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

JIM HODGES, Governor of South Carolina,

Plaintiff and Counterclaim-Defendant,

v.

SPENCER ABRAHAM, Secretary of Energy, and DEPARTMENT OF ENERGY,

Defendants and Counterclaim-Plaintiffs.

CIVIL ACTION NO.
1:02-1426-22

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON THEIR COUNTERCLAIM

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Dated: May 24, 2002

10.

TABLE OF CONTENTS

INTRODUCTION

This action involves a state official's intended impermissible interference with the federal government's implementation of measures that are expressly reserved to the prerogative of the United States by the Constitution and by federal statutory authority. Jim Hodges, acting as Governor of the State of South Carolina (sometimes "State"), has taken steps to prohibit the United States from transporting plutonium to a federally owned and operated nuclear facility located in South Carolina.[1] Through public statements and a "dress rehearsal" with State troopers of the South Carolina Highway Patrol and other State officials, the Governor has announced that he will physically blockade the federal government's planned shipment of the plutonium to his State. For any one of the following reasons, this Court must not permit the Governor to do so:

- Any attempt by the Governor to stop the federal government's shipment of the plutonium to South Carolina would violate the Supremacy Clause, both because such conduct would undermine the federal government's immunity from state interference, and because the Atomic Energy Act preempts the Governor's actions; and

- any attempt by the Governor to stop the federal government's shipment of plutonium to South Carolina would violate the Commerce Clause.

STATEMENT OF FACTS

The Department of Energy

Since World War II and the development of nuclear weapons, the federal government has exercised "rigid controls" and "a strict governmental monopoly" over nuclear materials. See United States v. Livingston, 179 F. Supp. 9, 16 (E.D.S.C. 1959), aff'd per curiam, 364 U.S. 281

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[1] Governor Hodges has sued the United States Department of Energy and its Secretary, Spencer Abraham, challenging the decision to ship plutonium to the Savannah River Site from other federal facilities outside South Carolina. The defendants are responding separately to the Governor's claim. This memorandum addresses only defendants' counterclaim against the Governor seeking a declaration that the Governor may not lawfully blockade the federal government's shipment.

(1960). Through various statutes, beginning with the Atomic Energy Act of 1946, Congress has assigned to federal agencies the task of regulating the possession and use of nuclear materials. See Act of Aug. 1, 1946, ch. 724, 60 Stat. 755. Under the current Atomic Energy Act of 1954 and its amendments, the United States Department of Energy ("DOE" or "Department"), a defendant and counterclaim-plaintiff in this action, is now statutorily responsible for the integrity and safety of the Nation's nuclear weapons, and for the management, processing, and disposition of nuclear materials, including plutonium. See 42 U.S.C. §§ 7112, 7132, 7133, 7274m, 7274n, 7274p; 50 U.S.C. § 2341; Pub. L. No. 83-703, 68 Stat. 919 (1954); Declaration of Linton F. Brooks ¶ 7 [herineafter Brooks Decl.].[2]

The end of the Cold War has created a legacy of surplus plutonium from nuclear weapons that must be either stored or disposed of. Id. ¶ 5; Declaration of Joseph Mahaley ¶¶ 5, 7 [hereinafter Mahaley Decl.]. DOE has immediate responsibility for the management, processing, and disposition of that surplus plutonium. Id. ¶¶ 5, 6; Declaration of Jessie Hill Roberson ¶ 17 [hereinafter Roberson Decl.]. The Department is working to modify its system for managing, processing, and disposing of surplus weapon-grade plutonium, in order to reduce costs, expedite

[2] All of the declarations cited herein are included in the Exhibits to Memorandum in Support of Defendants' Motion for Summary Judgment on Their Counterclaim, which is filed herewith.

closure and cleanup of certain sites and facilities in its nuclear complex, and enhance the security of this plutonium. Id. ¶¶ 3-22.

In furtherance of its foreign policy objectives, the United States entered into a reciprocal agreement with the Russian Federation, in September 2000, to dispose of certain weapon-grade plutonium ("U.S-Russia Agreement" or "Agreement").[3] In the Agreement, the United States and Russia each committed to dispose of no less than thirty-four (34) metric tons of weapon-grade plutonium (Article II, paragraph 1). DOE is the federal agency charged with the responsibility of carrying out the commitments of the United States in this respect under the U.S.-Russia Agreement. See Brooks Decl. ¶¶ 7-8. Carrying out these commitments requires transporting certain weapon-grade plutonium from various locations within the United States to other locations within the United States, including across state lines. Id ¶ 6.

Transfer of Plutonium to the Savannah River Site

The Savannah River Site ("SRS") is a DOE-owned and -operated nuclear facility located near Aiken, South Carolina. See Roberson Decl. ¶ 17. SRS was established in 1950, and currently occupies approximately 310 square miles. See Livingston, 179 F. Supp. at 17; Mahaley Decl. ¶ 12. At SRS, which houses extensive facilities, the Department carries out many of its responsibilities for the production, management, and disposition of nuclear materials, including plutonium. See Roberson Decl. ¶ 18. Approximately two metric tons of weapon-grade plutonium are already stored at SRS. Id. In furtherance of the commitments of the United States under the U.S.-Russia Agreement, DOE intends to construct at SRS a facility to convert weapon-

[3] A copy of the Agreement is at Tab I of the Exhibits to Memorandum in Support of Defendants' Motion for Summary Judgment on Their Counterclaim, filed herewith.

grade plutonium to mixed uranium oxide-plutonium oxide ("MOX"), which can be used as fuel in nuclear reactors. See Brooks Decl. ¶ 5.

Both to improve its system for managing, processing, and disposing of surplus weapon-grade plutonium, and in anticipation of construction of the MOX conversion facility, DOE intends to transport plutonium to SRS from locations outside South Carolina. Id. ¶ 8; Mahaley Decl. ¶¶ 7-12. Transferring the plutonium to SRS, and commencing the transfer expeditiously, are important both to the safe and efficient management of surplus plutonium and to the United States' defensive readiness and nuclear deterrence. Id.; Declaration of Everet H. Beckner ¶¶ 7-15 [hereinafter Beckner Decl.]; Roberson Decl. ¶¶ 6-22. Much of the plutonium to be shipped to SRS was actually produced there. Id. ¶ 17. The shipment of this plutonium to SRS is currently scheduled to begin on or about June 15, 2002. Id. ¶ 21.

The shipment of plutonium is to be carried out pursuant to stringent federal guidelines and procedures designed for safe passage. See Beckner Decl. ¶ 4. The vehicles to be used in DOE's shipment of plutonium to SRS are owned by the United States, and the personnel who accompany every such shipment are federal officers. Id. ¶¶ 4, 5. The vehicles to be used in these shipments, known as Safe, Secure Trailers and SafeGuard Transporters, are specially designed eighteen-wheel tractor-trailers with reinforced cargo features. Id. ¶ 4.

Actions of Governor Hodges

The plaintiff and counterclaim-defendant is Jim Hodges, currently the Governor of South Carolina ("Governor"). He has filed this action in an attempt to enjoin DOE's shipment of plutonium to SRS, alleging that the shipment violates the National Environmental Policy Act ("NEPA"). Despite the commencement of this action, the Governor has publicly proclaimed that,

with the assistance of the South Carolina Highway Patrol and other State officials, he will stop the federal government's planned shipment of plutonium to SRS by blockading any roadway used for such shipment. See Declaration of James M. Gaver ¶¶ 4-12 [hereinafter Gaver Decl.]; Declaration of W. Scott Simpson ¶ 2 & Ex. 1 [hereinafter Simpson Decl.]; Declaration of Robert F. Daley, Jr. ¶ 4 & Ex. 3 [hereinafter Daley Decl.]. On April 22, 2002, upon the request and under the personal observation of the Governor, officers and state troopers of the South Carolina Highway Patrol and other State employees rehearsed an attempt to stop DOE's planned shipment of plutonium by setting up a roadblock across a highway entering the State. See Gaver Decl. ¶¶ 7-9; Simpson Decl. ¶ 2 & Ex. 1. The April 22, 2002 rehearsal included the use of several vehicles marked for use as patrol cars by the South Carolina Highway Patrol, as well as a tractor-trailer owned by the State which functioned as a stand-in for the DOE tractor-trailers that the Governor intends to stop. Id.; Gaver Decl. ¶¶ 7-9. The Governor has even authorized a television advertisement that states, on his behalf, that he intends to blockade any road used by DOE to ship plutonium into South Carolina. Id. ¶ 12; Daley Decl. ¶ 4 & Ex. 3. The advertisement, which has been broadcast under the Governor's authorization several times during the month of May 2002, includes one or more images of the April 22, 2002 rehearsal. Id.

On May 8, 2002, counsel for the Department of Energy wrote to counsel for the Governor asking whether the Governor would obstruct or impede the shipment of any surplus plutonium to SRS if this Court were to deny the Governor's motion for a preliminary injunction. Id. ¶ 2 & Ex. 1. In response to the May 8 letter of counsel for DOE, counsel for the Governor stated, in a letter dated May 10, 2002:

> Unless a legally enforceable agreement is in place requiring the Department of Energy to convert and/or remove any plutonium shipped to South Carolina, the Governor expressly reserves the right to rely upon any and all lawful means available to him in his capacity, and under his authority, as the Governor of the State of South Carolina to prevent the Department of Energy from shipping any surplus plutonium to South Carolina.

Id. ¶ 3 & Ex. 2. In short, the May 10, 2002 letter failed to state that the Governor would refrain from his announced commitment to stop the shipment of plutonium to SRS using physical means if this Court were to deny the Governor's motion for a preliminary injunction.

ARGUMENT

The United States Constitution embodies the fundamental principle that in certain areas the United States must act as a single nation, led by the federal government, rather than as a loose confederation of independent sovereign states. Under the Supremacy Clause of the Constitution, the federal government is immune from any interference by the states when acting within its sphere. The Supremacy Clause also stands for the principle that where Congress exercises its authority in a given field within the federal sphere, the states may not interfere with any conflicting attempts to promote their own local interests.

The Governor's expressed intent to use physical means to blockade the United States' shipment of plutonium is plainly unconstitutional. Such a restriction on the activities of the United States or its officers would violate the principle of intergovernmental immunity embodied in the Supremacy Clause. Any effort to implement the Governor's stated intent would, moreover, be preempted by the federal Atomic Energy Act, which completely occupies the field regarding the health and safety of nuclear material and its shipment. Finally, the Governor's announced blockade would violate the Commerce Clause, which places the regulation of interstate

commerce entirely in the hands of the federal government. Any attempt by the Governor to carry out his intent to use physical means to stop the shipment of surplus plutonium into South Carolina would cause a serious risk of harm to federal employees, federal property, and the public.

I. The Governor's Planned Attempt To Stop The United States' Shipment Of Plutonium Into South Carolina Would Violate The Supremacy Clause

The Supremacy Clause of the United States Constitution provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const., art. VI, cl. 2. Chief Justice Marshall, writing for the Supreme Court in McCulloch v. Maryland, stated that the purpose of this Clause is "to remove all obstacles to [the federal government's] action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its own operations from their own influence." 17 U.S. (4 Wheat.) 316, 427 (1819). Thus, the authority of the United States is supreme in its sphere.

"The fundamental principle underlying the Supremacy Clause is that conflicts between federal and state power are to be resolved in favor of the federal government," in either of two ways. United States v. Ferrara, 847 F. Supp. 964, 968 (D.D.C. 1993), aff'd, 54 F.3d 825 (D.C. Cir. 1995). First, the doctrine of "intergovernmental immunities" establishes that "even in the absence of a specific federal law, federal officers are immune from state interference with acts 'necessary and proper' to the accomplishment of their federal duties." Id. (citing In Re Neagle, 135 U.S. 1 (1890)). The second doctrine provides that federal legislation preempts state action in a particular area if, among other things, the federal legislation is so pervasive as to displace state action. See Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Devel. Comm'n,

461 U.S. 190, 203-04 (1983) ("Congress' intent to supersede state law altogether may be found from a scheme of federal regulation so pervasive as to make reasonable the inference that Congress left no room to supplement it . . . .") (internal quotation marks omitted).[4] Both of these doctrines apply here with equal force to render the Governor's planned action unconstitutional.

A. Any Attempt To Stop The Shipment Of Plutonium Would Undermine The Federal Government's Immunity From State Interference

It is well-established that a state cannot interfere with a valid exercise of federal authority. From the beginning of the Republic, in McCulloch v. Maryland, through the Supreme Court's recent jurisprudence, the Court has repeatedly prohibited the type of impermissible conduct that the Governor plans. "[T]he very essence of supremacy," the Court said in McCulloch, is to "exempt [the federal government's] own operations from [state] influence." 17 U.S. (4 Wheat.) at 427. In other words, the Supremacy Clause "immunizes the activities of the Federal Government from state interference." Goodyear Atomic Corp. v. Miller, 486 U.S. 174, 180 n.1 (1988).

Individual cases demonstrate this principle in application. In McCulloch, for example, the Supreme Court held that a state could not tax the national bank. "[T]he states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government." 17 U.S. (4 Wheat.) at 436. In cases after McCulloch, the Court has not hesitated to strike down state actions, like that planned here, that impermissibly interfere with the power of the federal government. For example, in Hancock v. Train, a state attempted to prevent

[4] Federal legislation may also expressly preempt state action, or may create a conflict with state law, such that compliance with both federal and state law is physically impossible. Pacific Gas, 461 U.S. at 203-04.

the operation of a federally-owned power facility until the facility had secured a state permit for the discharge of pollutants. 426 U.S. 167 (1976). The Court held that no state could enforce such a requirement given "the fundamental importance of the principles shielding federal installations and activities from regulation by the States." Id. at 179; see Department of Energy v. Ohio, 503 U.S. 607 (1992) (holding that DOE is constitutionally immune from state civil penalties for past violations of federal environmental statutes). Similarly, in Johnson v. Maryland, the State attempted to prevent a federal postal employee from performing his duties until he had obtained a state driver's license. 254 U.S. 51 (1920). The Court struck down this attempt, holding that the states cannot "interrupt the acts of the general government itself." Id. at 55.

The DOE's contemplated shipment of surplus plutonium into South Carolina is quintessentially a federal activity involving the execution of powers vested in the federal government. One of the principal roles of the federal government, under the Constitution, is national defense. See U.S. Const., art. I, § 8, cls. 11-14; art. II, § 2, cl. 1. Plutonium is a highly radioactive material used in making nuclear weapons for purposes of national defense. See Complaint ¶ 12. By federal statute, DOE is responsible for the integrity and safety of the Nation's nuclear weapons, and for the management and disposition of nuclear materials. See 42 U.S.C. §§ 7112, 7132, 7133, 7274m, 7274n, 7274p; Brooks Decl. ¶ 7. The plutonium that DOE intends to ship into South Carolina either was extracted from now-dismantled nuclear weapons, or was manufactured for eventual use in nuclear weapons. See Mahaley Decl. ¶ 5; Roberson Decl. ¶ 12. The facility to which the plutonium is to be shipped is a federal facility, and the

actual shipment of the plutonium will be carried out by federal employees, using federal vehicles. Id. ¶ 17; Beckner Decl. ¶¶ 4, 5.

Moreover, now that this surplus material is no longer needed for nuclear weapons, DOE has concluded that moving it to SRS from other locations will significantly improve security:

> The physical protection of [special nuclear material, including plutonium] must be at the same stringent level (in order to prevent or defeat an attempted terrorist penetration) at every location where significant quantities of such materials are held. This means highly effective armed security police forces, physical systems to detect and prevent intrusion, material accountability and control systems, and personnel security must be maintained at each and every such location.
>
> From a professional security standpoint, consolidating the storage of [special nuclear material] has two dispositive advantages when protection against theft and sabotage are of paramount concern. First, it is more cost-effective and efficient and lends itself to obvious economies of scale. Second, it reduces the number of potential targets. Simply put, we can provide greater protection against the threats of theft and sabotage, both quantitatively and qualitatively, if our security resources are focused on fewer sites.

See Mahaley Decl. ¶¶ 9, 10. Movement of this plutonium to SRS "supports this strategy and will enhance the Department's ability to provide the highest level of security for this material" Id. ¶ 12. DOE is entitled to make these determinations as the custodian of the country's nuclear material.

This very Court has recognized, in a case involving the Savannah River Site itself, that the possession and processing of nuclear material are intimately bound up with national security:

> The explosion of the Hiroshima and Nagasaki weapons and their demonstration of destructive power, which, until then, was wholly unprecedented, led the Congress to give careful consideration to the needs and responsibilities of the nation for the use, control and development of this new source of energy. . . . The nation's responsibility to insure that this great power of destruction should not be misused also led to the conclusion that a strict governmental monopoly and rigid controls were required.

United States v. Livingston, 179 F. Supp. 9, 16 (E.D.S.C. 1959), aff'd per curiam, 364 U.S. 281 (1960). This Court held, therefore, that even a contractor involved in the operation of SRS was immune from state taxation. Id. at 24.

The conduct of foreign relations is, of course, another power vested exclusively in the federal government by the Constitution. See U.S. Const. art. II, § 2, cl. 2; art. II, § 3, cl. 3; Japan Line, Ltd. v. Los Angeles County, 441 U.S. 434, 448 (1979) ("In international relations . . . the people of the United States act through a single government with unified and adequate national power.") (quoting Board of Trustees v. United States, 289 U.S. 48, 59 (1933)); Hines v. Davidowitz, 312 U.S. 52, 63 (1941) ("The Federal Government . . . is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties."). The shipment of this plutonium will serve an important foreign-relations function, in that DOE will transport the plutonium to SRS for disposition and conversion as a consequence of the United States' post-Cold War relationship with the Russian Federation. See Brooks Decl. ¶¶ 5-8. The U.S.-Russia Agreement itself states that it is another step in a long series of negotiations and agreements regarding the disposition of plutonium "no longer required for defense purposes." See supra note 3. A principal purpose of DOE's intended shipment of plutonium to SRS, therefore, is to convert the plutonium into fuel for nuclear reactors in furtherance of the United States' foreign relations and, more particularly, for purposes of compliance with its obligations under a bilateral (e.g., nation-to-nation) agreement to do so. See Brooks Decl. ¶¶ 5-8.

Uncertainty regarding the shipment of plutonium to SRS would have serious ramifications for the foreign relations of the United States:

> The prospect of . . . uncertainty [regarding the plutonium shipments] poses potentially serious risks for U.S. national security and for a major U.S. nonproliferation objective, putting at risk a plan to eliminate enough plutonium for thousands of nuclear warheads. The national and international uncertainty associated with prolonged litigation would create a serious risk of disrupting or even ending this important nonproliferation effort.

Id. ¶ 4. More specifically, uncertainty regarding these shipments could put this "vital national security program" at risk by, among other things, causing Russia to "conclude that the United States will not be able to continue the program"; causing Russia, for that reason, to reexamine its own commitment to dispose of surplus plutonium; and hampering efforts to obtain international financing for the Russian plutonium-disposition program. Id. ¶ 6. The ramifications of these outcomes for our national security are clear: a delay in the Russian disposition program would leave the Russian plutonium at risk of theft, and a cancellation of that program would leave enough Russian plutonium available to make literally thousands of nuclear weapons. Id. ¶¶ 9, 14-15.

The State of South Carolina, let alone the Governor, acting on his own, has "no power . . . to retard, impede, burden, or in any manner control," the authorized activity of DOE to "carry into execution the powers vested in the general government." McCulloch, 17 U.S. (4 Wheat.) at 436. Given the exclusive use of federal employees and federally owned vehicles, and the fact that these shipments of plutonium are intimately tied to the federal government's conduct of our national defense and foreign relations, the shipments are even more plainly federal functions than the national bank held immune from state taxation in McCulloch, the federally owned (but contractually operated) power plant in Hancock, and the delivery of mail in Johnson. 17 U.S. (4 Wheat.) 316; 426 U.S. 167; 254 U.S. 51. The Governor's planned blockade of South Carolina's

borders would impermissibly prevent and disrupt the performance of this undeniable federal function, in direct contravention of the Constitution and 200 years of established Supreme Court jurisprudence.

B. The Atomic Energy Act Preempts Any State Action Regarding The Possession, Control, And Shipment Of Plutonium

The doctrine of legislative preemption dictates that federal legislation in an area may be so pervasive that state action is foreclosed without congressional consent to the contrary. As the Supreme Court has written:

> Congress' intent to supersede state law altogether may be found from a "'scheme of federal regulation . . . so pervasive as to make reasonable the inference that Congress left no room to supplement it,' because 'the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject,' or because 'the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose.'" Fidelity Federal Savings & Loan Ass'n v. De la Cuesta, 458 U.S. 141, 153 (1982), quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947).

Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Devel. Comm'n, 461 U.S. 190, 203-04 (1983) [hereinafter Pacific Gas]. In other words, state action in an area is preempted if federal legislation "has occupied the entire field." Id. at 212; see Jersey Cent. Power & Light Co. v. Township of Lacey, 772 F.2d 1103, 1110 (3d Cir. 1985) ("The Supremacy Clause mandates that federal law preempts any state regulation of any area over which Congress has expressly or impliedly exercised exclusive authority."), cert. denied, 475 U.S. 1013 (1986); see also California Pub. Utils. Comm'n v. United States, 355 U.S. 534 (1958) (federal procurement statutes preempted applying state statute requiring approval of state agency for deviation from established freight rates); United States v. Virginia, 139 F.3d 984 (4th Cir. 1998) (federal

procurement statutes preempted attempt to apply state regulations regarding private security services to federal FBI contracting).

Such is the case here. The "field" involved in this matter is the entire spectrum of the management of nuclear materials, including their possession, control, and shipment. And the federal government occupies this field: "The federal government's historic role as the force behind the discovery and utilization of nuclear power gives it a longstanding monopoly over all matters nuclear." Long Island Lighting Co. v. County of Suffolk, 628 F. Supp. 654, 662 (E.D.N.Y. 1986). This "longstanding monopoly" is codified in the Atomic Energy Act of 1954 ("AEA"), which governs all safety and health aspects regarding the possession, control, and shipment of certain nuclear materials, including plutonium. 42 U.S.C. §§ 2011, et seq.; Pub. L. No. 83-703, 68 Stat. 919 (1954). The AEA regulates these subjects "so pervasively" that any state action in this area is preempted.

The AEA's official statement of "purpose" not only expresses an intent that this statute should govern "the possession, use, and production" of certain nuclear material and that the federal government should "control" that area, but also that such control is crucial to the "common defense and security and the national welfare" and the ability to "enter into and enforce" international agreements — areas that are necessarily within the exclusive constitutional purview of the federal government. See 42 U.S.C. § 2013(c).[5] The operative provisions of the

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[5] The statement of purpose provides:

> It is the purpose of this chapter to . . . provid[e] for . . . a program for Government control of the possession, use, and production of atomic energy and special nuclear material, whether owned by the Government or others, so directed as to make the maximum contribution to the common defense and security and the national welfare, and to provide continued assurance of the Government's ability

AEA place the possession and distribution of "special nuclear material" (which includes plutonium, id. § 2014(aa)) under the sole aegis of an agency of the United States government. The Act authorizes the Department of Energy —

> [to] establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the [Department] may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property . . . .

Id. § 2201(b).[6]

Pursuant to the AEA, Congress vested DOE with the unambiguous authority to undertake precisely the conduct that the Governor intends to prevent through his unilateral blockade. That is, the AEA authorizes DOE to "make such disposition as it may deem desirable" of surplus radioactive materials, id. § 2201(j), and to "prescribe such regulations or orders as it may deem necessary . . . to guard against the loss or diversion of any special nuclear material acquired by any person . . . to prevent any use or disposition thereof which the [Department] may determine to be inimical to the common defense and security . . . ." Id. § 2201(i). This is precisely why the

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> to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons.

42 U.S.C. § 2013(c) (emphasis added).

[6] In the provisions quoted above, the AEA uses the term "Commission," and the definitions section of the Act states that "Commission" means "Atomic Energy Commission." 42 U.S.C. § 2014(f). However, the Atomic Energy Commission was abolished in 1974. Pub. L. No. 93-438, § 104, 88 Stat. 1233, 1237 (1974). Its licensing and related regulatory functions were transferred to the Nuclear Regulatory Commission, 42 U.S.C. § 5841(f); and its operational, national security, and energy research and development functions were transferred to the Energy Research and Development Administration, then later to the Department of Energy. Id. §§ 5814(c), 7151(a).

court in Long Island Lighting Co. found that the federal government has "a longstanding monopoly over all matters nuclear." 628 F. Supp. at 662.

The AEA further demonstrates Congress's intent to "occupy the field" with federal legislation by vesting other duties regarding nuclear materials in the federal Nuclear Regulatory Commission ("NRC"). For example, the possession, transfer, or delivery of special nuclear material (including plutonium) by private persons or entities is expressly prohibited, except under license by the NRC:

> Unless authorized by a general or specific license issued by the Commission, which the Commission is authorized to issue pursuant to section 2073 of this title, no person may transfer or receive in interstate commerce, transfer, deliver, acquire, own, possess, receive possession of or title to, or import into or export from the United States any special nuclear material.

42 U.S.C. § 2077(a). Indeed, any violation or attempted violation of this prohibition is subject to criminal penalties:

> Whoever willfully violates, attempts to violate, or conspires to violate, any provision of sections 2077, 2122, or 2131 of this title . . . shall, upon conviction thereof, be punished by a fine of not more than $10,000 or by imprisonment for not more than ten years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation shall, upon conviction thereof, be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than $20,000 or both.

Id. § 2272.

In Pacific Gas, the Court summarily dismissed a state's attempt to thwart the nation's nuclear policies. 461 U.S. 190. In that case, a utility company sought to enjoin enforcement of a state statute that imposed a moratorium on the construction of new nuclear power plants until a plan for disposal of the nuclear waste from such plants was developed and approved by the

federal government. Id. at 198. Based on its review of the content and history of the Atomic Energy Act, the Supreme Court held that "the safety of nuclear technology [is] the exclusive business of the Federal Government" and that "the Federal Government maintains complete control of the safety and 'nuclear' aspects of energy generation." Id. at 208, 212. Thus, said the Court, "[a] state moratorium on nuclear construction grounded in safety concerns" would be preempted by the Atomic Energy Act. Id. at 213.[7] Accordingly, the Atomic Energy Act "has occupied the entire field of nuclear safety concerns," and no power or authority with respect to the shipment of plutonium has been expressly ceded to South Carolina. Id. at 212.

The lower courts also have held that various kinds of state action are preempted by the Atomic Energy Act. In People of Illinois v. General Electric Co., for example, a utility company challenged a state statute which prohibited "transport[ing] into [the] State for disposal or storage any spent nuclear fuel which was used in any power generating facility located outside [the]

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[7] The Court in Pacific Gas went on to hold that the state statute at issue there was aimed, not at "radiation hazards," but at "economic problems." 461 U.S. at 213. Specifically, the state legislature was concerned that, "[w]ithout a permanent means of disposal, the nuclear waste problem could become critical, leading to unpredictably high costs to contain the problem or, worse, shutdowns in reactors." Id. at 213-14. Therefore, the Court held, the statute was within the state's traditional authority over "the economic aspects of electrical generation," rather than the federal government's exclusive authority over "nuclear safety regulation." Id. at 206, 216. This principle has no application here. The Governor has repeatedly invoked health and safety concerns in objecting to DOE's shipment of plutonium. See Memorandum in Support of [Plaintiff's] Motion for Preliminary Injunction at 34-35 (assertion of irreparable harm in support of motion for preliminary injunction); Simpson Decl. ¶ 3 & Ex. 2 (Governor's "State of the State" address); Exhibits to Memorandum in Support of Defendants' Motion for Summary Judgment on Their Counterclaim, Tab J (letter from Governor to Secretary of Energy, Apr. 10, 2002). In any event, regardless of the Governor's motivation, his announced intent to stop the shipments cannot fall within the "economic" exception of Pacific Gas because that exception was based on the states' traditional authority over non-federal entities regarding the generation of electricity. See 461 U.S. at 205-06. The states do not, by contrast, have any traditional authority regarding any "economic" aspects of the federal government's transportation of plutonium.

State." 683 F.2d 206, 208 (7th Cir.), cert. denied, 461 U.S. 913 (1983). The court held that the Atomic Energy Act preempts state regulation of the shipment of spent nuclear fuel, including the state law in question. Id. at 215; accord Jersey Cent. Power & Light Co., 772 F.2d at 1110-12. Similarly, in United States v. Kentucky, the United States challenged a state administrative order that purported to restrict the Department of Energy's disposal of radioactive materials in a DOE landfill. 252 F.3d 816, 820 (6th Cir.), cert. denied, 122 S. Ct. 396 (2001). The court held that the order was preempted by the Atomic Energy Act, stating:

> The AEA grants DOE and the Nuclear Regulatory Commission exclusive responsibility for regulating source, special nuclear, and byproduct material. . . . [T]he AEA preempts any state attempt to regulate materials covered by the Act for safety purposes.

Id. at 821, 823. Likewise, in Long Island Lighting Co. v. County of Suffolk, a municipality enacted an ordinance that prohibited certain aspects of an emergency-response test required before the Nuclear Regulatory Commission could license a nuclear power plant. 628 F. Supp. 654 (E.D.N.Y. 1986). Examining the AEA and noting the federal government's "longstanding monopoly over all matters nuclear," the court held that the ordinance was preempted by the AEA. Id. at 662-66.

Unquestionably, the Governor's planned blockade of DOE's shipment of plutonium to SRS impermissibly interferes with the exclusive federal authority marked out by the Atomic Energy Act. The Act forbids anyone other than DOE to "transfer, deliver, acquire, own, possess, receive possession of or title to, or import into or export from the United States any special nuclear material," including plutonium, except under license by the Nuclear Regulatory Commission. 42 U.S.C. § 2077(a). The Governor would, therefore, seek to prevent activity that

is fully regulated and permitted by federal statute. See Johnson v. Maryland, 254 U.S. 51, 57 (1920) ("[T]he immunity of the instruments of the United States from state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer, upon examination, that they are competent for a necessary part of them . . . . Such a requirement . . . requires qualifications in addition to those that the [federal] government has pronounced sufficient.").

As explained above, the AEA unambiguously preempts state laws, regulations, or administrative orders that attempt to invade the exclusively federal province of nuclear regulation. Here, the Governor's planned blockade at the South Carolina border does not even have the indicia of legal legitimacy of these validly promulgated state laws; his unilateral action as Governor cannot be countenanced where it interferes in a field monopolized by the federal government. Accordingly, the Governor's conduct is preempted and should be enjoined.

II. The Governor's Planned Blockade of the South Carolina Border Would Violate The Commerce Clause

The Governor's plan to erect a blockade at the South Carolina border to the interstate shipment of plutonium also violates the Commerce Clause. The Commerce Clause vests in the federal government the exclusive authority to "regulate Commerce with foreign Nations, and among the several States." See U.S. Const., art. I, § 8, cl. 3. This Clause operates "not only as an authorization for congressional action, but also, even in the absence of a conflicting federal statute, as a restriction on permissible state regulation." Hughes v. Oklahoma, 441 U.S. 322, 326 (1979).

Where a state has attempted to impose a law or regulation to impede the interstate transportation of products, the Supreme Court has had no difficulty in striking down such state action as violative of the Commerce Clause. In its analysis of state action under the Commerce Clause, the Court employs a two-tiered approach, depending on the particular conduct. When state action expressly discriminates against interstate commerce, it is "virtually per se" invalid. Philadelphia v. New Jersey, 437 U.S. 617, 624 (1978). In contrast, where a state statute "regulates evenhandedly to effectuate a legitimate local public interest," but has only an "incidental" effect on interstate commerce, the Court uses a balancing test: such a law "will be upheld unless the burden imposed on . . . commerce is clearly excessive in relation to the putative local benefits." Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970); see Medical Waste Assocs. v. Mayor & City Council of Baltimore, 966 F.2d 148, 150 (4th Cir. 1992).

The Supreme Court has held that "[t]he clearest example of . . . legislation [that is per se invalid] is a law that overtly blocks the flow of interstate commerce at a State's borders." Philadelphia, 437 U.S. at 624. The Governor's decision to stop the shipment of surplus plutonium into South Carolina is an express discrimination against interstate commerce, and is thus subject to the "per se" standard.[8] Cf. C&A Carbone, Inc. v. Town of Clarkstown, 511 U.S.

[8] DOE's shipment of plutonium to SRS plainly constitutes interstate commerce for purposes of delineating the roles of the federal and state governments pursuant to the Commerce Clause. The Supreme Court has rejected a restrictive view of what constitutes "commerce" for this purpose: "All objects of interstate trade merit Commerce Clause protection; none is excluded by definition at the outset." Philadelphia, 437 U.S. at 622 (holding that solid waste is an article of commerce, even if it has no value). Although DOE's shipment of plutonium will be performed by federal employees, those employees will be crossing several interstate boundaries during the shipment, traveling in vehicles that were built and purchased in interstate commerce and over roads that are built and repaired with interstate commerce, and using fuel purchased in interstate (or international) commerce. See Beckner Decl. ¶ 4. See generally United States v. Livingston, 179 F. Supp. 9, 16 (E.D.S.C. 1959) (holding that contractor involved in operation of

383, 390 (1994) ("As we find that the ordinance discriminates against interstate commerce, we need not resort to the Pike test.").

This per se rule has been applied in a number of cases involving attempts to stop the flow of nuclear materials into a state. For example, the Seventh Circuit has struck down a state law that prohibited "transport[ing] into [the] State for disposal or storage any spent nuclear fuel which was used in any power generating facility located outside [the] State." General Electric Co., 683 F.2d at 208. Similarly, the Ninth Circuit has rejected a state statute that purported to close the state's borders to "the entry of low-level radioactive waste originating outside the state." Washington State Bldg. & Const. Trades Council v. Spellman, 684 F.2d 627, 629 (9th Cir. 1982), cert. denied, 461 U.S. 913 (1983).

The Governor here is not seeking to remove from the State plutonium or other nuclear material already present, and is not seeking to impede the transportation of any such plutonium or nuclear material within the State, or from South Carolina to any location outside the State. Rather, the Governor seeks only to block the transportation into the State of plutonium from outside South Carolina. Like the laws struck down in other cases, the Governor's object here "applies only to [plutonium] brought in from other states." General Electric Co., 683 F.2d at 213. The Governor's expressed interests in health and safety are "unaffected by the origin of the radioactive material." Id. Such discriminatory action is not permissible under the Commerce Clause.

In most cases, merely concluding that a state measure expressly discriminates against interstate commerce results in its invalidation. See Chemical Waste Mgmt., Inc. v. Hunt, 504

SRS was immune from state taxation), aff'd per curiam, 364 U.S. 855 (1960).

U.S. 334, 342 (1992) ("Once a state tax is found to discriminate against out-of-state commerce, it is typically struck down without further inquiry."); Philadelphia, 437 U.S. at 626-27 ("[W]hatever [the state's] ultimate purpose, it may not be accomplished by discriminating against articles of commerce coming from outside the State unless there is some reason, apart from their origin, to treat them differently."). Given that the Governor's decision to stop DOE's shipment of plutonium is expressly discriminatory, it should be held unconstitutional without resort to further analysis.

In certain cases involving express discrimination against interstate commerce, courts have examined, under the "strictest scrutiny," the state's "purported[ly] legitimate local purpose" and "the absence of nondiscriminatory alternatives." Hughes, 441 U.S. at 337. Under this analysis, "the burden falls on the State" to "demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest." C&A Carbone, Inc., 511 U.S. at 392; Chemical Waste Mgmt., Inc., 504 U.S. at 342; see Environmental Tech. Council v. Sierra Club, 98 F.3d 774, 787 (4th Cir. 1996) (striking down statute where state had failed to "demonstrate that no neutral alternatives exist to discrimination"), cert. denied, 521 U.S. 1103 (1997). "This is an extremely difficult burden," Camps Newfound/Owatonna, Inc. v. Town of Harrison, 520 U.S. 564, 582 (1997), and numerous decisions have struck down state statutes and ordinances as violative of the Commerce Clause notwithstanding that they serve presumably legitimate goals or valid local interests. See, e.g., Philadelphia, 437 U.S. at 627. Cases in which this analysis are applied are factually indistinguishable from cases in which expressly discriminatory state actions are invalidated without resort to such an analysis, as stated in the immediately-preceding paragraph. The approach described in the immediately-preceding paragraph is more appropriate

here, however, particularly given that the action challenged is a unilateral state executive action rather than a statute enacted pursuant to state constitutional processes.

Even if one were to assume application of the "rigorous scrutiny" analysis here, the Governor's announced intention to stop DOE's plutonium shipments would nonetheless be impermissible. The Governor's expressed concerns for radiological health and safety can be met by adherence to various health and safety measures, for which the federal government is exclusively responsible. See supra text at 14-16. In any event, the fact that plutonium and other nuclear materials are already present in South Carolina would belie any credible assertion that the only way to protect the citizens of South Carolina is to exclude plutonium shipments altogether. Cf. Maine v. Taylor, 477 U.S. 131, 151 (1986) ("Maine's ban on the importation of live baitfish serves legitimate local purposes that could not adequately be served by available nondiscriminatory alternatives.").

Finally, in analyzing state action for compliance with the Commerce Clause, it is irrelevant whether the state's attempt to stop the flow of materials across its borders is motivated by economic and financial concerns, or by health and safety concerns. In the Philadelphia case, for example, the state asserted that the Commerce Clause did not apply because the purpose of its prohibition on the importation of out-of-state waste was "to protect the health, safety and welfare of the citizenry at large" rather than economic protectionism. 437 U.S. at 626. The Court disagreed, finding:

> This dispute about ultimate legislative purpose need not be resolved, because its resolution would not be relevant to the constitutional issue to be decided in this case. . . . [T]he evil of protectionism can reside in legislative means as well as legislative ends. Thus, it does not matter whether the ultimate aim of [the state statute] is to reduce the waste disposal costs of New Jersey

> residents or to save remaining open lands from pollution . . . . [W]hatever New Jersey's ultimate purpose, it may not be accomplished by discriminating against articles of commerce coming from outside the State unless there is some reason, apart from their origin, to treat them differently. Both on its face and in its plain effect, [the statute] violates this principle of nondiscrimination.

Id. at 626-27.[9]

The same is true of the Governor's announced intention to stop the shipment of plutonium into South Carolina; whether couched in health and safety concerns or economic and commercial concerns, his blockade of plutonium at the State's border violates the Commerce Clause.

III. The Court Should Grant Declaratory Judgment Against the Governor's Planned Blockade

A declaratory judgment against the Governor's planned blockade is both appropriate and necessary. In order for a court to grant declaratory judgment —

> two conditions must be satisfied. First, the dispute must be a "case or controversy" within the confines of Article III of the United States Constitution — the "constitutional" inquiry. Second, the trial court, in its discretion, must be satisfied that declaratory relief is appropriate — the "prudential" inquiry.

White v. National Union Fire Ins. Co., 913 F.2d 165, 167 (4th Cir. 1990). Both of these conditions are easily satisfied here. See generally Johnson v. Nationwide Mut. Ins. Co., 276 F.2d 574, 581 (4th Cir. 1960) (summary judgment rule applies to declaratory judgment actions).

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[9] By the same reasoning, therefore, our contention that the Governor would violate the Commerce Clause by attempting to stop the interstate shipment of plutonium does not contradict our assertion, made earlier, that the Governor's decision was expressly motivated by safety and health concerns, and thus falls within the federal authority reserved by the Atomic Energy Act. See supra text at 14-16. The question under the Commerce Clause is whether the Governor's action would, in fact, improperly affect interstate commerce; in contrast, the question under the -preemption analysis is whether the Governor expressed concerns for safety and health in explaining his action. Indeed, the Seventh Circuit apparently saw no such contradiction when it held that one state's effort to prevent the importation of spent nuclear fuel was both preempted by the AEA and violative of the Commerce Clause. See General Electric Co., 683 F.2d at 213-15.

The "case or controversy" requirement is met where the parties present a "definite and concrete" dispute, "touching the legal relations of parties having adverse legal interests." White, 913 F.2d at 167 (quoting Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240-41 (1937)). The dispute must be one "admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." Id. (quoting Aetna Life Ins. Co., 300 U.S. at 240-41). In other words, the dispute must be "of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." Id. at 168 (quoting Maryland Casualty Co. v. Pacific Coal & Oil Co., 312 U.S. 270, 273 (1941)).

The dispute here is clearly "definite and concrete": the parties dispute whether the United States can ship physical material — plutonium — into South Carolina. The United States plans to begin those shipments after a date certain: June 15, 2002. See Roberson Decl. ¶ 21. This dispute, moreover, obviously "touch[es] the legal relations of parties having adverse legal interests." White, 913 F.2d at 167. That the parties' interests are adverse is illustrated by the facts that the Governor intends to use physical means to prevent the plutonium shipments altogether, and that he is already attempting (through this lawsuit) to prevent the shipments using legal means. The counterclaim-plaintiffs seek a declaratory judgment regarding the constitutional "relations" among the parties, id.: that is, a declaration that any attempt by the Governor to blockade, or otherwise interfere with, the United States' shipment of plutonium would violate the Constitution.

Furthermore, this situation is far from "hypothetical." Id. The Governor has publicly stated, a number of times, that he will blockade the plutonium shipments, and he has supervised the South Carolina Highway Patrol and other State employees in rehearsing the blockade. See

Gaver Decl. ¶¶ 3-12; Simpson Decl. ¶ 2 & Ex. 1; Daley Decl. ¶ 4 & Ex. 3. He has authorized a television commercial which says that he will prevent the plutonium shipments, "even if it means a blockade." Id. This commercial has been broadcast several times during the month of May 2002. Id. Finally, the Governor's attorney in this matter has refused to agree that his client will not obstruct or impede the plutonium shipments if this Court denies his request for a preliminary injunction against the shipments. Id. ¶¶ 2, 3 & Exs. 1, 2. This dispute, therefore, is more than "sufficient[ly] immedia[te] and real[] to warrant the issuance of a declaratory judgment." White, 913 F.2d at 168.

