁸ <https://www.federalregister.gov/documents/2008/10/24/E8-25420/notice-of-availability-of-final-complex-transformation-supplemental-programmatic-environmental>
Italics and parentheses in the original.

⁹ Draft Supplemental Programmatic Environmental Impact Statement on Stockpile Stewardship and Management for a Modern Pit Facility, NNSA, May 2003, <https://www.energy.gov/sites/prod/files/EIS-0236-S2-DEIS-Summary-2003.pdf>

We believe it is obvious that these same NEPA requirements that applied then still legally apply today.

In addition, the Supplemental PEIS prepared for the Modern Pit Facility, a process in which our groups formally participated, also stated:

Subsequent to the SSM PEIS ROD, a number of citizen groups filed suit challenging the adequacy of the SSM PEIS. In August 1998, the SSM PEIS litigation was resolved. As a result of that litigation, DOE agreed to entry of a court order that required, “prior to taking any action that would commit DOE resources to detailed engineering design, testing, procurement, or installment of pit production capability for a capacity in excess of the level that has been analyzed in the SSM PEIS (50 pits per year [ppy] under routine conditions, 80 ppy under multiple-shift operations), DOE shall prepare and circulate a Supplemental PEIS, in accordance with DOE NEPA Regulation 10 CFR 1021.314, analyzing the reasonably foreseeable environmental impacts of and alternatives to operating such an enhanced capacity, and shall issue a ROD based thereon.” This MPF EIS is being prepared in part to satisfy that obligation.¹⁰

We first note that the MPF SPEIS was abandoned in draft stage, far from a Record of Decision (ROD) ever being issued, and that the 1996 SSM PEIS is woefully out of date for any analysis of production of up to 80 pits per year. But to bring this to today, in 2018 NNSA has clearly stated that it intends to produce 80 pits per year *or more*. The agency has also clearly stated that it intends to establish redundant pit production at the Savannah River Site, which certainly constitutes an “enhanced capacity.” Therefore, we assert that in addition to the continuing legal requirements under NEPA, the court order also mandates that a Programmatic Environmental Impact Statement be prepared, one that must specify the upper bounds of future plutonium pit production and the impacts it may have.

Plutonium Pit Production at the Savannah River Site

In your May 10 decision you stated that the soon-to-be-closed MOX Fuel Fabrication Facility at the Savannah River Site would be repurposed for plutonium pit production. On October 9, 2018, the Fourth Circuit Court of Appeals lifted a lower court’s injunction that had halted NNSA’s termination of the MOX project, removing that roadblock. On October 10, NNSA ended its contract with MOX Services and began implementing project termination. The court did not rule on any aspect pertaining to the repurposing of the partially completed MOX facility. Therefore, absent a PEIS and follow-on site-specific NEPA analysis, there is no legal basis for repurposing that facility for a wholly new plutonium pit production mission or any other mission.

We believe no conversion activities toward pit production can be taken at the shuttered MOX facility until the PEIS on expanded pit production has been finalized and a Record of Decision issued. With that in mind, we caution NNSA against stating that the MOX facility will be repurposed for pit production and expect that no closure activities at the MOX facility will be undertaken that begin to convert the facility to pit production *absent the required*

¹⁰ Ibid., brackets and parentheses in the original.

PEIS. In addition, the required NEPA processes must explore how reuse of the MOX Plant might be constrained given uncorrected construction and “rework” problems.

In closing, we repeat that if NNSA continues to move forward with new pit production capacity at LANL and SRS, it must begin preparation of a new PEIS without delay. We add that such a document must involve initial scoping, hearings and opportunities for written and oral public comment at each stage of this process. Assuring the public’s ability to meaningfully comment is a key component of legal compliance. Further, once NNSA meets its obligation for a PEIS, and if its Record of Decision supports expanded pit production, it then follows that the agency will have to complete related site-specific NEPA documents for both LANL and SRS.

We respectfully request your timely response within 30 days. We invite you to communicate by postal letter, phone or email. Thank you in advance for your consideration.

Sincerely,

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