The "prudential," discretionary conditions for declaratory relief are also satisfied here. Id. at 167.

> Two questions should be asked when a court makes such a prudential decision: "(1) whether the judgment will serve a useful purpose in clarifying the legal relations in issue; or (2) whether the judgment will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding."

Id. at 168 (quoting National R.R. Passenger Corp. v. Consolidated Rail Corp., 670 F. Supp. 424, 431 (D.D.C. 1987)). This situation is plainly in need of immediate "clarification." The Governor intends to use state troopers to disrupt federal officers in the performance of quintessentially federal duties. His planned blockade of shipments of highly radioactive material, conducted by armed federal officers, could create a highly uncertain and possibly dangerous situation. If the Court were to deny the Governor's motion for preliminary injunction, and the Governor still refused to promise that he would not obstruct or impede the shipments, the United States would face the difficult choice of (1) proceeding with the first shipment, thus possibly giving rise to an extremely dangerous situation if the Governor carries out his plan, or (2) delaying the shipments

indefinitely in the face of that plan, thus allowing a state to obstruct and harm the performance of this federal function. Because the Department of Energy plans to begin shipment of this plutonium on or about June 15, 2002, a declaratory judgment is urgently needed to eliminate this "uncertainty." Id.

Other courts, including the Fourth Circuit, have granted declaratory relief in analogous circumstances. In United States v. Virginia, for example, state regulations governed the licensing, registration, and conduct of private investigators. 139 F.3d 984, 985-86 (4th Cir. 1998). The State Attorney General wrote to the Federal Bureau of Investigation, asserting that the regulations applied to private security services under contract to the FBI, and that the State "planned to initiate enforcement action against those unregistered and/or unlicensed [FBI contract investigators] working in Virginia." Id. at 986. The FBI sued, seeking, among other things, declaratory relief against application of the regulations to its contract investigators. Id. at 987. In upholding judgment for the United States, the Fourth Circuit held that the situation presented "a ripe case or controversy," because "the Virginia Attorney General [had] repeatedly informed the FBI that it believes that [its contract] investigators are subject to its regulations and that it has the power to enforce those regulations against [the] investigators." Id. at 987 n.3.

Similarly, in Mobil Oil Corp. v. Attorney General, a state statute purported to regulate certain aspects of the retail sale of petroleum products by franchisees. 940 F.2d 73, 74-75 (4th Cir. 1991). "Rather than violate the law or capitulate to it, Mobil filed . . . suit against the state's enforcement officer (the Attorney General) and simultaneously notified its franchisees that it would not enforce the provisions in the franchise agreements that [violated the statute] until resolution of the litigation." Id. at 75. Plaintiff sought declaratory relief, and other things, and

the State moved to dismiss for lack of a justiciable controversy. The Fourth Circuit held that a justiciable controversy existed, in that the State Attorney General had not "disclaimed any intention of exercising her enforcement authority." Id. at 76. Avoiding the plaintiff's predicament, in fact, is "precisely why the declaratory judgment cause of action exists" — "submit to a statute or face the likely perils of violating it." Id. at 74; accord General Electric Co., 683 F.2d at 208 (finding justiciable controversy in utility's challenge to state statute that was not yet enforced against utility).

These precedents apply with full force here. Like the defendant in United States v. Virginia, the Governor here clearly "plan[s] to initiate" action to stop DOE's shipment of plutonium, and has "repeatedly" proclaimed that he will do so. 139 F.3d at 986, 987 n.3. And, like the defendant in Mobil Oil Corp., the Governor has failed to "disclaim any intention" to stop the shipments if this Court denies his motion for preliminary injunction; he has, in fact, declined a specific invitation to disclaim any such intent. 940 F.2d at 76; see Daley Decl. ¶¶ 2, 3 & Exs. 1, 2. The Department of Energy need not wait for the Governor to attempt to blockade an actual, moving shipment of plutonium — thus creating a serious risk of harm to its employees and to federal property — before seeking a declaratory judgment.

CONCLUSION

Accordingly, the Court should grant summary judgment on defendants' counterclaim, and enter a declaratory judgment that any attempt by the Governor, or by anyone acting in concert or participation with him, to stop or otherwise interfere with the Department of Energy's shipment of surplus plutonium to the Savannah River Site, would violate the United States Constitution.

Respectfully submitted,

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Dated: May 24, 2002

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

JIM HODGES, Governor of South Carolina, Plaintiff and Counterclaim-Defendant, v. SPENCER ABRAHAM, Secretary of Energy, and DEPARTMENT OF ENERGY, Defendants and Counterclaim-Plaintiffs.	CIVIL ACTION NO. 1:02-1426-22

EXHIBITS TO
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON THEIR COUNTERCLAIM

EXHIBITS

Tab A	Declaration of Everet H. Beckner
Tab B	Declaration of Linton F. Brooks
Tab C	Declaration of Robert F. Daley, Jr.
Tab D	Declaration of James M. Gaver
Tab E	Omitted
Tab F	Declaration of Joseph Mahaley
Tab G	Declaration of Jessie Hill Roberson
Tab H	Declaration of W. Scott Simpson
Tab I	Agreement Between The Government of the United States of America And The Government of the Russian Federation Concerning the Management and Disposition Of Plutonium Designated as No Longer Required For Defense Purposes and Related Cooperation
Tab J	Letter from Governor Jim Hodges to Secretary Spencer Abraham, dated April 10, 2002

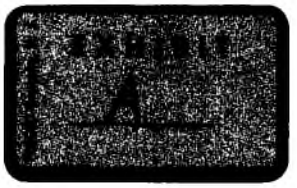
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

JIM HODGES Governor, State of South Carolina, Plaintiff, v. SPENCER ABRAHAM, Secretary, United States Department of Energy, and the UNITED STATES DEPARTMENT OF ENERGY, Defendants.	)	CIV 1 02 1426-22

DECLARATION OF EVERET H. BECKNER

I, Everet H. Beckner, hereby declare and attest as follows:

1. I am the Deputy Administrator for Defense Programs (DP), National Nuclear Security Administration (NNSA), at the United States Department of Energy (DOE or the Department). I have served in this capacity since February 5, 2002. Prior to accepting my present position I was the Deputy Chief Executive at the Atomic Weapons Establishment in Aldermaston, United Kingdom, and Vice President of Technical Operations, Lockheed Martin. Prior to joining Lockheed Martin I served as the Principal Deputy Assistant Secretary for Defense Programs at DOE from 1991 through 1995. From 1962 to 1990, I held many senior leadership positions at Sandia National Laboratories, Albuquerque, New Mexico, including: Vice President, Defense Programs; Vice President, Energy Programs; Director, Energy Programs;



Director, Waste Management Programs; Director, Physical Research; and other managerial and research-related positions. In my capacity as Deputy Administrator for Defense Programs, I have responsibility for the Department's weapons programs and related facilities including planning and implementation of the Department's Stockpile Stewardship Program. The President's Nuclear Posture Review (December 2001) reaffirmed the importance of continuing the Stockpile Stewardship program. I provide programmatic direction directly to the Department's weapons research and development laboratories and weapons production facilities, including NNSA's system for transporting nuclear materials.

2. The information contained in this declaration is based upon my personal knowledge and information that I have obtained in my official capacity.

3. The purpose of this declaration is to inform and advise the Court about the NNSA's Secure Transportation Asset (STA) and the effects that delays in shipping of plutonium from the Rocky Flats Environmental Technology Site (RFETS) to the Savannah River Site (SRS) will have on other national security shipments and activities.

4. The STA is a mode of safe, secure transport for nuclear materials. The primary mission of the STA is to serve the nuclear weapons community for shipments of nuclear warheads, associated components, and nuclear materials that can be used in the production of nuclear weapons or other high value cargoes that require the highest level of safety and security. STA shipments of nuclear materials are carried out pursuant to stringent guidelines and procedures designed to ensure safe passage. The STA consists of: armored tractors; reinforced cargo carriers referred to as Safe, Secure Trailers (SST) or SafeGuard Transporters (SGT); real-time communications; and escort vehicles. STA vehicles used to ship nuclear materials are

owned by the United States and are built by private commercial entities under contract with DOE. The cargoes are moved mostly over interstate highways. Information concerning routes, cargoes, times, and destinations is classified.

5. The federal agents who drive the tractor-trailers and man the escort vehicles are heavily armed and are trained to defend their cargoes from theft, sabotage or other means of destruction or loss. These highly trained federal agents have skills typically acquired in military special forces or equivalent. They are required to achieve and maintain competence in driving, physical conditioning, weapons and tactics. These federal agents are authorized under the Atomic Energy Act and have federal authorities similar to United States Deputy Marshals, including the use of deadly force in the performance of their duties. It takes these federal agents approximately three years of training to achieve a fully-qualified competency level for STA operation.

6. The STA serves various DOE program offices, including the NNSA Offices of Defense Programs, Naval Reactors, and Nuclear Nonproliferation, as well as DOE's Offices of Environmental Management, Nuclear Energy, and Science. The Department of Defense also periodically requests shipment of cargoes by DOE's STA. Nuclear materials are shipped in STA when quantities exceed certain threshold values deemed to be sensitive to loss or when the materials present significant safety hazards. Those thresholds are established by DOE policies and orders. For example, DOE/Albuquerque Order 5610.14 requires that a quantity of plutonium over five grams must be shipped by STA.

7. Recent events have place increased demands on STA's finite resources. Heightened security following the September 11, 2001 terrorist attacks, requiring additional federal agents

and equipment per convoy, has effectively reduced STA capacity. At the same time, enhanced security and safety for warhead shipments have resulted in fewer warheads per transporter, resulting in a greater number of total convoys.

8. I have been informed by the Department's Office of Environmental Management (EM) that the special nuclear material (SNM) stored at RFETS must be shipped to the Savannah River Site by November 2003, in order for DOE to keep its commitment to close RFETS by the end of 2006. *See* the Declaration of Jessie Hill Roberson, at paragraph 11.

9. In order to accommodate the EM RFETS-to-SRS shipping campaign, some of STA's other shipments will need to be deferred. As discussed below, the EM campaign can be accommodated with an acceptable impact to DP's other shipping responsibilities, if that campaign is carried out as scheduled. However, if that schedule is compressed, accommodating the EM campaign will affect all types of shipments necessary to carry out DP's program responsibilities, many with significance for national security.

10. One example of shipments needed to meet DP's program responsibilities is those shipments needed to move nuclear weapons between DOE and DoD sites as changes are made in weapon configurations or as technical issues arise. If such moves are not performed in a timely manner, the result could be an inadequate number of weapons for deployment and a reduction in the operational readiness of the Nation's nuclear deterrent posture.

11. A second example of STA operations that would be affected by the EM RFETS-to-SRS campaign involves the movement of nuclear weapon components that have a limited life, such as tritium reservoirs, which require periodic replacement. Tritium is a radioactive isotope of hydrogen which decays at a rate of about 5 percent a year. All weapons in the stockpile must

have tritium to function as designed. A tritium reservoir kept in place beyond its useful life will result in a degradation of operational readiness and expected nuclear yield, possibly rendering the weapon in which it is contained non-operational.

12. A third example is in the critical area of operational readiness. Regularly scheduled weapons surveillance tests are conducted to verify the continued reliability of the deployed nuclear weapons stockpile. Approximately 11 weapons of each type must be removed from deployment and transported to the Pantex Plant in Texas where the surveillance tests are conducted. These tests entail a complete disassembly and thorough analysis of the thousands of components that make up a nuclear weapon. 10 of the 11 warheads are reassembled and returned to the stockpile, the 11th is destructively analyzed. A delay in this vital test activity will inhibit the Department's ability to certify the continued safety, security, and reliability of the nuclear weapons stockpile to the President.

13. A fourth example is the life extension work on four weapon systems (W87, W76, W80 and B61) that constitute a significant fraction of the enduring nuclear weapons stockpile. Life extension work involves all elements of the geographically dispersed weapons complex and will require extensive support from STA. Once complete this work will extend the life of these systems for up to 30 years.

14. If the RFETS shipping campaign begins on or about June 15, 2002, thus allowing for an approximate 16-month campaign, then about 66% of the scheduled shipments necessary for DP's program requirements can be achieved during that period, and about 34% will have to be deferred. However, a 16 month campaign would have only a modest impact on surveillance testing; approximately 84% of shipments scheduled for that purpose will occur.

15. If the start of the RFETS shipping campaign were delayed so that it must be accomplished in 12 months, only 50% of DP's scheduled shipments could be achieved, and only 70% of surveillance shipments could occur.

16. If the RFETS shipping campaign were reduced to 8 months, no required DP shipments could be made and all scheduled surveillance would be missed.

17. Any unplanned delay during a shipment of plutonium could create a risk of harm to the public, to the DOE personnel accompanying the shipment, and to any persons responsible for the delay.

18. Any unplanned delay during a shipment of plutonium could provide an opportunity for persons or entities to attempt to waylay or damage the federal vehicles, to extract the plutonium contained in the vehicles, and otherwise to disrupt the shipment.

I declare under penalty of perjury that the foregoing is true and correct to best of my knowledge and belief.

Everet H. Beckner
Deputy Administrator for
Defense Programs
National Nuclear Security Administration

Dated this 24 day of May, 2002

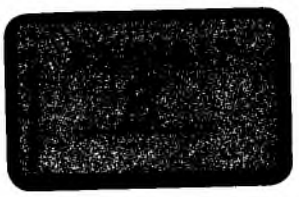
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

JIM HODGES, Governor, State of South Carolina, Plaintiff, v. SPENCER ABRAHAM, Secretary, United States Department of Energy, and the UNITED STATES DEPARTMENT OF ENERGY, Defendants.	)	CIV 1 02 1426-22

DECLARATION OF LINTON F. BROOKS

I, Linton F. Brooks, hereby declare and attest as follows:

1. I am the Deputy Administrator for Defense Nuclear Nonproliferation, National Nuclear Security Administration (NNSA) at the Department of Energy (the Department). I have served in this capacity since October 30, 2001. Prior to accepting my present position, I served as Vice President and Assistant to the President for Policy Analysis at the Center for Naval Analyses (CNA), a federally funded research and development center, from 1994 to 2001. Prior to joining CNA, I held senior positions at the State Department, including Assistant Director for Strategic and Nuclear Affairs at the U.S. Arms Control and Disarmament Agency, and as head of the U.S. Delegation on Nuclear and Space Talks, and Chief Strategic Arms Reductions Talks (START) Negotiator. Before becoming head of the U.S.



Delegation to the Nuclear and Space Talks in April 1991, I served for two years as deputy head of the delegation, holding the rank of ambassador. Prior to joining the delegation I served for three years as Director of Arms Control on the staff of the National Security Council, where I was responsible for all aspects of U.S. strategic arms reductions and nuclear testing policies. In my capacity as Deputy Administrator for Defense Nuclear Nonproliferation, I direct the NNSA's nonproliferation programs involving nuclear, chemical and biological weapons of mass destruction, and international nuclear safety programs that ensure the security of nuclear weapons materials in Russia and other countries.

2. The information contained in this declaration is based upon my personal knowledge and information that I have obtained in my official capacity.

3. The purpose of this declaration is to inform the Court of the implications that the uncertainty associated with prolonged litigation over the Department of Energy's shipments of surplus plutonium from the Rocky Flats Environmental Technology Site (RFETS) to the Savannah River Site (SRS) would have for the Department's surplus plutonium disposition program, for national security and for our continued ability to negotiate and implement nonproliferation agreements.

4. The prospect of such uncertainty poses potentially serious risks for U.S. national security and for a major U.S. nonproliferation objective, putting at risk a plan to eliminate enough plutonium for thousands of nuclear warheads. The national and international uncertainty associated with prolonged litigation would create a serious risk of disrupting or even ending this important nonproliferation effort.

5. At the end of the Cold War, the Nation was left with a legacy of tons of plutonium that was deemed to be surplus to defense needs. In September 2000, Russia and the United States signed the *Agreement Between the Government of the United States and the Government of the Russian Federation Concerning the Management and Disposition of Plutonium Designated As No Longer Required for Defense Purposes and Related Cooperation*. A true and correct copy of this Agreement in included in the Administrative Record. AR-13. In this Agreement, the two Parties agreed to each dispose of 34 metric tons of plutonium pursuant to certain agreed-upon schedule and timing milestones. Following a major review of all U.S. non-proliferation programs with Russia, including the surplus plutonium disposition program, the Bush Administration concluded that the U.S. obligations under the September 2000 Agreement would be met by converting the plutonium to a mixed oxide (MOX) fuel for burning in commercial nuclear reactors. AR-1, at p. 19434. The MOX facility would be built at SRS, and the surplus plutonium currently stored at RFETS would be destined to be turned into MOX fuel in the SRS facility. The Department is moving ahead with additional environmental reviews for this proposal. *Ibid.*, at p. 19435.

6. Carrying out the commitments of the United States under the U.S.-Russia Agreement will entail transporting certain weapons-grade plutonium from various locations within the United States to other locations within the United States across state lines, including transporting plutonium from RFETS to SRS. Litigation associated with the surplus plutonium shipments from RFETS to SRS could create uncertainty over the program's future. This would have serious negative effects and

put at risk this vital national security program. Among those effects would be the following:

- The Russians could conclude that the United States will not be able to continue the program and could reexamine their own commitment to dispose of surplus plutonium.
- Even if the Russians remained committed, efforts to obtain international financing for the Russian program could be hampered or even collapse.
- Congressional support, which is needed for the U.S. to continue to meet its commitments, could be eroded.
- The commercial reactor operator could withdraw, effectively terminating the U.S. program.

7. Among its duties, the Department is statutorily responsible for the integrity and safety of the Nation's nuclear weapons, and for the management, processing, storage, and disposition of nuclear materials, including plutonium.

8. The Department has decided to ship the plutonium at RFETS to SRS and store it there while we pursue implementation of the U.S.-Russia Agreement. A decision that these shipments cannot proceed would very likely result in the consequences described in paragraph 6. above coming to pass and seriously threaten the United States' ability to honor its existing commitments. However, the uncertainty caused by prolonged litigation over these shipments could also result in these consequences. Those parties, both foreign and domestic, whose active participation is essential to the successful implementation of the U.S.-Russia Agreement are likely to perceive such a delay as raising questions about the ultimate success of the bilateral plutonium disposition effort. This would have serious repercussions for national security.

Risk to the Reciprocal Russian MOX Program

9. Under the September 2000 Agreement referenced above, the Russian Federation plans to pursue a similar approach-- using MOX technology to dispose of surplus plutonium--as does the United States. However, Russian officials have made it clear that Russia will continue with its MOX program only if the United States continues with its program. Actual or apparent delay in any aspect of the U.S. program, such as the uncertainty associated with a prolonged delay in the shipment of plutonium destined for the MOX program, could lead the Russian leadership to reconsider its support for the current approach. At best, this would delay implementation of the program to dispose of surplus Russian plutonium. Conceivably, it could kill the program because its success depends on each side believing that the other side is engaging in reciprocal nonproliferation efforts. This mutual commitment is memorialized in the reciprocal schedules and milestones contained in the Annex to the September 2000 Agreement. AR-13, at Attachment 1.

10. While the current Russian leadership remains committed to the Russian MOX program in part because of its belief that the United States remains committed as well, there are competing views within Russia creating pressure on the leadership. Some Russians believe that the long-term energy situation is such that plutonium will have greater value in the future as a reactor fuel; they would thus like to delay any near-term elimination of surplus plutonium. Other Russians believe that speculative future technologies offer additional benefits to Russia's economy and that disposition should be delayed to await development of those technologies. Such factions would

likely be empowered by a perceived inability on the part of the United States to carry out its commitments.

Risk to International Financing

11. The Russian program is also contingent on international financing now being negotiated through the Group of Eight (G-8). Although the Russians have agreed to eliminate 34 metric tons of weapons plutonium, they have done so only on the understanding that the cost of the Russian program will be borne by the international community. The Russians assert that their financial situation makes it impossible for them to bear the cost of the program. The United States is taking the lead in securing international financing, and expects to be successful, provided that our international partners are convinced that the program is likely to proceed in both Russia and the United States. The United States' efforts to obtain international funding were effectively stalled during the Administration's review of plutonium disposition options (discussed in paragraph 5. above) because other countries were unwilling to commit to a program with an uncertain future. Prolonged delay now in shipping plutonium from RFETS to SRS could be viewed as reflecting a lack of U.S. commitment to the joint MOX program and thus have the same effect.

Risk to Continued Congressional Support

12. The U.S. program depends on Congressional funding, which would almost certainly be withheld were the Russians to withdraw from their own program. The Bush Administration's review of plutonium disposition options, while necessary and appropriate, resulted in a reduction in the congressionally appropriated funding for the MOX program based on the uncertainty of the program's future. A similar

result is quite possible if continued litigation leads to renewed uncertainty. Indeed, since the filing of South Carolina's lawsuit, legislation has been introduced to require the Department of Energy to consider alternate sites for a MOX Fuel Fabrication Facility. Any shift to an alternate site would require extensive engineering and environmental analysis and would almost certainly lead to a delay of two to three years in construction of the MOX facility, with a concomitant increase in program costs.

Risk to Industry Participation in the MOX Program

13. The success of the U.S.-Russia joint plutonium disposition program also depends on the continued willingness of the commercial reactor operator currently involved in the MOX program to accept the MOX fuel. The Department has entered into a contract with a consortium of companies to design, construct and operate the MOX Fuel Fabrication Facility. Duke Power, the operator of commercial reactors has a subcontract with the consortium to ultimately burn the MOX fuel. The consortium is currently committed to perform only through the portion of the program related to design and associated activities (*e.g.,* licensing). The economics of the commercial nuclear industry require long-term commitments to purchase nuclear fuel (normally low-enriched uranium). Absent an assured fuel supply through these long-term commitments, a commercial operator would be forced to obtain fuel on the expensive and volatile short-term (*i.e.,* "spot") market. If the consortium's commercial nuclear power plant operator becomes convinced that the MOX program faces uncertain delay, it will be forced as a matter of economic prudence to make other arrangements for procuring fuel in order to avoid the eventual need to seek more costly supplies

from the spot market. Once the operator has contracted for an alternate fuel source, it would have no incentive to remain a part of the U.S. MOX program. If the operator withdraws from the U.S. MOX program, the United States would find itself faced with no method of disposing of the MOX fuel. The prospect is exacerbated by the fact that only one U.S. utility, Duke Power, has expressed a willingness to irradiate MOX fuel made from surplus plutonium. This could effectively terminate the U.S. program and, thus, the Russian effort as well.

Interrelationship of Risks

14. Each of these consequences would be serious standing alone, but the occurrence of any one of them will also increase the probability of the others coming to pass. Congressional report language has made it clear, for example, that continued U.S. funding depends on the Russian program remaining on track. *See, e.g.,* S. Rep. No. 206, 105th Cong., 2d Sess. 118-119 (June 5, 1998). Similarly, any indication of loss of congressional support increases the chance that the commercial reactor operator may withdraw. Russian reactions to developments in the U.S. would also affect the U.S. ability to raise the necessary international funding. Thus any of the adverse consequences discussed above could lead to all of them coming to pass. If any of these outcomes resulted in the cancellation of Russia's program to dispose its surplus plutonium, 34 tons of weapon-grade plutonium would remain indefinitely in a nation whose financial problems have made it difficult for that nation to maintain stringent security over nuclear materials without significant U.S. assistance. The International Atomic Energy Agency standard conservatively assumes that eight kilograms of plutonium are enough to make a single nuclear weapon. Thus, the

Russian plutonium at issue represents enough to make at least 4250 nuclear weapons.[1] The longer this material remains in existence, the longer there is a risk of its falling into the hands of terrorists or of hostile states seeking a nuclear weapons capability.

15. Even if the uncertainty associated with prolonged litigation over plutonium shipments would result only in a delay in implementation of the U.S.-Russia MOX agreement rather than its outright cancellation, that delay could prolong the period when Russian plutonium is at risk of theft. This is because the Russians will be unwilling to begin their own plutonium elimination efforts before the United States begins.

16. Finally, the failure of one of the largest U.S. – Russian nonproliferation efforts would call into question our commitment to other nonproliferation efforts and diminish our credibility in continuing to provide leadership on these issues internationally. The Presidents of the United States and the Russian Federation recently formalized an agreement for substantial mutual reductions in both countries' deployed nuclear weapon arsenals. Failure of, or even delay in, the U.S.-Russia plutonium disposition agreement could have a chilling effect on our ability to negotiate and implement further agreements related to nonproliferation and weapons reduction.

---

[1] This is a conservatively low number; a sophisticated state could fabricate a nuclear weapon using significantly less than eight kilograms of plutonium. The exact amount is classified. Moreover, a terrorist organization could create widespread public panic by dispersing even a small amount of this hazardous substance in an explosive device without creating a nuclear reaction (a so-called "dirty bomb").

I hereby declare under penalty of perjury that the information set forth above is true and accurate to the best of my knowledge and belief.

Linton F. Brooks
Deputy Assistant Administrator for
Defense Nuclear Nonproliferation
National Nuclear Security Administration

Dated this 23 day of May, 2002

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

JIM HODGES, Governor of South Carolina, Plaintiff and Counterclaim-Defendant, v. SPENCER ABRAHAM, Secretary of Energy, and DEPARTMENT OF ENERGY, Defendants and Counterclaim-Plaintiffs.	CIVIL ACTION NO. 1:02-1426-22

DECLARATION OF ROBERT F. DALEY, JR. IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON THEIR COUNTERCLAIM

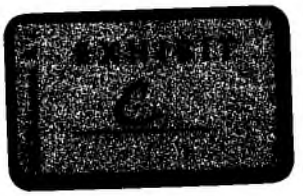
I, Robert F. Daley, Jr. declare the following to be true and correct:

1. I am an Assistant United States Attorney for the District of South Carolina in Columbia, South Carolina. The statements made herein are based on personal knowledge obtained by me during the performance of my official duties.

2. On May 8, 2002, I sent a letter to William L. Want, counsel for the plaintiff in this action. A copy of that letter is attached hereto as Exhibit 1.

3. On May 10, 2002, I received a letter from William L. Want in response to my letter of May 8. A copy of the May 10 letter is attached hereto as Exhibit 2.

4. On May 21, 2002, I recorded on videotape a commercial that was broadcast on NBC on that date. That commercial, which I watched while recording it, states that Governor Hodges is "fighting" to keep plutonium out of South Carolina, "even if it means a blockade." I have seen the same commercial broadcast several times during May 2002. After recording the commercial,



I wrote "Governor Jim Hodges Commercial 5/21/02" on the label of the videotape. That videotape accompanies this declaration as Exhibit 3.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 24, 2002.

ROBERT F. DALEY, JR.

U.S. Department of Justice

United States Attorney

District of South Carolina

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(864) 282-2100
FAX (864) 233-3158

Reply to: Columbia

May 8, 2002

VIA FAX, ORIGINAL MAILED

William L. Want, Esq.
171 Church Street, Suite 300
Charleston, SC 29401
Fax No.: 843-723-2804

Re: HODGES, Jim, Governor of the State of South Carolina, in his official capacity v. ABRAHAM, Spencer, Secretary of the Department of Energy, in his official capacity, and the UNITED STATES DEPARTMENT OF ENERGY
Civil Action No.: 1:02-1426-22

Dear Bill:

I request that you inform me whether the Governor will obstruct or impede the shipment of any surplus plutonium described in the Department of Energy's Amended Record of Decision dated April 19, 2002, if the Governor's Motion for Preliminary Injunction is denied.

I would appreciate a response by the end of the week.

With best regards, we remain

Sincerely,

J. STROM THURMOND, JR.
UNITED STATES ATTORNEY

By: _____
Robert F. Daley, Jr.
Assistant United States Attorney

RFD,jr./dsr

EXHIBIT 1

William L. Want
ATTORNEY AT LAW
171 Church Street, Suite 300
Charleston, South Carolina 29401

(843) 723-5148
(fax) 723-2804

wwant@aol.com

May 10, 2002

Robert F. Daley, Jr., Esq.
Assistant United States Attorney
1441 Main St., Suite 500
Columbia, SC 29201

Re: Hodges v. Abraham, C.A. 1:02-1426-22

Dear Bob:

I am writing in response to your letter of May 8, 2002, regarding Governor Hodges' possible actions in the event his Motion for Preliminary Injunction in this case is denied.

Unless a legally enforceable agreement is in place requiring the Department of Energy to convert and/or remove any plutonium shipped to South Carolina, the Governor expressly reserves the right to rely upon any and all lawful means available to him in his capacity, and under his authority, as the Governor of the State of South Carolina to prevent the Department of Energy from shipping any surplus plutonium to South Carolina.

Sincerely,

Billy Want

William L. Want

EXHIBIT "2"

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

JIM HODGES, Governor of South Carolina, Plaintiff and Counterclaim-Defendant, v. SPENCER ABRAHAM, Secretary of Energy, and DEPARTMENT OF ENERGY, Defendants and Counterclaim-Plaintiffs.	CIVIL ACTION NO. 1:02-1426-22

DECLARATION OF JAMES M. GAVER

I, James M. Gaver, hereby declare and attest, as follows:

1. I am the Director of the Office of External Affairs for the Savannah River Operations Office (DOE-SR) of the U.S. Department of Energy (DOE) at the Savannah River Site (SRS). I am responsible for public affairs at SRS. I am a resident of South Carolina.
2. The information contained in this declaration is based upon my personal knowledge and information that I have obtained in my official capacity.
3. The purpose of this declaration is to inform the Court about the public statements by Governor Jim Hodges that he intends to prevent DOE plutonium shipments from reaching SRS.

EXHIBIT 10

4. The Governor has made numerous well-publicized statements, starting in August 2001, that he intends to block plutonium shipments. He was quoted in the Columbia, South Carolina, newspaper, The State, as ordering the director of the South Carolina Department of Public Safety to evaluate options for closing the state's borders to plutonium shipments. See Attachment 1. The director was asked to consider options for roadblocks and other measures or "whatever it takes." The article further reported the Governor as saying that if his actions precipitated a national crisis, so be it.

5. The Governor was quoted in the Aiken, South Carolina, Standard on August 11, 2001, as declaring, "if it is necessary for me to lie down in front of the trucks, I'll do that." See Attachment 2.

6. After DOE gave notice in April 2002 that shipments of plutonium to SRS would begin after May 15, 2002, the Governor again began to make widely publicized statements of his intent to interfere with the shipments. The State reported on April 17, 2002, that the Governor had begun to make preparations to stop plutonium shipments. See Attachment 3. He specifically ordered Department of Public Safety officials "to thoroughly examine" entrances to SRS.

7. Shortly thereafter, on April 20, the South Carolina Department of Public Safety announced plans for a "high profile rehearsal where they'll practice blocking plutonium shipments the federal government plans to deliver next month." See Attachment 4. According to The State, the Governor planned to have twenty

South Carolina Highway Patrol troopers practice forcing a tractor-trailer to stop and turn around. See also Aiken Standard article, April 21, 2002, Attachment 5.

8. The Governor and various South Carolina state agencies assembled at "Johnson's Crossroads" (the intersection of U. S. 278 and South Carolina Highway 19) on April 22 for the rehearsal. This event was widely publicized and reported in the local media. See Aiken Standard article and photographs, April 22, 2002, Attachment 6; The State article, April 23, Attachment 7; Augusta Chronicle article, April 23, Attachment 8; Aiken Standard article and photographs, April 23, Attachment 9.

9. In the rehearsal, two South Carolina Highway Patrol cars and one State Transport Police car blocked the highway to stop a tractor-trailer. See Attachments 6, 7, 8, and 9. The Governor again reiterated his intent to do "whatever it takes to keep plutonium" out of South Carolina.

10. Since the April 22 rehearsal, the Governor has continued to state publicly his intent to impede the shipments of plutonium to SRS. For example, he stated at an April 25 rally that he would turn the plutonium trucks back at the border. See Attachment 10.

11. Sharon Collins interviewed the Governor on Cable News Network on May 18, 2002. Ms. Collins asked him if he would really block the trucks with his body. He replied, "whatever it takes". See Attachment 11.

12. The Governor continues to publicize his intent to stop plutonium shipments through paid television advertising running on South Carolina television stations as of the date of this declaration.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on May 23, 2002.

JAMES M. GAVER

THE STATE
Columbia. South Carolina
Circulation 137,200 Daily
171,200 Sunday

Friday, August 10, 2001 Page 1A Page 1 of 2

S.C. might close its borders, to plutonium

State officials examine options to block shipments to Savannah River Site

By LEE BANDY
Staff Writer

Gov. Jim Hodges ordered his public safety director Thursday to evaluate options for closing the state's borders to plutonium shipments to the Savannah River Site near Aiken.

"We must be prepared to stand up to Washington," he said in a memo to Boykin Rose, director of the Department of Public Safety,

"My hope is the federal government will come to its senses and allow us to avoid this step, but we cannot take a chance."

Hodges asked Rose to consider options for highway roadblocks or "other measures."

Asked if this might mean stationing Highway Patrol troopers at the borders or calling out the Army National Guard, Hodges replied, in an interview, 'Whatever it takes."

And if it precipitates a national crisis, so be it, he said.

The U.S. Justice Department declined comment on what legal action, if any, it might take to stop South Carolina from shutting down its borders to trucks or trains that deliver the plutonium.

S.C. Attorney General Charlie Condon had no immediate comment.

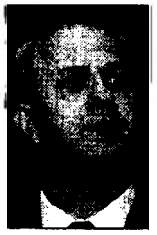
In 1988 and 1991, Idaho Gov. Cecil Andrus used state police to block railroad cars filled with radioactive waste from entering a federal storage site.

Lawsuits that arose from those actions ultimately led to a settlement agreement that set deadlines for shipping nuclear waste out of Idaho.

During the Clinton administration, South Carolina worked out an arrangement with the Department of Energy whereby the state agreed to accept temporary custody of surplus plutonium at SRS in return for a promise to ship the deadly fuel to Nevada for final burial and to convert plutonium to an energy fuel.

DOE, however, has "reneged" on the deal, Hodges said. What was to be temporary storage now may turn into long-term or even permanent storage, the governor fears.

He met with Energy Secretary Spencer Abraham at the National Governors' Association conference in Rhode Island Monday and asked him to delay shipments until the department agrees to a legally enforceable long-term plan for removing the material. The secretary declined to commit to that, Hodges said.


Hodges

"My concern is that we're weeks away from seeing plutonium from across the nation shipped to our state with no idea of what they're going to do with it or when they're going to ship it out n a safer form to another location. And that's unacceptable," the governor said.

Abraham was in the state Thursday touring SRS. He toured the facility south of Aiken to announce a $5 million contribution to an industrial park adjacent to the site and meet with community leaders.

He described discussions with Hodges as "very frank." Abraham said a top assistant met Thursday with a representative from the governor's office. He said the dialogue "can lead to positive results, and we're anxious to work with the state to achieve that."

Shipping is to begin sometime this month, mostly from a federal facility in Rocky Flats, Colo., Hodges said.

Hodges painted a scenario where DOE or the president might say "no" to the Yucca Mountain burial site in Nevada, which has yet to receive high-level nuclear waste.

"And then we have all the plutonium here and no place to stick it. It terrifies me," the governor said.

In his memo to Rose, the governor said that once the plutonium from other states arrives in South Carolina, "it will no longer be an issue of concern for other states. We will be left holding the proverbial bag,"

In its agreement with the state, DOE promised to build facilities at SRS to immobilize plutonium to make it safe for shipment to its final burial ground, and to convert it to fuel for commercial nuclear energy facilities. Both would have created hundreds of job opportunities. The projects now are doubtful. The Bush administration cites budgetary concerns.

That's not good enough, Hodges said. When it comes to the issue of health and safety of the state's citizens, money shouldn't be an issue.

"We will not allow the health and safety of our citizens to be threatened by storage of plutonium without a definite timetable for

Attachment 1

THE STATE
Columbia, South Carolina
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Friday, August 10, 2001 Page 1A Page 2 of 2

conversion and disposition in another state," he said.

U.S. Rep. John Spratt, D-S.C., a senior member of the House Armed Services Committee, has proposed legislation to bar shipments of plutonium after Feb. 1, 2002, if no agreement has been reached with the state.

Sen. Fritz Hollings, D-S.C., included language in an energy bill that says DOE must consult with the state on this matter and submit a report to Congress on how it plans to address plutonium disposition at SRS for the long term.

What worries Hodges is that a lot of plutonium could be shipped between now and when legislation passes.

"Once they begin the shipments, they won't stop. A lot could be shipped between now and February. And once that process starts, it's difficult to stop," Hodges said.

Staff Writer Kenneth A. Harris contributed to this report.

JONATHAN ERNST/THE ASSOCIATED PRESS

U.S. Energy Secretary Spencer Abraham greets workers Thursday at the Savannah River Site in Aiken.

THE AIKEN STANDARD
Aiken, South Carolina
Circulation 17,500 Daily
18,000 Sunday

Saturday, August 11, 2001 Page 2A Page 1 of 1

Gov. Hodges speaking out on shipments

Associated Press

On the same day the U.S. energy secretary was visiting the Savannah River nuclear site, Gov. Jim Hodges' was making threats to keep federal plutonium shipments out of the facility

"If it is necessary for me to lie down in front of the trucks, I'll do that," Hodges said Thursday "We're going to do whatever it takes."

In a memo to state Public Safety Director Boykin Rose, Hodges said he wanted Rose to evaluate using "highway roadblocks or other measures" to prevent plutonium from crossing into South Carolina.

"We must be prepared to stand up to Washington," Hodges wrote.

"My hope is the federal government will come to its senses and allow us to avoid this step, but we cannot take a chance."

SRS had an agreement with the Clinton administration to store surplus plutonium temporarily Hodges said it now appears President Bush may be backing out of that deal, making SRS a long-term or even permanent storage facility

The U.S. Justice Department declined comment on what legal action, if any, it might take to stop South Carolina from shutting down its borders to trucks or trains that deliver the radioactive material.

State Attorney General Charlie Condon, however, said Friday he fully supported the governor.

"Once plutonium is stored here, it will never leave here," Condon said.

"With respect to plutonium shipments, the South Carolina state line must be our line in the sand."

THE STATE
Columbia, South Carolina
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Wednesday, April 17, 2002 Page B1

Hodges readies to halt plutonium

By SAMMY FRETWELL
Staff Writer

Gov. Jim Hodges and State law enforcement leaders began Preparing Tuesday to stop federal plutonium shipments headed for South Carolina next month from a nuclear weapons complex in Colorado.

The governor's preparations come amid escalating tensions between the Republican Bush administration and Democrat Hodges, who opposes plutonium shipments to the state without a legally binding agreement that it won't be stored here forever.

Plutonium is a highly toxic material used for decades to make atomic weapons.

Hodges didn't provide many details of how the state government would stop federal trucks laden with plutonium destined for storage at the Savannah River Site. But, in addition to a possible lawsuit, Hodges hasn't ruled out using state troopers and transport officers to delay or' block the plutonium convoy.

During a brief meeting open to the news media, the governor told the state Department of Public Safety to examine "safety concerns" about toxic shipments on state highways and report back to him next week.

He also ordered the department to "thoroughly examine" the entrances to the SRS site. He wasn't more specific, but his concerns likely center on routes that trucks might take to reach the nuclear weapons complex outside Aiken near the Georgia border.

Additionally, Hodges said SC. transportation officials need to talk with their counterparts from neighboring states about shared concerns over the plutonium shipments. Hodges said officials in other states would need to be aware of South Carolina's plans if it tried to stop plutonium shipments at the border.

Hodges' orders will update plans his office made last summer. That's when South Carolina learned plutonium could be shipped to SRS without a clear plan to remove it, Hodges has said.

"Our goal is to make sure that no plutonium is shipped into South Carolina's borders without a firm agreement on how the material is going to be treated and when it is going to leave," Hodges said. "We need to look at every-thing that's available to help us in achieving our goal of protecting the public health and safety of South Carolina."

Federal Energy Department spokesman Joe Davis criticized Hodges' actions Tuesday, saying the federal government wants a compromise with South Carolina

Energy Secretary Spencer Abraham has offered plans to Hodges that Abraham says would ensure the plutonium doesn't stay in South Carolina indefinitely.

The DOE formally notified Hodges late Monday that it would start shipping plutonium to SRS as early as May 15. The energy department still hopes to work out a compromise with the governor that satisfies his concerns, Davis said.

"I think it's astonishing . . that the governor would choose to have a meeting to try to build a better roadblock, rather than work with us and the members of Congress," Davis said. "This is somewhat disappointing."

Trucks full of plutonium from the Rocky Flats, Colo., site would be guarded by federal agents, officials have said. The plutonium would come in tightly packed, double-insulated containers for shipment to SRS, Davis said.

The office of U.S. Sen. Strom Thurmond, R-SC., said Tuesday the senator was working to get the plan added to the fiscal 2003 defense bill. That would ensure the plutonium would leave SRS eventually, his office said.

The dispute has simmered for months over federal plans to process plutonium at SRS into fuel for commercial nuclear power plants. The excess plutonium would come from old nuclear weapons sites across the country that are being cleaned up.

Arms agreements with Russia call for both countries to neutralize weapons-grade plutonium so it can't again be used for atomic bombs. One way to do that is through the mixed oxide fuel, or MOX, plants to be built at SRS.

Hodges, however, says there's no guarantee the MOX plants will be built and South Carolina would be stuck with the plutonium. The Bush administration has pledged nearly $4 billion over 20 years to build the plants. But Hodges argues Bush can't say what will happen in 20 years.

In the meantime, Abraham has offered to move the material out of the state if the plutonium

THE STATE
Columbia, South Carolina

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Wednesday, April 17, 2002

program goes awry. Hodges wants a federal court order to make sure that happens, but Abraham has balked at the governor's plan.

Tuesday's developments came as state Republican leaders criticized Hodges for failing to accept the Bush administration's offer to resolve the dispute.

"What I'm puzzled about is the governor appears determined to have a confrontation," said Attorney General Charlie Condon, a GOP gubernatorial candidate who spoke Tuesday with Abraham. "The energy secretary says he will do anything to let South Carolina have a legally binding and legally enforceable agreement."

Lt. Gov. Bob Peeler, also a GOP candidate for governor, and Republican House Speaker David Wilkins issued a joint statement accusing Hodges of political posturing.

"The transportation of nuclear material is serious business done by serious people," the statement said. "Holding irresponsible posturing meetings for the public is not helpful."

"I think it's astonishing . . . that the governor would choose to have a meeting to try to build a better roadblock, rather than work with us and the members of Congress."

- Federal ***Energy*** Department spokesman Joe ***Davis***

THE STATE
Columbia, South Carolina
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Saturday, April 20, 2002 Page B3 Page 1 of 1

State to rehearse SRS roadblock

Troopers will practice stopping delivery of plutonium to Aiken

By NICHOLE MONROE BELL
Knight Ridder Newspapers

The SC. Department of Public Safety announced on Friday plans for a high-profile rehearsal where they'll practice blocking plutonium shipments the federal government plans to deliver next month.

About 20 troopers with the S.C. Highway Patrol and the S.C. Transport Police will gather Monday morning in New Ellenton, near Aiken, to practice forcing a tractor-trailer to stop and turn around, said DPS spokesman Sid Gaulden.

Gaulden said he didn't expect that troopers will use barricades, but they might flash their blue lights, turn on their sirens and surround the mock plutonium truck to force it to slow down.

"They also could put cars in the road to make it impossible to get through," Gaulden said. 'We're investigating all avenues."

Gov. Jim Hodges, who ordered the exercise, plans to attend. The governor wants to stop the federal government from delivering about 34 metric tons of radioactive plutonium to the Savannah River Site, a nuclear manufacturing facility in Aiken. Hodges has said he doesn't want the plutonium to come into the state without a firm agreement on how the material will be treated and when it will eventually be shipped out of the state. He has even threatened to lie in the road in front of the trucks if that's what it will take to stop them.

THE AIKEN STANDARD
Aiken, South Carolina
Circulation 17,500 Daily
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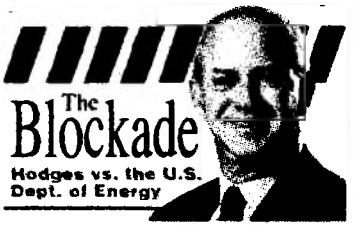
Sunday, April 2 1, 2002 Page A 1 Page 1 of 2

Hodges: My way on the highway

State troopers, governor to hold practice exercise



By SANDY NeSMITH
Staff writer

As local, state and federal agencies get ready to test their preparedness to handle an earthquake at the Savannah River Site on Tuesday, Gov. Jim Hodges will hold an exercise Monday showcasing his plans to block any shipments of plutonium to South Carolina.

The roadblock exercise will take place Monday at 10 a.m. at U.S. Highway 278 and South Carolina Highway 19 in New Ellenton, according to South Carolina Department of Public Safety spokesman Sid Gaulden.

Gaulden said the South Carolina State Transport Police and South Carolina Highway Patrol, "will participate in an enforcement exercise designed to prepare for the possibility of weapons-grade plutonium arriving at the state's border."

Hodges will attend Monday's exercise, according to his spokesman Cortney Owings. The governor has been demanding a promise from the U.S. Department of Energy that any plutonium brought her will be removed in a timely fashion. The shipments from a closed nuclear weapons plant in Rocky Flats, Colo. could begin as early as May 15. "In light of the recent circumstances, Gov. Hodges met with the Department of Public Safety and ordered them to perform the exorcise," Owings said. "This is one of several options the governor is evaluating. A roadblock would be the very last resort." Owings said Hodges is realizing his fears the weapons-

See EXERCISE, Page 11 A

THE AIKEN STANDARD
Aiken, South Carolina
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Sunday, April 21, 2002 Page A1 Page 2 of 2

grade materials will be shipped to the Palmetto State and "then stored here indefinitely"

This week, the Energy Department officially cancelled one of the two plutonium disposition options it had promised South Carolina in 1898. The process, called immobilization, would have stabilized some of the plutonium for permanent storage in another site. In a formal Record of Decision, published Friday in the Federal Register, the Energy Department also said the second plutonium disposition option promised to South Carolina, conversion to mixed-oxide fuel (MOX) for commercial nuclear reactors, remains under review.

The Energy Department plans to ship about 34 tons of surplus plutonium from the nation's nuclear weapons stockpile to SRS as part of the U.S. obligation under a treaty with Russia for both nations to render the weapons grade material useless for future nuclear weapons.

Last year Hodges threatened to hold a similar exercise when shipments were scheduled to begin, but the drill was cancelled after a last minute decision by the Energy Department to postpone those shipments.

Starting Tuesday local, state and federal agencies will act out a scenario involving an earthquake at the site, with the release of nuclear materials into the atmosphere.

During the drill, the Federal Radiological Monitoring and Assessment Center will be called upon to respond from Nevada to aid in the simulated disaster The FRMAC is the Department of Energy's National Security Administration organization that supports federal, state and county agencies in responding to radiological events, SRS spokesman Bruce Cadotte said. Exercise activities will halt overnight during the event, which is expected to conclude at noon on Thursday

The Associated Press contributed to this story.

THE AIKEN STANDARD
Aiken, South Carolina
Circulation 17,500 Daily
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Monday, April 22, 2002 Page 1A Page 1 of 3

South Carolina's plutonium standoff

Getting the show on the road

Governor flexes his muscles

By BILL BENGTSON
Staff writer

NEW ELLENTON - A planned exercise simulating the shipment of plutonium into the Savannah River went relatively smoothly this morning amid a huge pack of S.C. Highway Patrolmen and members of the media.

The centers of attention were Gov. Jim Hodges and an 18-wheeler from the S.C. Department of Corrections.

Representatives of a variety of state agencies were on hand to simulate the actions they might take were a shipment of plutonium were to be sent to SRS – a move Hodges has promised to block unless federal officials enter a legally binding agreement not to store the material there indefinitely

The 1&wheeler arrived at about 9:55 a.m. to face a blockage formed by three vehicles two from the S.C. Highway Patrol and one from the State Transport Police. Also greeting the truck was a cluster of television cameras and reporters.

Hodges had arrived a few minutes earlier, holding an outdoor discussion with about 20 highway patrolmen, keeping the media at a distance.

When asked whether he would be willing to have highway patrolmen stay at a potential entry point for an indefinite period, Hodges indicated he would do whatever it takes.

He pointed out that he does have some Republican support for his stand on the plutonium issue and that his stand today was not a mere political ploy.

He also expressed his overall attitude toward the dilemma: "Let's wrap up an agreement that will be enforceable in court about what's going to happen and when it is going to happen, what commitments the Department of Energy is going to make, and not allow one ounce of plutonium to come in until that is done."

The governor has been demanding a promise from the U.S. Department of Energy that any plutonium brought here will be removed in a timely fashion. The shipments from a closed nuclear weapons plant in Rocky Flats, Colo. could begin as early as May 15. "In light of the recent circumstances, Gov. Hodges met with the Department of Public Safety and ordered them to perform the exercise," Hodges spokesman Cortney Owings said. "This is one of several options the governor is evaluating. A roadblock would be the very last resort."

Owings said Hodges is realizing his fears the weapons-grade materials will be shipped to the Palmetto State and "then stored here indefinitely."

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Attachment 6

THE AIKEN STANDARD
Aiken, South Carolina
Circulation 17,500 Daily
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Monday, April 22, 2002 Page 1A Page 2 of 3

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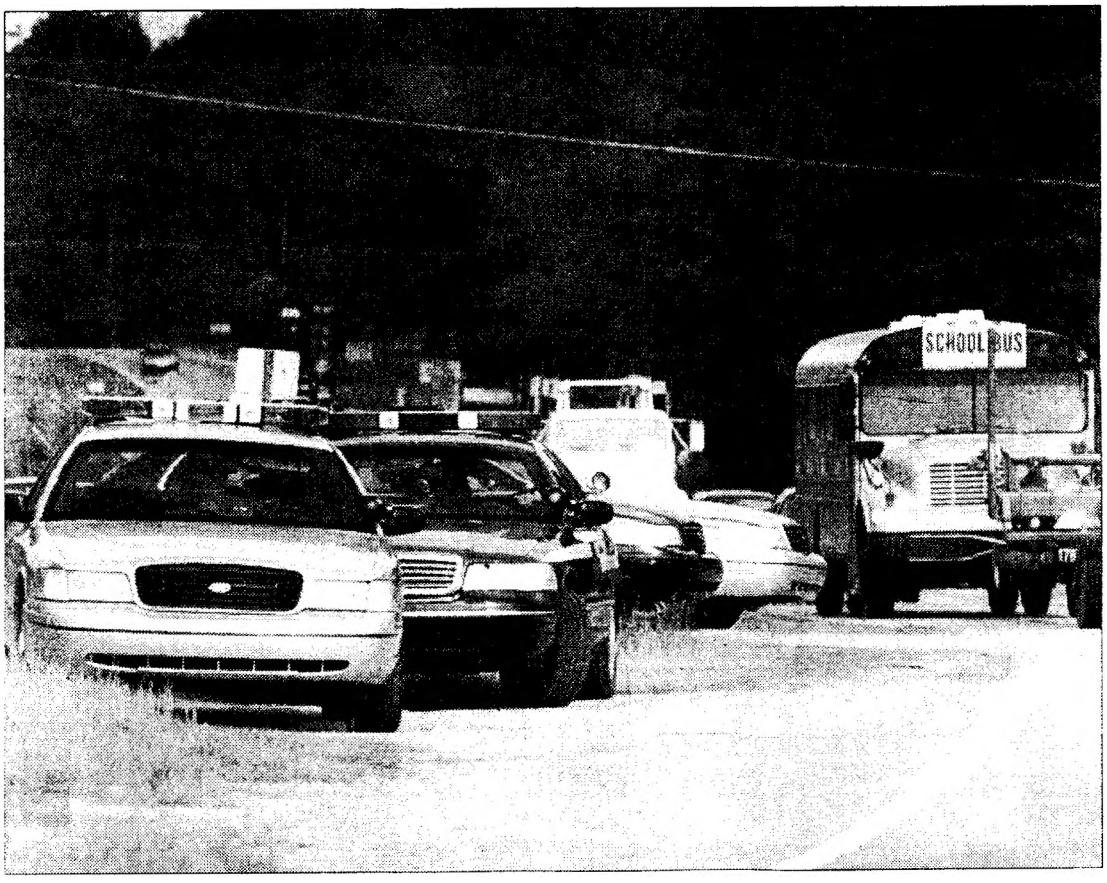


Staff photo by Ginny Southworth

READY. State troopers and S.C. Transport Police vehicles line Hwy. 278 during the mock plutonium shipment drill earlier today.

THE AIKEN STANDARD
Aiken, South Carolina
Circulation 17,500 Daily
18,000 Sunday

Monday, April 22, 2002 Page 1A Page 3 of 3

Staff photo by Ginny Southwort

RACTICE. A S.C. Highway patrol officer and Boykin Rose (right), director of the S.C Department of Public Safety, meet with Gov. Jim dges as they refined plans for this morning's exercise that involved two dozen state troopers and S.C. Transport Police officers.

THE STATE
Columbia, South Carolina
Circulation 137,200 Daily
17 1,200 Sunday

Tuesday, April 23, 2002 Page I A Page I of 3

State rehearses SRS roadblock

Hodges oversees exercise to halt plutonium-laden rigs at Aiken site

By CLIF LeBLANC
Staff Writer

NEW ELLENTON – Gov. Jim Hodges didn't quite lie down on the road Monday – as he has threatened -to block federal plutonium shipments.

But, dressed in loafers, casual pants and an open-collar shirt, the governor watched from a median on SC. 19 as about two dozen state employees acted out how they would turn back a rig at the Savannah River Site.

In this roadblock exercise that critics call "street theater," everything went South Carolina's way: The 18-wheeler – a stand-in owned by the S.C. Department of Corrections and driven by a department employee – turned tail.

The mock confrontation with troopers and state trucking regulators was over in fewer than five minutes. A real fight might be prolonged and the U.S. Department of Energy might not be so accommodating.

Armed guards accompany shipments of real weapons-grade plutonium. Furthermore, federal officials could summon U.S. marshals or even the military.

Hodges has been battling the Energy Department over shipments that could start as early as mid-May 15. The deliveries could grow to include the nation's whole stockpile of surplus plutonium – or 34 metric tons -the governor said after the exercise.

"Plutonium is the stuff they make bombs out of," said Hodges, a Democrat seeking a second term. "This stuff will be going past their homes, past their schools.

"I believe people in South Carolina would agree with me. Our federal government ought not to be treating us this way."

The federal agency quickly responded: "We can only assume that a growing number of South Carolina officials are correct in characterizing this exercise as self-serving and political grandstanding," a DOE statement said.

Hodges fears the federal government will leave the material at the sprawling plant outside Aiken, since U.S. officials have no firm plan for final disposal. He wants a written agreement or court order before withdrawing his objections.

Plutonium, a highly toxic metal, was produced at SRS and shipped to other-facilities for further work in making nuclear warheads during the Cold War.

The plutonium to be shipped here will be converted to mixed oxide fuel, which would power Duke Energy plants near Charlotte.

Federal energy officials said South Carolinians are safe.

"Safely transporting this material to the Savannah River Site – from which 75 percent of it originated – would pose no risk," the agency said.

Russ Ferrara, a nuclear engineer at SRS who is running as a Republican for the SC. House seat in the area, said Hodges is exaggerating for political gain.

"It is not a public safety issue," he said. 'We've processed plutonium for 50 years in a very safe and efficient manner. The only way plutonium is going to be a risk to anyone is if they ingest it."

Folks in Aiken County support 'the new jobs that processing would bring to a plant hit with thousands of job losses in recent years, New Ellenton Mayor Jim Sutherland said.

U.S. Rep. Lindsey Graham, whose congressional district includes the SRS site, said he and others in the state's Washington delegation are working across party lines to resolve the dispute.

"We're not going to solve this by rattling sabers," said Graham, a Republican candidate for U.S. Senate.

SRS already has plutonium onsite and is home to some of the nation's deadliest nuclear waste.

The complex has 37 million gallons of liquid, high-level waste stored in aging underground storage tanks.

Blocking the shipments could cost "tens of thousands of dollars" Hodges said, but he's willing to spend whatever it costs, despite the state's economic crunch.

Public safety director Boykin Rose, whose department includes the patrol and trucking regulators, said he did not know how many practical access routes there are to the site. He insisted his agency could respond within hours to a shipment.

Rose's spokesman, Sid Gaulden, told reporters earlier the state has little way of knowing when the shipments would arrive or which routes they would take.

THE STATE
Columbia, South Carolina
Circulation 137,200 Daily
171,200 Sunday

Tuesday, April 23, 2002 Page 1A Page 2 of 3

The first shipments are expected to come from Rocky Flats, Colo. Hodges said news media there would likely alert South Carolina to their departures.

Staff Writer Sammy Fretwell contributed to this article.

Gov. Jim Hodges and Boykin Rose, director of the S.C. Department of Public Safety, discuss a mock highway blockade Monday of a truck carrying plutonium to the Savannah River Site near Aiken.

THE STATE
Columbia, South Carolina
Circulation 137,200 Daily
171,200 Sunday

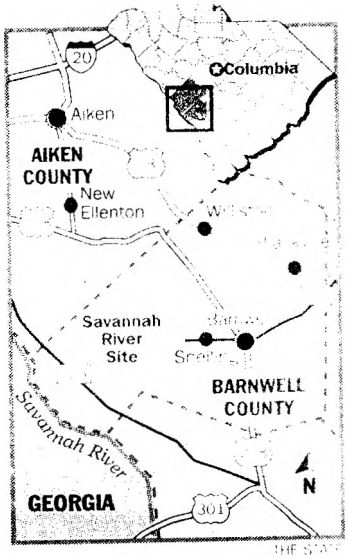
Tuesday, April 23, 2002 Page 1A Page 3 of 3

TIM DOMINICK/THE STATE

Gov. Hodges heads back across the road after the blockade exercise.

SAVANNAH RIVER SITE

The Savannah River Site covers 310 square miles in Aiken and Barnwell counties.



THE AUGUSTA CHRONICLE
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Tuesday, April 23, 2002 Page 1A Page 1 of 2

Blockade drill pleases Hodges

By Brandon Haddock
Staff Writer

NEW ELLENTON — South Carolina Gov. Jim Hodges declared Monday's law-enforcement exercise to practice blocking plutonium shipments to Savannah River Site a success.

But the specifics of how state troopers would block the real thing remain unclear.

"That's all in the planning stage," said Sid Gaulden, spokesman for the South Carolina Department of Public Safety. "We're still trying to work that out."

Monday's exercise was Mr. Hodges' latest volley in what so far has been a war of words with U.S. Energy Secretary Spencer Abraham over plutonium shipments.

The governor has said he will allow no plutonium to reach SRS until the U.S. Department of Energy enters a binding agreement to ship the radioactive metal out of South Carolina after it is treated at the federal nuclear-weapons site.

Without such a deal, South Carolina runs the risk of becoming a permanent storage site for plutonium, Mr. Hodges says. The metal can cause cancer if inhaled or ingested even in small amounts.

Mr. Abraham and Mr. Hodges reached an agreement in principle April 11, but they have argued since then over how to implement the deal. In the meantime, Mr. Abraham issued an order to begin shipments sometime after May 15.

ANNETTE M. DROWLETTE/STAFF

South Carolina Gov. Jim Hodges (left) speaks with state troopers after a road drill in New Ellenton in preparation for blocking plutonium shipments.

"Our federal government ought not to treat us this way," Mr. Hodges said Monday. "I think we're all tired of promises being made and not being kept."

Mr. Hodges said the drill was not political gamesmanship, as some rivals have alleged. He also said he was willing to spend "as much as it takes" to stop the shipments from reaching SRS.

"I'm willing to commit the state's resources to make sure this doesn't happen," the governor said.

"We're willing to give up on a few speeders to keep plutonium out of this state. It's a matter of priority."

Not everyone concurred.

The Energy Department said in a statement that it is "extremely disappointed" with Mr. Hodges' handling of the issue.

U.S. Rep. Lindsey Graham, R-S.C., also issued a statement critical of the drill.

"We're not going to solve this by rattling sabers," Mr. Graham said.

Monday's drill – which was attended by at least two dozen reporters and involved 14 state troopers – was successful, state officials said.

"I think it went well today," said B. Boykin Rose, the director of the South Carolina Department of Public Safety. "We've practiced this before. It was orderly. It was safe."

THE AUGUSTA CHRONICLE
Augusta, Georgia

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Tuesday, April 23, 2002 Page 1A Page 2 of 2

nut state officials acknowledged that circumstances might be very different when the real trucks arrive. For starters, routes and timetables used by the trucks are classified.

There are at least 69 roads the trucks could take into South Carolina, although only a handful are practical, Mr. Rose said. There are several more access points to SRS, including at least one by rail, he said.

"We're going to have to find those trucks," Mr. Gaulden said. "It's going to depend on where they are and where we actually find them."

Unlike the drill's participants, the actual trucks are escorted by armed federal agents. State officials said little when asked what would happen if those agents refused orders to leave.

"We think they will turn around," Mr. Hodges said.

Reach Brandon Haddock at (706) 823-3409 or bhaddock@augustachronicle.com

THE AIKEN STANDARD
Aiken, South Carolina
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Tuesday, April 23, 2002 Page A 1 Page 1 of 2

South Carolina's plutonium standoff

Real blockade would be different

By PAGE IVEY
Associated Press

NEW ELLENTON – When state troopers stop the real escort for a plutonium shipment from Colorado, they won't face a fellow state employee – they will face armed federal officers.

Just what will happen when those two sides meet in a standoff between the South Carolina governor and the federal Energy Department was unclear after Monday's Plutonium blockade drill.

About three dozen officers took part in the exercise ordered by Gov. Jim Hodges, who's been locked in a dispute with the U.S. Department of Energy about shipments Of weapons-grade plutonium from Rocky Flats to South Carolina. Hodges, a Democrat UP for re-election this year, had threatened to lie down in the road if necessary to block the shipments.

A tractor-trailer owned by the state pretended to attempt to enter the nuclear weapons complex at U.S. Highway 278 and state Highway 19 about 13 miles east of Augusta, Ga. The four-lane road was blocked on both sides by patrol cars.

In a matter of minutes, two officers had convinced the driver of an escort vehicle to turn around.

officials said later they didn't know whether it would be that easy when trucks carrying plutonium and escorted by armed federal officers make the same attempted entrance into the site. Energy officials have said shipments could begin by May 15.

Hodges, who was on hand for the drill, said the state will do "whatever it takes" to keep the plutonium shipments out of South Carolina unless DOE signs an agreement for the treatment and removal of the radioactive material.

Monday's drill was successful, Public Safety Department spokesman Boykin Rose said, but neither he nor Hodges would speculate on whether the standoff would be more dangerous when armed troopers face armed federal officers.

"I think they'll turn around," Hodges said. (But) "we'll take whatever steps are necessary to keep the plutonium out of here."

The Energy Department plans to reprocess the plutonium into fuel to be used in commercial nuclear reactors. Hodges worries that project might be abandoned and the material might be stored in South Carolina permanently

Hodges and the agency nearly reached an agreement earlier this month, but the Energy Department balked at operating under a court-ordered consent decree.

"The department is extremely disappointed with Governor Hodges roadblock exercise," according to a prepared statement faxed by the agency "Fortunately other South Carolina leaders are spending their time today working with the department towardfinalizing our plutonium disposition program."

The governor said state officials will have a good idea of when the plutonium will leave the Rocky Flats facility and what route it will take.

That, Rose said, will make it a little easier to guess which one of the 69 roads will be used to enter South Carolina. Rose refused to say Monday whether Georgia officials are offering any assistance to keep the material out of the state.

There are six or seven roads into the sprawling Savannah River Site, which once made plutonium for nuclear warheads during the Cold War, Rose said. There also is at least one railroad line.

Hodges and Rose said they didn't know how much the drill or patrolling would cost the state, which is suffering through budget cuts this year and looking at major spending reductions for next year. Hodges said he was sure it was "tens of thousands of dollars."

Attachment 9

THE AIKEN STANDARD
Aiken, South Carolina
Circulation 17,500 Daily
18,000 Sunday

Tuesday, April 23, 2002 Page A I Page 2 of 2

And, he said, the state would still be covered by troopers despite the greater need around SRS.

"We're willing to give up a few speeders to keep plutonium out of the state," Hodges said.

Several Republicans, including U.S. Reps. Lindsey Graham and Jim DeMint, have said they will work to create legislation to satisfy the state's concerns about the plutonium.

"I've been working closely with the White House, Congressman John Spratt and the Department of Energy seeking a resolution to this problem," Graham said. "Today's actions by the governor do nothing to help that effort."

Others, such as GOP gubernatorial candidates Attorney General Charlie Condon and Lt. Gov. Bob Peeler, have called the governor's stance nothing more than election-year posturing.

Condon said he was making arrangements Monday to fly to Idaho to talk with the attorney general's staff there to learn details of an agreement between that state and the DOE..

Condon said that's the only agreement in existence between the federal agency and a state limiting how nuclear material is handled. He said he is inviting Hodges to send a representative along and said a binding legal solution should be reached before blocking the road.

Hodges' spokeswoman Cortney Owings said the governor knows of the Idaho-DOE relationship. He's taking pointers in dealing with the DOE from former Idaho Gov. Cecil Andrus, who blocked shipments in 1988 and 1991, said Owings, who added that the two have spoken several times by phone.

THE AIKEN STANDARD
Aiken, South Carolina
Circulation 17,500 Daily
18,000 Sunday

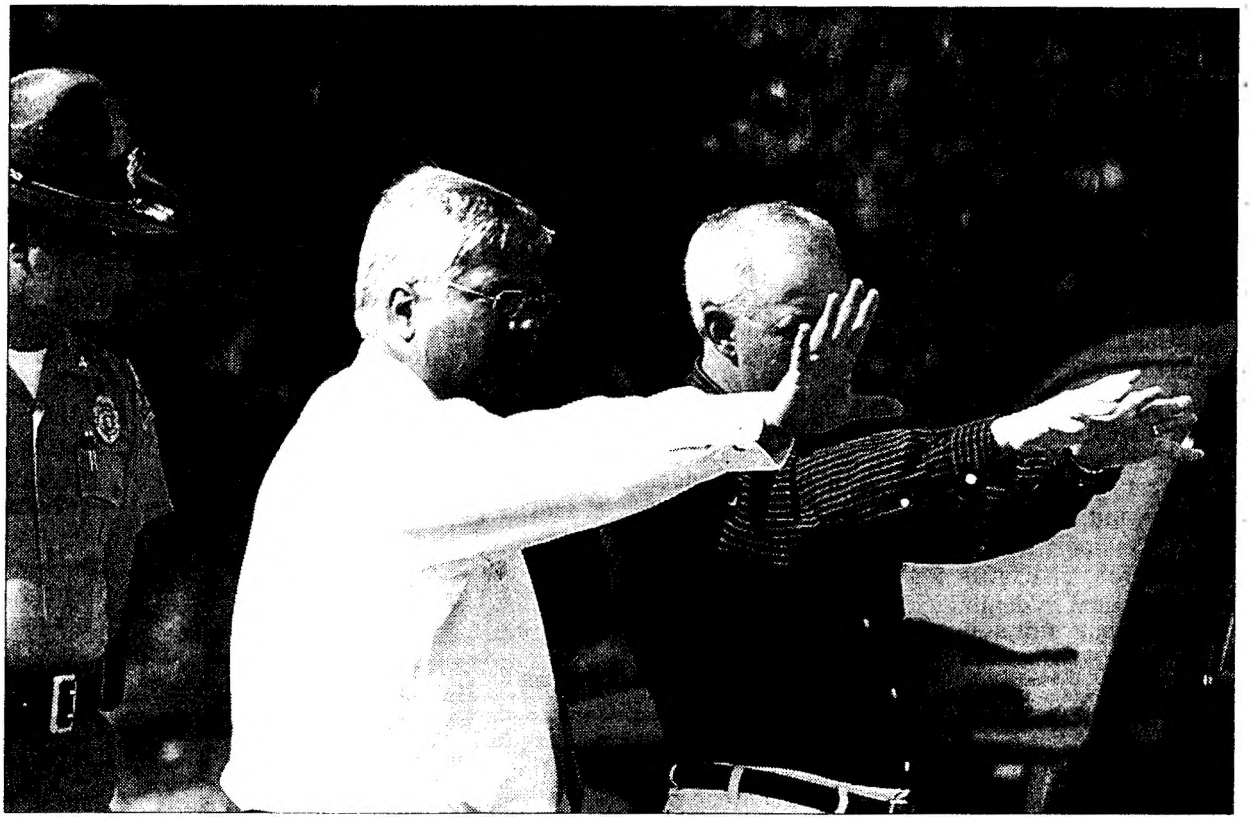
Tuesday, April 23, 2002 Page A1 Page 2 of 2

Staff photo by Ginny Southworth

JBLICITY. Gov. Jim Hodges speaks with members of the media in New Ellenton Monday following the SRS plutonium blockade exercise

THE AIKEN STANDARD
Aiken, South Carolina
Circulation 17,500 Daily
18,000 Sunday

Tuesday, April 23, 2002 Page 6A Page 2 of 2



Staff photo by Ginny Southworth

DIRECTING TRAFFIC. Gov. Jim Hodges (right) works with S.C. Dept. of Public Safety Director Boykin Rose Monday.

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Friday, April 26, 2002 Page B3 Page 1 of 1

Hodges backed on plutonium stand

By SAMMY FRETWELL
Staff Writer

Politicians lined up behind Gov. Jim Hodges on Thursday to denounce plutonium shipments to South Carolina without a federal guarantee that the atomic bomb material won't be left in the state forever.

At a Sierra Club rally against storing plutonium in South Carolina, Democratic U.S. Senate candidate Alex Sanders of Columbia and Bob Waldrep of Anderson, Republican 3rd District congressional candidate, were among those supporting the governor's hard line against plutonium shipments from Colorado.

Sanders, seeking the seat being vacated by U.S. Sen. Strom Thurmond, R-SC., said' "no decent South Carolinian can fail to support our governor in his effort to keep the plutonium out. It's not a matter of Democrats and Republicans.

"I have been opposing nuclear waste in South Carolina for at least 30 years," Sanders told more than 100 people at the rally. He added that a pound of plutonium "is enough to give every human being on the planet lung cancer. That's the magnitude of the problem. The danger is not theoretical."

Sanders faces U.S. Rep. Lindsey Graham, R-SC., for the seat. Graham opposes shipping plutonium to South Carolina before Congress passes a law that would require its removal at a future date.

Others at the "Keep it in Colorado" stump 'included Ben Gregg, Democratic agriculture commissioner candidate; Lt. Gov. candidate Phil Leventis, a Democratic state senator from Sumter; Democratic state Sen. Linda Short of Chester; and Democratic state Rep. Joe Neal of Columbia. All spoke in favor of Hodges' position.

Hodges, a Democrat up for re-election this year, wants an enforceable agreement that forces the Department of Energy to process the plutonium or ship it out of South Carolina if the processing plan falls through.

The DOE, despite Hodges' vows to block the shipments, plans by May 15 to start sending the plutonium to South Carolina from a closed nuclear weapons site at Rocky Flats, Colo. Hodges said Thursday negotiations are continuing to force penalties on the DOE if it fails to remove the plutonium.

Waldrep said the issue is bi-partisan. He said the state needs a binding agreement with the federal government that the plutonium will leave South Carolina before the material is allowed into the state.

"If you don't have a firm agreement, you don't have an agreement at all," Waldrep told the gathering of sign-waving environmentalists and anti-nuclear activists. "I'm with you to keep the stuff away."

Neal, Leventis and Gregg said South Carolina residents oppose the plutonium shipments because people are tired of the state being used as a dumping ground for the nation's trash.

Hodges, who also spoke at the event, thanked the candidates and environmentalists for supporting his position.

"If those plutonium trucks come before we have an agreement . . . they will be turned back at South Carolina's border," Hodges said.

FNS FEDERAL NEWS SERVICE

U.S. DEPARTMENT OF ENERGY

CNN Headline News

CNN TV, May 18, 2002, 7:30 PM

Governor Hodges of South Carolina

BROADCAST EXCERPT

SHARON COLLINS: If you live in South Carolina, be careful not to drive over your governor.

Governor Hodges says he'll lie down in the road to stop trucks that try to bring plutonium into his state.

The Energy Department wants to ship weapons-grade plutonium, the kind they make bombs out of from Colorado's Rocky Flats nuclear weapons plant to South Carolina's Savannah River site.

We talked with Governor Hodges, who says Uncle Sam broke a promise. The original plan was that this plutonium would come to South Carolina and then be processed into nuclear fuel, then leave the state. Well, the Energy Department cancelled part of the processing plans, and Hodges says he will not allow his state to become a dumping ground for plutonium.

GOVERNOR JIM HODGES: Well, plutonium is a substance that bombs are made from. Much of the concern in South Carolina derives from the fact that, frankly, the Department of Energy has no clear plan for how to deal with all the surplus plutonium that exists in our country.

All we are asking them to do is to honor the promises that they made to us several years ago about how plutonium would come into our state, how it would be treated and when it would leave.

COLLINS: Now, Hodges' questions why the government would want to move such a volatile substance along our highways without good reason. Critics say it's because Colorado's Republican governor is seeking reelection and getting the plutonium out of his state would help his chances.

Meanwhile, Hodges has asked a federal judge to stop the shipments and the Energy Department has delayed them until a judge hears arguments on June 13th. But I asked Hodges if he really would block the trucks with his body and he said, whatever it takes.

I'm Sharon Collins.

[END OF REPORT.]

TAB E

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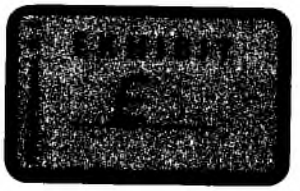


UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

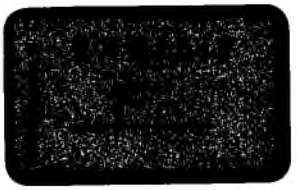
JIM HODGES, Governor, State of South Carolina, Plaintiff, v. SPENCER ABRAHAM, Secretary, United States Department of Energy, and the UNITED STATES DEPARTMENT OF ENERGY, Defendants.	CIV 1 02 1426-22

DECLARATION OF JOSEPH MAHALEY

I, Joseph Mahaley, hereby declare and attest, as follows:

1. I am the Director of Security for the U.S. Department of Energy (DOE or the Department). I am responsible for developing strategies and policies governing the protection of national security and other critical assets entrusted to DOE, in addition to managing security operations for DOE facilities in the national capital area. I have held this position since March, 2001. Prior to my assignment as the Department's Director of Security, I had served as the Department's Director of Security Affairs since May, 1997. I have recently represented the Department before a congressional committee and testified on the subject of restructuring government for homeland security.

2. The information contained in this declaration is based upon my personal knowledge



and information that I have obtained in my official capacity.

3. The purpose of this declaration is to inform the Court of the security implications of removing the surplus plutonium currently located at the Rocky Flats Environmental Technology site (RFETS) and consolidating that material with the surplus plutonium located at the Savannah River Site (SRS).

4. The RFETS is approximately 11 air miles northwest of Denver, Colorado. It was established in the early 1950's, at a critical time in the Cold War, as a nuclear weapons production facility. It fulfilled that mission until the late 1980's.

5. With the end of the Cold War, the United States' need for active production of nuclear weapons parts (the mission of Rocky Flats) was dramatically reduced. The Department decided in 1992 to permanently shut down operations at Rocky Flats. That decision created various issues, chief among which was the disposition and security of the special nuclear material (SNM) remaining at RFETS.

6. In DOE, the highest level of protection is associated with protection of SNM, including plutonium. The Department is responsible for SNM in forms which range from complete nuclear weapons to the raw materials used to create nuclear weapons. DOE refers to the protection program for this material as nuclear safeguards and security. The DOE nuclear safeguards and security program is focused on the protection of the most critical nuclear assets and classified information and is geared toward the prevention of theft or unauthorized use of nuclear weapons and the prevention of acts of radiological sabotage. See Statement of Joseph Mahaley, Restructuring Government for Homeland Security; Hearing before the Committee on the Budget, House of Representatives, One Hundred Seventh Congress, 1st Session, Serial No.

107-19, December 5, 2001, p. 9.

7. During the Cold War, dispersion of activities and SNM was an essential component of ensuring the security of the nation's nuclear weapons production and utilization program. Dispersion denied a single target to enemy missiles and manned bombers. This concept is similar to the United States' strategy of dispersion of missile silos and bomber bases and the deployment of missiles aboard ballistic missile submarines. The dispersion of the complex for producing nuclear weapons was similarly part of our national security strategy. When the Cold War ended, DOE found itself with literally tons of SNM located at sites throughout the United States that no longer have active production missions.

8. In the post Cold War environment, our security strategy must address a new historical situation that presents new and different challenges. Beginning in the early 1990's, DOE came to recognize that consolidating - - rather than dispersing - - SNM was an imperative component of nuclear security in the post-Cold War environment. Consolidation is a strategy that directly responds to what is now our greatest security challenge: the prevention of theft or unauthorized use of nuclear materials and the prevention of acts of radiological sabotage.

9. The physical protection of SNM must be at the same stringent level (in order to prevent or defeat an attempted terrorist penetration) at every location where significant quantities of such materials are held. This means that highly effective armed security police forces, physical systems to detect and prevent intrusion, material accountability and control systems, and personnel security must be maintained at each and every such location.

10. From a professional security standpoint, consolidating the storage of SNM has two dispositive advantages when protection against theft and sabotage are of paramount concern.

First, it is more cost-effective and efficient and lends itself to obvious economies of scale. Second, it reduces the number of potential targets. Simply put, we can provide greater protection against the threats of theft and sabotage, both quantitatively and qualitatively, if our security resources are focused on fewer sites.

11. A key element of DOE's security strategy, therefore, is to significantly accelerate the consolidation of nuclear materials and work into fewer and more secure locations and configurations.

12. The movement of SNM from RFETS to SRS supports this strategy and will enhance the Department's ability to provide the highest level of security for this material. SRS is a large facility (310 square miles) with an ongoing national mission. By contrast, RFETS is a much smaller facility (10 square miles) scheduled for closure in 2006. Maintaining satisfactory security at a site that is focused on closure is inherently more difficult than maintaining security at a site with a continuing mission. Were SNM to be indefinitely stored at RFETS in contravention of our consolidation strategy, maintaining adequate safeguards and security there would require the diversion of resources that could be employed much more effectively and efficiently at other DOE sites.

I hereby declare under penalty of perjury that the information set forth above is true and accurate to best of my knowledge and belief.

Joseph Mahaley
Director of Security
U.S. Department of Energy

dated this 23 day of May, 2002

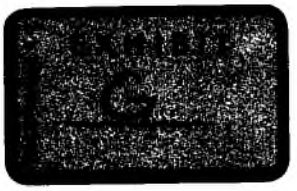
UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

JIM HODGES, Governor, State of South Carolina, Plaintiff,	)	
v.	)	CIV 1 02 1426-22
SPENCER ABRAHAM, Secretary, United States Department of Energy, and the UNITED STATES DEPARTMENT OF ENERGY, Defendants.	)	

DECLARATION OF JESSIE HILL ROBERSON

I, Jessie Hill Roberson, hereby declare and attest as follows:

1. I am the Assistant Secretary for Environmental Management (EM), at the U. S. Department of Energy (DOE or the Department). I have served in this capacity since July 2001. From January 2000 to July 2001 I served as a member of the Defense Nuclear Facilities Safety Board. Prior to that, I served as the Manager of DOE's Rocky Flats Field Office at the Rocky Flats Environmental Technology Site (RFETS, Rocky Flats or the site) in Colorado from 1996 to 1999. Prior to that I served as a Deputy Assistant Manager



at the Savannah River Site (SRS) in South Carolina. As Assistant Secretary for EM, I am responsible for DOE waste management operations, environmental restoration, and related technology development programs and activities. As RFETS Manager, I supervised the integration and performance of all environmental cleanup activities on the site. At SRS, I performed the same duties.

2. The information contained in this declaration is based upon my personal knowledge and information that I have obtained in my official capacity.

3. The purpose of this declaration is to explain to the Court the importance of closing RFETS as safely, quickly and efficiently as possible. This declaration also provides information concerning the plaintiff's sixth claim for relief regarding the Department's alleged use of uncertified containers to ship special nuclear material (SNM) from RFETS to SRS.

4. There are several important reasons for vigorously pursuing closure of RFETS. With the safe and secure cleanup of RFETS, DOE will achieve a reduction in security vulnerability of SNM, an elimination of the safety and environmental risks associated with the presence of SNM at the site, and a dramatic reduction in the continuing costs the public must bear for the nation's victory in the Cold

War. It is for these reasons that not only the current Secretary of Energy but also his immediate predecessors have committed to completing the cleanup of the site by December 2006.

5. In addition to serving these specific imperatives, the early closure of Rocky Flats is broadly perceived as the linchpin of DOE's overall effort to reduce environmental risk to the public in the nation's nuclear weapons complex. DOE's progress toward meeting the 2006 closure goal is closely monitored by Congress and by federal and state environmental regulators nationwide.

6. The importance of closing Rocky Flats in 2006, and the costs and risks of not doing so, can be divided into three categories: (1) the vital importance of the success of the Rocky Flats Closure Project to the closure of other sites and to DOE's overall cleanup strategy; (2) the safety risks of delaying closure; and (3) the costs associated with closure and the costs of *not* closing the site on schedule and on budget.

The National Significance of the Rocky Flats Closure Project

7. By 1998, DOE and its congressional oversight committees had recognized that DOE's program to clean up the nuclear weapons complex, which had begun in 1989, was

spending vast sums of money with too little cleanup progress, and too little reduction in risk to the public, to show for the effort. Completion schedules at many sites stretched into the latter part of the twenty-first century at total costs that were effectively unaffordable. By failing to establish priorities and trying instead ineffectively to address all of DOE's cleanup problems at once, the program was destined to fail.

8. A key element of the solution to this problem lay in the recognition that too much of the cleanup program's resources were being spent on infrastructure, maintenance, security, and other "landlord" activities, rather than on actual cleanup work. Particularly at sites with significant quantities of SNM, the cost of keeping such sites open, safe and secure left too little funding available for cleanup. Both DOE and Congress recognized that if real progress was to be made, some sites would have to be given precedence over others and brought to an early completion. That way, the resulting substantial and permanent savings in reduced "landlord" costs could then be devoted to accelerated risk reduction/elimination efforts at the remaining sites.

9. The site's location near a major metropolitan area made Rocky flats the most obvious and attractive candidate

site for early closure. Additionally, it was a former major weapons productions site where large quantities of weapons-useable SNM were still stored at enormous cost, yet which had no future defense mission. Accordingly, Congress and DOE selected Rocky Flats as the centerpiece of a newly refocused cleanup program that would concentrate on reducing public and environmental risks by 2006 at certain key sites in order to pave the way for progress at the remaining sites.

10. Because of its history as a major weapons production facility and the size of its budget, Rocky Flats has emerged, both for Congress and for environmental regulators, as the focal point and test case for the Government's new risk reduction strategy. Failure to carry out this strategy at Rocky Flats would call into question DOE's ability to clean up and close a major weapons production site. DOE's ability effectively to establish near-term cleanup priorities in furtherance of long-term complex-wide objectives would be seriously, and perhaps irreparably, damaged.

11. As I will explain later in this declaration, failure to complete the removal of the SNM currently at Rocky Flats by November 2003 will place in jeopardy DOE's ability to close the site by the end of 2006.

The Safety Risks of Delaying the Closure Project

12. Rocky Flats occupies a ten-square-mile site from which downtown Denver is visible at a distance of approximately 11 air miles. From 1952 to 1989, the primary mission of the site was the production of nuclear and non-nuclear components of nuclear weapons. Activities generally consisted of radioactive (principally plutonium and uranium) and non-radioactive (primarily stainless steel and beryllium) metal working fabrication and component assembly, as well as the chemical recovery and purification of plutonium. In 1989, almost all of Rocky Flat's radioactive material production activities were suspended for environmental and safety concerns related to operations. The site was also placed on the Superfund National Priorities List in 1989. In 1992 the Government decided to permanently shut down nuclear weapons work at the site.

13. Compounding the issue of the site's proximity to Denver is the encroachment of suburbs and commercial facilities, edging steadily closer to the borders of the site. There are now homes within a mile of the site.

14. Over the years many of the facilities and equipment used for the production of nuclear and non-nuclear weapon components were contaminated with

radioactive and other hazardous materials. Moreover, as a result of past disposal practices and releases - both planned and unplanned - of radioactive and hazardous substances, much of the land at the site is contaminated to some extent with those materials.

15. However, it is the presence of large quantities of SNM at a site with no DOE mission, other than to close down as quickly as possible, that poses the most significant safety risk at Rocky Flats. Therefore, since cleanup efforts first began in earnest in 1995, the closure project has concentrated on the stabilization, consolidation, interim storage, and off-site shipment of SNM.

16. In addition to the risk posed by the SNM itself, delaying the removal of the SNM from the site also delays remediation of significant quantities of contamination in and around the facility where the SNM is currently stored. This contamination poses risks of its own, due to the contamination embedded in the facilities and structures that must be maintained as long as the SNM remains.

17. The presence of large quantities of SNM poses some risk to any site that stores and processes it. However, the transfer of the approximate six metric tons of

plutonium stored at Rocky Flats to SRS would not represent a significant increase in risk for a site that will continue to serve DOE missions for decades to come. DOE carries out many of its responsibilities for the management and disposition of nuclear materials, including plutonium, at SRS. The infrastructure already includes extensive facilities for the management and disposition of nuclear materials. Over one-third of the plutonium produced for U.S. national defense purposes was originally produced at SRS, including much of the Rocky Flats material. There is currently approximately two metric tons of plutonium in storage at SRS. Contrasted with Rocky Flats, whose sole mission is to clean up and close down, the small, incremental risk to SRS will be minimal, as DOE has demonstrated in its environmental analyses.

The Cost of Delayed Closure

18. Currently, "landlord" costs at Rocky Flats, *i.e.*, costs other than the cost of actual cleanup work, are approximately $440 million per year, or about $1.2 million per day. These costs are not expected to decline significantly until all SNM has been removed from the site. Once the SNM has been shipped elsewhere, an additional $1 million per day, approximately, will be available for

cleanup work, and the site's 2006 closure budget assumes the early availability of this funding.

19. Accordingly, any prolonged delay in removing the SNM will make it that much more difficult to close the site on schedule and within budget. Moreover, as I have discussed above, Rocky Flats has already received preferential consideration in the congressional appropriations process, and the prospect for it now to receive more funding, in the face of competing needs at other sites, is questionable at best.

20. Even if additional resources could be found to cover the unanticipated costs caused by a delay in shipping the SNM to SRS, that delay would soon put into jeopardy DOE's ability to achieve closure by the end of 2006, regardless of the amount of resources brought to bear. This is because the decontamination, decommissioning and demolition of Building 371, the building in which the SNM is currently stored, are each key steps toward site closure that cannot proceed until the SNM has been removed.

21. DOE is taking all practicable steps to mitigate the effect of delayed shipments on closure activities at Building 371 by working in areas of the building that are not affected by SNM storage. Even so, the activities necessary to decontaminate, decommission and demolish

Building 371 are complex and they will require an irreducible finite period to accomplish after the SNM has been removed. Ultimately, the SNM must be removed from Building 371 by November 2003, in order for these activities to occur on a schedule that will ensure closure of the site by the end of 2006. DOE must begin shipping the SNM soon in order to assure that this completion date can be met without jeopardizing other vital DOE national security missions. *See* the Declaration of Everet Beckner, at paragraphs 14-16. Shipments are currently scheduled to begin on or about June 15, 2002.

22. The schedule for closure of Building 371 also bears directly on the resources DOE must expend to maintain the security of the SNM stored there. The security systems currently in place are adequate to ensure the security of the SNM, assuming it is removed by November 2003. However, if DOE is indefinitely enjoined from shipping SNM to SRS, we will be forced to expend several million dollars to conduct security upgrades at Building 371 to provide for the possible continued storage of SNM beyond that date. These are funds that would be much better spent improving security at a site with a continuing mission, rather than for a building destined for demolition.

Use of Certified Containers

23. In his sixth claim for relief, the plaintiff alleged that the Department illegally granted a "national security exemption" to facilitate the shipment of surplus plutonium from RFETS to SRS. Specifically, the plaintiff claims that the Department plans to send a portion of the surplus plutonium at RFETS to SRS in DT-22 shipping containers. He further claims that the Department issued a national security exemption that would allow the Department's contractor to "disregard the Nuclear Regulatory Commission's safety regulations" and use these containers.

24. In November of 2000, my predecessor did authorize use of DT-22 containers for shipping 125 parts from RFETS, some of which were destined for SRS. Special authorization was necessary because the quantity of radioactive material proposed to be shipped in each container was greater than the quantity for which these containers are certified.

25. That authorization was granted contingent on satisfactory completion of a safety analysis and reviews required by governing Department Orders to demonstrate that the DT-22 containers could be used for this application

without undue risk to the public. That analysis and those reviews were underway but not completed.

26. On May 15, 2002, I informed the RFETS Manager that I have decided to ship the materials in question in certified containers rather than in DT-22 containers, and therefore, that the safety analysis and accompanying reviews need not be completed.

27. I made this decision because the process necessary to complete the analysis and reach a final decision on the acceptability of the DT-22 containers for this application would be time consuming and could ultimately cause further shipment delays.

I hereby declare under penalty of perjury that information set forth above is true and accurate to the best of my knowledge and belief.

Jessie Roberson

Jessie Hill Roberson
Assistant Secretary for
Environmental Management
U.S. Department of Energy

Dated this 24 day of May, 2002

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

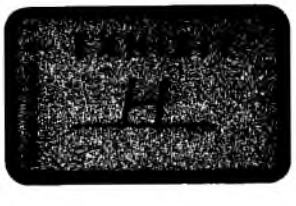
JIM HODGES, Governor of South Carolina, Plaintiff and Counterclaim-Defendant, v. SPENCER ABRAHAM, Secretary of Energy, and DEPARTMENT OF ENERGY, Defendants and Counterclaim-Plaintiffs.	CIVIL ACTION NO. 1:02-1426-22

DECLARATION OF W. SCOTT SIMPSON IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON THEIR COUNTERCLAIM

I, W. Scott Simpson, declare the following to be true and correct:

1. I am a Senior Counsel in the Federal Programs Branch of the Civil Division, U.S. Department of Justice, in Washington, D.C. The statements made herein are based on personal knowledge obtained by me during the performance of my official duties.

2. On May 11, 2002, I visited the Internet site at http://www.state.sc.us/governor/. The title of the home page, listed at the top of my browser window, was "The South Carolina Governor's Office." I clicked on a link labeled "Press Releases," which took me to the page at http://www.state.sc.us/governor/pressrelease.html. Then, I clicked on a link labeled "Images," which took me to the page at http://www.state.sc.us/governor/photos.html, bearing the title "Photos" at the top of my browser window. I printed the relevant paper pages of the "Photos" page, and those pages are attached hereto as Exhibit 1.



3. On May 13, 2002, I again visited the Internet site for "The South Carolina Governor's Office" at http://www.state.sc.us/governor/. I clicked on the link labeled "Press Releases," then on a link labeled "State of the State 2002." Clicking on the "State of the State 2002" link retrieved an Adobe Acrobat document with the filename "sots2002.pdf," whose title read "State of the State Address / Governor Jim Hodges / January 16, 2002." I saved the document "sots2002.pdf" on the hard drive of my office computer and printed it later, and a copy of that document is attached hereto as Exhibit 2.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 24, 2002.

W. SCOTT SIMPSON

Governor Prepares for Plutonium Shipments
April 22, 2002

Photo by Bryan Stone, Governor's Office

Governor Hodges, Col. Mike Kelly, and Boykin Rose review plan to turn back trucks carrying Plutonium

EXHIBIT 1

State of the State Address
Governor Jim Hodges
January 16, 2002

Ladies and Gentlemen, members of the General Assembly, honored guests, please join me in honoring our nation with the words of the Pledge of Allegiance.

I pledge allegiance to the flag of the United States of America ... and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

Thank you.

Four months ago, our president stood before Congress to address the nation in the wake of the tragic events of September 11. Many Americans asked the simple questions: What is expected of me in this time of crisis? What can I do to help? How can I make a difference in America?

President Bush said we must first continue fully living our lives. Then, we all have a job to do -- both at home and overseas.

My friends, we have heeded the president's words. Across South Carolina, people have rallied around our country and touched those in need.

South Carolinians like James "Smitty" Smith of Lake City. On September 11, Smitty was working at the Pentagon when the attack on America occurred. He put his own life in danger to save the lives of others. Yet, Master Sergeant Smith describes himself simply as one of many who reached out to help. Master Sergeant, please stand and be recognized.

Who can forget the students of White Knoll Middle School in Lexington? They heard the story of a New York fire station sending a fire engine to Columbia after the Civil War. The students decided a 135-year-old debt should be paid off. Over the next few months, these students led a fund drive and raised over $500,000. On Thanksgiving Day, they delivered a check for a new fire truck to Mayor Rudy Giuliani. I ask the student leaders of White Knoll to stand and be recognized.

Tonight, more than 200 South Carolina National Guardsmen are on duty overseas as part of Operation Enduring Freedom -- our war on terrorism. They include the Swamp Foxes, F-16 fighter pilots and their support teams from McEntire. I ask General Spears, our National Guard Adjutant General, to please stand and accept our thanks for the job South Carolina's service men and women are doing to protect country.

These are the faces of September 11. Of tragedy and tears... of courage and hope ... of character and optimism. These great South Carolinians remind us what matters in life -- God's gift of a free country, caring communities, and loving families.

EXHIBIT 2

Members of the General Assembly, as we move forward in this important legislative session, let us do so with that same sense of purpose they have shown. Let us avoid the poison of partisanship. Let us agree respect will be our watchword... cooperation our mission.

And look what we have accomplished by working together.

Old controversies have been resolved. The nation's nuclear waste is headed elsewhere. Our innovative SILVERxCard program is helping nearly 40,000 vulnerable seniors afford prescription drugs. Palmetto Pride has reduced trash on our roads.

We've broken records in job creation. We've kept our taxes among the lowest in the country. We've even added a new tax-free shopping holiday every August to help our families.

We've focused like a laser beam on improving public education. Now our efforts are paying off.

First in the nation in SAT improvement, fourth in improving teacher quality, and third in the nation in the number of nationally certified teachers -- an increase of more than 7,500 percent. And last week, Education Week announced that South Carolina is one the leading states in educational improvement.

Our new education lottery is a great success! It has sold almost twenty million dollars in tickets... in the first week alone. This new revenue will open the door of educational opportunity for scores of South Carolinians of all ages.

Ladies and gentlemen, we can take pride in these accomplishments. And if these were ordinary times, we could spend this evening reflecting on their impact. But we dare not, because we are faced with two new factors in our lives.

Our economy is suffering and America is at war.

For the first time since World War Two, we must plan for homeland security. At the request of the White House, I have ordered the National Guard to protect our state's airports. Until the federal government completes improvements to airport security, these brave men and women will provide an extra measure of safety for passengers.

We have created a new Office of Homeland Security to better protect our state.

Our Director of Homeland Security, General Steve Siegfried, and our team hit the ground running after September eleventh. In just two short months, they successfully responded to the threat of anthrax. Safety procedures at our ports and nuclear power plants were reviewed and improved. Our National Guard was selected for special civilian disaster training. And we signed a mutual aid agreement with our neighbors in North Carolina.

But the terrorist attack opened our eyes to a whole new set of challenges.

General Siegfried has worked with me to prepare sweeping anti-terrorism legislation. This legislation will make the Palmetto State a national leader. It includes antiterrorism training for our police, firefighters and healthcare workers. We must also improve information sharing between law enforcement agencies at all levels. And we must upgrade the capabilities of our public health agencies to deal with the threat of bio-terrorism.

And I am asking National Homeland Security director Tom Ridge to partner with us and make South Carolina the model for homeland security.

While we are talking about making our state safer, I want to address the issue of plutonium shipments to the Savannah River Site in Aiken. The people of South Carolina have a long and proud history of supporting the defense of our country.

Several years ago, we agreed to convert weapons-grade plutonium at SRS. We asked one thing of the federal government -- find another location to dispose of it. Recently, the federal government broke its commitment, and began planning shipments of plutonium to South Carolina without a disposition plan. This is unacceptable.

Plutonium is one of the most hazardous materials known to man. Even a very small amount can be lethal. As a nuclear explosive, a few pounds of weapons-grade plutonium, fashioned into a bomb, could decimate several square miles of our state and make a whole county uninhabitable for years.

Dumping this weapons-grade plutonium in our state turns us into a terrorist target. We cannot allow the federal government to paint a bullseye on South Carolina.

But as we work to keep our citizens safe, we cannot afford to lose sight of our other big priorities. Those kitchen table concerns of everyday families.

Before the terrorist attacks, our national economy was slowing. But September 11 made things worse. The impact was felt across the nation and here in South Carolina as well.

The good news is that our economy shows signs of improvement. But we will not simply stand by and wait for a recovery. We will respond to our state's needs with vigor.

The first positive step is to pass a responsible budget. Last year, we responded to the state's budget challenges by downsizing state government by nearly $200 million while protecting our core priorities of education and health care.

Our state still faces a budget crunch. But we must see this as a challenge. Not an obstacle. We can manage this budget, or let it manage us. The decision is ours. I say let's keep our state moving forward. Let's think outside the box. Let's use every ounce of creativity to protect our progress... in education, health care, and public safety.

To balance our state budget, let's agree on another important point: no tax increases. Our fellow citizens are struggling to make ends meet, and simply cannot afford to pay more. Like every family experiencing a financial crunch, we'll just have to tighten our belts.

Fortunately, there's an easy way to start. Every day the legislature operates costs the taxpayers $60,000. If Florida can do the people's business in 60 days, and Texas can do it with a legislature that meets only once every other year, then South Carolina can do the people's business in two months.

For years, Speaker Wilkins has introduced a bill to shorten the legislative session. I am proud tonight to endorse the Speaker's bill.

However, even before the Speaker's bill passes, it is within the legislature's power to wrap up the people's business in 60 days. Speaker Wilkins ... Lt. Governor Peeler ... let's agree tonight to put some bipartisan muscle to work, to finish the people's business in two months, and to save taxpayers millions of dollars.

Our efforts to help those affected by the economy do not stop with the budget alone.

For the past decade, South Carolina has been blessed with a robust economy. Even as our economy slowed, our Department of Commerce has a strong record... more than $11 billion in capital investment and 50,000 new jobs during the last two years.

We have a great business climate. And I have every confidence that our state will continue attracting new jobs and investments as our economy improves.

But one industry in our state needs special attention. Textile workers have suffered job losses due to unfair and illegal foreign competition. And countries are routinely ignoring our trade agreements.

We cannot control the national economy, but we can fight to protect our jobs. Our nation must recognize the importance of a strong manufacturing base to our American way of life.

More than 30,000 South Carolina textile jobs have been lost in the past decade. We'll lose more if immediate action is not taken. My friends, this is not just a South Carolina crisis. It's a national crisis. A great nation cannot fight a war if its clothing, guns, and planes are made someplace else.

Let's stand up for textile workers by sending a message to our national leaders. We must enforce our international trade agreements and stop sending our textile jobs over seas.

And while we are sending messages to Washington, let's send one on behalf of all South Carolinians who have lost their jobs. Our state's One-Stop employment and training system is helping unemployed workers find new jobs. But they need help making ends meet. Join me in urging our national leaders to help families keep their health insurance until they find new jobs. And join me in requesting an additional fourteen weeks of unemployment compensation for those trying to find work.

Of course, the best response to job loss is job creation. It's not enough to protect old jobs and respond to layoffs. We must set ambitious goals for new jobs. In that regard, I am challenging Team South Carolina to create at least 25,000 new jobs and additional private investment of at least $6 billion this year.

But our vision for the economic future of our state must also include a role for the New Economy. For the past six months, my Technology Transition Team has been hard at work identifying ways for South Carolina to become a leader in high tech jobs. Several key elements of this plan require immediate attention.

First, we must recognize the role our universities play in fostering new ideas that create jobs. Look no further than Atlanta, Georgia; the Research Triangle in North Carolina; and Austin, Texas to see the impact a research university has on economic development. Our universities can also be engines of economic opportunity. But only if we dramatically increase research funding to support promising new ideas. I am calling on the legislature to create a new fund to support research at our universities with $40 million in lottery proceeds.

This research fund will support new centers of excellence, like an Automotive Center at Clemson. At this center, the latest automotive technologies and designs can be tested and perfected by the world's top engineers and students. South Carolina will become a magnet for exciting new ideas in the automotive field. And we will become a world leader in new automotive engineering jobs as well.

I also urge you to enact legislation that authorizes certified capital companies. This will create a venture capital pool of $100 million for new technology companies. This will put South Carolina in the center of the New Economy.

These measures will help South Carolina during this economic slowdown. But the greatest insurance against future slumps is to have the best-educated workforce in America. To do that, we must demand excellence from our public schools.

Here's what we will do next to create the world-class schools South Carolina deserves.

Let us start with the school buildings themselves. We are already making record strides in replacing portable classrooms with bricks and mortar. Our historic billion-dollar investment has moved us toward our goal -- without raising taxes. But there are still more than 3,000 portable classrooms in the state.

It is simply unacceptable to send our children to school in leaky, portable classrooms. We need our own Marshall Plan for school buildings.

Tonight, I am announcing a school building initiative called Palmetto Builds! Palmetto Builds! has a simple goal – move our kids out of portable classrooms into modern classrooms without raising taxes.

Palmetto Builds! will create a School Infrastructure Bank, similar to our Highway Infrastructure Bank, that will allow districts to save on financing, purchasing and interest costs. Ultimately, the bank can use existing debt service and state revenues to give all of our children – in rich and poor districts – classrooms the entire country will envy.

Even while we improve the buildings, we must help the teachers who work there.

We've done a good job of meeting the Southeastern average salary for teachers. But if we want to continue attracting the best and brightest professionals, South Carolina must pay our teachers a salary of national caliber.

Tonight, I ask you to make a commitment to raise our teachers' pay to the national average within the next five years.

We must also support excellence among South Carolina's educators by encouraging even more teachers to become nationally certified.

When I took office, we had seventeen of these outstanding professionals in our classrooms. I set the goal of five hundred nationally certified teachers by 2002. Well, we passed that goal early, and there are now 1,300 nationally certified teachers in South Carolina.

Some critics say we have too many nationally certified teachers. They say we should discontinue incentives for teachers to become nationally certified. I disagree. It's time to set the bar higher, not lower. There is no reason we cannot have 5,000 nationally certified teachers in our state by the year 2005. That's 5,000 by "o five."

We must also fulfill our commitment to public school accountability. Parents recently received the first school report cards. They provided parents with a snapshot of how their children's schools measure up. This honest assessment was the first step. Now the legislature must do its part and provide under-performing schools with the money they need to make improvements. My budget provides $41 million for this task.

Next, let's make sure that reading truly becomes fundamental. Because I believe every child in the state deserves access to quality books. And I believe that every elementary school in the state deserves a quality library.

To meet both these goals, we are kicking off the Cool Books initiative. Cool Books has a simple goal: put a read-aloud library in every elementary classroom in the state.

Cool Books is a partnership between our states' communities, businesses and schools. To participate in Cool Books, individuals or groups can purchase coolers of books for a particular classroom or school. By tapping the great South Carolina community spirit, Cool Books will help every child become a book lover.

Last week, President Bush announced his "Leave No Child Behind" education plan. Like South Carolina, the plan has heavy doses of accountability, an emphasis on pre-school, initiatives to close the achievement gaps between rich and poor, and a special emphasis on reading.

To make progress in education, the president has put money on the table. I intend to use this money to enhance the initiatives we've already begun... to expand our successful Governor's Institute of Reading. This will encourage our youngest readers to continue as they progress through school.

We also know students learn better when there are strong partnerships between schools and communities. In Greenwood, for example, the HOSTS mentoring program partners adult volunteers with struggling readers. I want to use the president's education money to take this mentoring project statewide.

In addition, our new teachers need more help. Asking new teachers to sink or swim simply doesn't work. We lose one-third of our teachers in the first five years. Let's pair new teachers with veteran educators to insure our brightest new teachers don't get discouraged and leave our classrooms.

Now, let's make sure our children can safely travel to school. Our school bus fleet is in bad shape. Let's dedicate a portion of our bond revenues to replacing our state's old buses. For an investment of $40 million, we can replace 750 buses and buy our parents some much-needed piece of mind.

Let's talk for a minute about the students who ride on those buses ... the students who fill the classrooms of our state's schools.

Character education is already an important part of many South Carolina classrooms. Across the state, character education initiatives promote the fundamental South Carolina values of service, leadership, responsibility and discipline.

We began tonight by reciting the pledge of allegiance. Our state's students begin each morning the same way. In this time of national trial, we must all recognize that patriotism is the cornerstone of the American character. Let's also give our students a lesson in the character and history of American heroism.

On December 7, 1941, this nation was a sleeping giant. Then came war, unbidden and unexpected. President Roosevelt rallied the nation, and America arose to meet the challenge. The Second World War saw our parents and grandparents earn the title of "greatest generation," by meeting the threat with honor and courage.

Even as the "greatest generation" passes, their lessons must be taught and their values must endure. Therefore, I want every high school student to receive a copy of Tom Brokaw's book, The Greatest Generation. I want this book to become part of our school's American history curriculum.

Reading about the "greatest generation" is not enough. I want our state's students to hear these stories directly from the source. Tonight, I am announcing that we will select a school district for an exciting pilot initiative that will bring World War II veterans into the classroom. These living heroes will give South Carolina students the chance to see courage exemplified and character personified.

I am pleased to report that we have our first volunteer... our very own World War II hero, Senator John Drummond.

Finally, there is one fundamental tool for improving South Carolina's schools that we have not discussed yet tonight.

Education lottery tickets are on sale now. But there are crucial pieces of business that remain unfinished. We need our lottery to reach its full potential. First, we must work together to give South Carolina the college scholarships and world-class educational opportunity the people voted for. And it is time to allow South Carolinians to participate in multi-state Powerball games. These games will generate even more excitement and money for education.

And it's time to pass the people's lottery plan. College scholarships for our state's high school students... Free graduate education for classroom teachers... And lifetime learning scholarships so that any adult at any age can attend a technical college and get the job skills they need.

When the people's lottery plan has passed, lifelong learning will become the birthright of every South Carolinian. More than 100,000 students will receive scholarship benefits. And every worker will be able to attend technical college.

Our lottery plan is needed now more than ever. More research at our state's universities equals more jobs. And the lottery scholarships make it possible for laid-off workers to learn new skills. These scholarships will make a higher education available to every South Carolinian who earns one.

Eliminating portables ... better teacher pay ... modern classrooms ... these are not the projects of a single legislative session or a single term of office. These are no quick fixes or easy solutions. These are goals that cannot be completed in one year or two. But these are the works we are called upon to do, from generation to generation.

We have proved it possible to cut spending, while preserving education and health care. We have balanced the budget during tough times, without raising taxes. It is a "can do" spirit. This year, let's bring that same spirit of progress to bear and reach our goals together.

Ladies and Gentlemen, we agree on so many ideas. South Carolinians want better schools, lean government and safe communities. Let's throw out the old stumbling block of partisanship and politics. And remember the heroes we met tonight. They deserve cooperation and progress.

I recall the words President Bush used just 11 weeks ago. "We've got to put aside political differences, and act swiftly and strongly."

What the president asked of the nation, I ask of you.

Let's take these fresh approaches to old problems, together... the best homeland security in the nation... protecting jobs while starting new initiatives for the New Economy... advancing, not retreating on educational progress.

This is the work of the swift and the strong!

Thank you. God bless you, and God bless the great state of South Carolina.

AGREEMENT
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE RUSSIAN FEDERATION
CONCERNING THE MANAGEMENT AND DISPOSITION
OF PLUTONIUM DESIGNATED AS NO LONGER REQUIRED
FOR DEFENSE PURPOSES AND RELATED COOPERATION

The Government of the United States of America and the Government of the Russian Federation, hereinafter referred to as the Parties,

Guided by:

The Joint Statement of Principles for Management and Disposition of Plutonium Designated as No Longer Required for Defense Purposes, signed by the President of the United States of America and the President of the Russian Federation on September 2, 1998, affirming the intention of each country to remove by stages approximately 50 metric tons of plutonium from their nuclear weapons programs and to convert this plutonium into forms unusable for nuclear weapons;

Taking into account:

The Agreement between the Government of the United States of America and the Government of the Russian Federation on Scientific and Technical Cooperation in the Management of Plutonium That Has Been Withdrawn from Nuclear Military Programs, signed on July 24, 1998 (hereinafter referred to as the Scientific and Technical Cooperation Agreement);

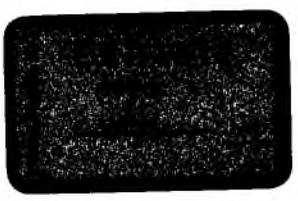
Continuation by the Parties of their cooperation within the framework of the Scientific and Technical Cooperation Agreement and the importance of that work for making decisions concerning technologies for plutonium conversion and mixed uranium-plutonium fuel fabrication, as well as for reactor modification for the use of such fuel;

The statement of the President of the United States of America on March 1, 1995, announcing that 200 tons of fissile material will be withdrawn from the U.S. nuclear stockpile and directing that these materials will never again be used to build a nuclear weapon;

The statement of the President of the Russian Federation to the 41st Session of the General Conference of the International Atomic Energy Agency, on September 26, 1997, on step-by-step removal from nuclear military programs of up to 500 tons of highly enriched uranium and up to 50 tons of plutonium released in the process of nuclear disarmament; and

The Joint Statement by the Parties concerning non-separation of weapon-grade plutonium in connection with the signing of this Agreement;

Have agreed as follows:



AGREEMENT
BETWEEN
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The Joint Statement by the Parties concerning non-separation of weapon-grade plutonium in connection with the signing of this Agreement;

Have agreed as follows:

Article I

For the purposes of this Agreement, the terms specified below are defined as follows:

1. "Weapon-grade plutonium" means plutonium with an isotopic ratio of plutonium 240 to plutonium 239 of no more than 0.10.

2. "Disposition plutonium" means weapon-grade plutonium that has been

   a) withdrawn from nuclear weapon programs,

   b) designated as no longer required for defense purposes, and

   c) declared in the Annex on Quantities, Forms, Locations, and Methods of Disposition, which is an integral part of this Agreement.

3. "Blend stock" means any plutonium other than disposition plutonium that is received at a disposition facility for mixing with disposition plutonium.

4. "Spent plutonium fuel" means fuel that was manufactured with disposition plutonium and irradiated in nuclear reactors.

5. "Immobilized forms" means disposition plutonium that has been imbedded in a glass or ceramic matrix and encapsulated with high-level radioactive waste in a can-in-canister system suitable for geologic disposal, or any other immobilization system agreed in writing by the Parties.

6. "Disposition facility" means any facility that is constructed, modified or operated under this Agreement or that stores, processes, or otherwise uses disposition plutonium, spent plutonium fuel, or immobilized forms, including any such conversion or conversion/blending facility, fuel fabrication facility, immobilization facility, nuclear reactor, and storage facility (other than storage facilities specified in Section III of the Annex on Quantities, Forms, Locations, and Methods of Disposition).

Article II

1. Each Party shall, in accordance with the terms of this Agreement, dispose of no less than thirty-four (34) metric tons of disposition plutonium.

2. Each Party's declaration on quantities, forms, locations, and methods of disposition for disposition plutonium is set forth in the Annex on Quantities, Forms, Locations, and Methods of Disposition.

3. The Parties shall cooperate in the management and disposition of disposition plutonium, implementing their respective disposition programs in parallel to the extent practicable.

4. The reciprocal obligations set forth in paragraph 1 of this Article shall not prejudice consideration by the Parties of what additional quantities of plutonium may be designated by each Party in the future as no longer required for defense purposes.

5. The Parties shall cooperate with a view to ensuring that additional quantities of weapon-grade plutonium that may be withdrawn from nuclear weapon programs and designated in the future by the Parties as no longer required for defense purposes are:

   a) brought under and disposed of in accordance with the terms of this Agreement; or

   b) subject to other measures as agreed by the Parties in writing that provide for comparable transparency and disposition.

6. Each Party shall have the right to mix blend stock with disposition plutonium provided that for nuclear reactor fuel containing disposition plutonium the mass of blend stock shall:

   a) be kept to a minimum, taking into account the protection of classified information, safety and economic considerations, and obligations of this Agreement; and

   b) in no case exceed twelve (12) percent of the mass of disposition plutonium with which it is mixed.

   The resulting mixture of disposition plutonium and blend stock shall be weapon-grade plutonium.

7. Each Party's disposition plutonium shall count toward meeting the thirty-four (34) metric ton obligation set forth in paragraph 1 of this Article once the other Party confirms in accordance with agreed procedures that the spent plutonium fuel or immobilized forms meet the criteria specified in the Annex on Technical Specifications, which is an integral part of this Agreement. Blend stock shall not count toward meeting that thirty-four (34) metric ton obligation.

Article III

1. Disposition shall be by one or more of the following methods:

   a) irradiation of disposition plutonium as fuel in nuclear reactors;

   b) immobilization of disposition plutonium into immobilized forms; or

   c) any other methods that may be agreed by the Parties in writing.

2. The following are the nuclear reactors that may be used for irradiation of disposition plutonium under this Agreement: light water reactors in the United States of America and in the Russian Federation; the BOR-60 at Dimitrovgrad and the BN-600 at Zarechnyy in the Russian Federation; and any other nuclear reactors agreed by the Parties in writing.

Article IV

1. Each Party shall take all reasonable steps, including completion of necessary technical and other preparatory activities and feasibility studies, to complete construction and modification and to begin operation of disposition facilities necessary to dispose of no less than two (2) metric tons per year of its disposition plutonium in accordance with

Article III of this Agreement, if the assistance specified in the multilateral agreement referred to in paragraph 8 of Article IX of this Agreement for this disposition rate is being provided for achievement of milestones in the Russian Federation specified in the Annex on Schedules and Milestones, which is an integral part of this Agreement.

2. Each Party shall seek to begin operation of facilities referenced in paragraph 1 of this Article not later than December 31, 2007.

3. Pending conclusion of the multilateral agreement referred to in paragraph 8 of Article IX of this Agreement for the disposition rate specified in paragraph 1 of this Article, the Parties shall proceed with research, development, demonstrations, design and licensing activities under this Agreement, on the condition that assistance for such activities is being provided pursuant to paragraph 1 of Article IX of this Agreement.

4. Each Party shall notify the other Party whenever it reaches a milestone set forth in the Annex on Schedules and Milestones or, if not reached at the specified time, the reasons for that delay. If a Party does not reach a milestone at the specified time, it shall make every effort to minimize the delay. In these circumstances, the Parties shall establish in writing a revised mutually-agreed schedule of work for achieving the milestone.

5. Once facilities specified in paragraph 1 of this Article are constructed or modified and begin operations, each Party shall proceed to dispose of disposition plutonium to achieve a disposition rate of no less than two (2) metric tons per year at the earliest possible date.

6. If, prior to December 31, 2007, a Party begins to dispose of disposition plutonium, such plutonium may count toward meeting the thirty-four (34) metric ton obligation set forth in paragraph 1 of Article II of this Agreement if:

   a) the criteria specified in the Annex on Technical Specifications are met; and

   b) monitoring and inspection measures agreed in writing by the Parties are applied to such disposition activities.

Article V

1. Promptly upon entry into force of this Agreement, the Parties shall undertake to develop a detailed action plan, including efforts with other countries as appropriate, to at least double the disposition rate specified in paragraphs 1 and 5 of Article IV of this Agreement at the earliest practicable date. The Parties shall seek to complete this detailed action plan within one year after entry into force of this Agreement. The development of the action plan and the development of arrangements provided for in paragraph 7 of Article IX of this Agreement will, for the Government of the United States of America and the Government of the Russian Federation, proceed in the channels that have negotiated this Agreement.

2. In developing the action plan pursuant to paragraph 1 of this Article, consideration may be given to:

   a) expanding the capability of existing nuclear reactors to utilize mixed uranium-plutonium fuel or using such fuel in additional nuclear reactors, including nuclear reactors outside the Russian Federation, and using such fuel or other plutonium fuel in

advanced nuclear reactors within the Russian Federation, if they prove practical in light of available resources within the time frame of this Agreement;

b) consistent with the expansion of capabilities mentioned in subparagraph (a) of this paragraph, increasing the capacity of conversion or conversion/blending facilities, fuel fabrication facilities and/or immobilization facilities, or constructing additional facilities; and

c) any other approaches as the Parties may agree.

3. Each Party shall proceed at the earliest possible date to dispose of disposition plutonium at the disposition rate specified in the action plan referred to in paragraph 1 of this Article if the assistance specified in the provisions supplementing the multilateral agreement referred to in paragraph 8 of Article IX of this Agreement for this rate in the Russian Federation is being provided.

Article VI

1. Disposition plutonium and blend stock, once received at any disposition facility, shall not be:

a) used for the manufacture of nuclear weapons or any other nuclear explosive device, for research, development, design or testing related to such devices, or for any other military purpose; or

b) exported to a third country, including for disposition, except by agreement in writing of the Parties to this Agreement and subject to international safeguards and other applicable international agreements or arrangements, including INFCIRC/274/Rev. 1, The Convention on the Physical Protection of Nuclear Material.

2. Neither Party shall separate plutonium contained in spent plutonium fuel until such time as that Party has fulfilled the obligation set forth in paragraph 1 of Article II of this Agreement.

3. Neither Party shall separate disposition plutonium contained in immobilized forms.

4. Disposition facilities shall be utilized only in ways consistent with the terms and conditions of this Agreement.

5. Disposition plutonium and blend stock shall be the only plutonium received at or processed by disposition facilities that are conversion or conversion/blending facilities, or fuel fabrication facilities.

Article VII

1. Each Party shall have the right to conduct and the obligation to receive and facilitate monitoring and inspection activities in accordance with this Article and the Annex on Monitoring and Inspections, which is an integral part of this Agreement, in order to confirm that the terms and conditions of this Agreement with respect to disposition

plutonium, blend stock, spent plutonium fuel and immobilized forms, and disposition facilities are being met.

2. Disposition plutonium and blend stock shall become subject to monitoring and inspection under this Agreement, in accordance with the Annex on Monitoring and Inspections and procedures developed pursuant to that Annex, either (a) after receipt but before processing at a conversion or conversion/blending facility, or (b) upon receipt at a fuel fabrication or an immobilization facility, whichever (a) or (b) occurs first for any given disposition plutonium or blend stock.

3. Each Party shall begin consultations with the International Atomic Energy Agency (IAEA) at an early date and undertake all other necessary steps to conclude appropriate agreements with the IAEA to allow it to implement verification measures beginning not later in the disposition process than: (a) when disposition plutonium or disposition plutonium mixed with blend stock is placed into the post-processing storage location of a conversion or conversion/blending facility; or (b) when disposition plutonium is received at a fuel fabrication or an immobilization facility, whichever (a) or (b) occurs first for any given disposition plutonium.

4. If agreed in writing by the Parties, the exercise of each Party's right set forth in paragraph 1 of this Article may be suspended in whole or in part by the application of equivalent IAEA verification measures under the agreements referred to in paragraph 3 of this Article. The Parties shall, to the extent practicable, avoid duplication of effort of monitoring and inspection activities implemented under this Agreement and appropriate agreements with the IAEA.

Article VIII

1. Each Party shall be responsible within the territory of the United States of America and the Russian Federation, respectively, for:

   a) ensuring safety and ecological soundness of disposition plutonium activities under the terms of this Agreement; and

   b) effectively controlling and accounting for disposition plutonium, blend stock, spent plutonium fuel and immobilized forms, as well as providing effective physical protection of such material and facilities containing such material taking into account the recommendations published in the IAEA document INFCIRC/225/Rev. 4, The Physical Protection of Nuclear Material, or a subsequent revision accepted by the Parties.

Article IX

1. The Government of the United States of America shall make available up to two hundred (200) million United States dollars in assistance for the activities to be undertaken in the Russian Federation pursuant to this Agreement and such other amounts as may be agreed in writing by the Parties for these purposes in the future, subject to the availability of appropriated funds and the fulfillment of United States legal and administrative requirements. Assistance provided by the Government of the United States of America shall be for such activities as the research, design, development, licensing, construction

and/or modification of facilities (including modification of nuclear reactors), and technological processes, systems and associated infrastructure for such activities. This assistance will be in addition to any other assistance that may be provided by the Government of the United States of America under the Scientific and Technical Cooperation Agreement.

2. Assistance provided by the Government of the United States of America may include research and development, scientific and technical experimentation, design for facility construction or modification, general and specialized equipment, replacement and spare parts, installation services, licensing and certification costs, initial operations and testing, aspects of facility operations, and other assistance directly related to the management and disposition of plutonium in accordance with the provisions of this Agreement.

3. Equipment, supplies, materials, services, and other assistance provided or acquired by the Government of the United States of America, its contractors, subcontractors, and their personnel, for the implementation of this Agreement in the Russian Federation, are considered free technical assistance.

4. Assistance provided by the Government of the United States of America for activities to be undertaken in the Russian Federation pursuant to this Agreement shall be provided in accordance with the terms and conditions set forth in this Agreement, including the Annex on Assistance, which is an integral part of this Agreement.

5. The activities of each Party under this Agreement shall be subject to the availability of appropriated funds.

6. Activities to be undertaken in the Russian Federation pursuant to this Agreement may be supported by contributions by the Government of the Russian Federation and by assistance provided by the Government of the United States of America and, as may be specified in the multilateral agreement referred to in paragraph 8 of this Article, by other countries or groups of countries (including equipment, supplies, materials, services, and other assistance provided by them). Activities may also be supported from other sources, including non-government and private sector funds, under terms and conditions agreed in writing by the Parties.

7. The Parties shall seek to develop near-term and long-term international financial or other arrangements for the support of activities to be undertaken in the Russian Federation pursuant to this Agreement sufficient, in combination with contributions by the Government of the Russian Federation and assistance provided by the Government of the United States of America, to achieve and maintain:

   a) the two (2) metric ton per year disposition rate specified in paragraphs 1 and 5 of Article IV of this Agreement; and

   b) the disposition rate resulting from the action plan developed pursuant to paragraph 1 of Article V of this Agreement.

8. For the disposition rate referred to in paragraph 7(a) of this Article, the Parties shall cooperate with a view toward concluding within one (1) year after entry into force of this Agreement a multilateral agreement that documents the assistance arrangements necessary for that rate. For the disposition rate resulting from the action plan developed pursuant to paragraph 1 of Article V of this Agreement, the Parties shall cooperate with a view to

supplementing such multilateral agreement with provisions recording assistance arrangements necessary for that rate.

9. As part of the multilateral agreement referred to in paragraph 8 of this Article, the Parties shall seek to provide for:

   a) notifications, explanations and immediate consultations in the event that a recorded assistance commitment is not fulfilled; and

   b) those consultations to include consideration of resumption of assistance, measures to mitigate any consequences of such non-fulfillment, including costs associated with nuclear safety, physical protection and facility conservation, and other measures as deemed appropriate by the participants in the consultations.

10. If conclusion of the multilateral agreement referred to in paragraph 8 of this Article for assistance arrangements necessary for the disposition rate set forth in paragraph 7(a) of this Article is not completed within eighteen (18) months after entry into force of this Agreement for any reason, the Parties shall consult on whether to adjust the schedules for their respective programs, including any necessary adjustments to the milestones set forth in the Annex on Schedules and Milestones, and any other steps, or whether to terminate the Agreement in accordance with Article XIII of this Agreement.

11. Pending conclusion of the multilateral agreement referred to in paragraph 8 of this Article and conclusion of necessary arrangements with the Government of the Russian Federation for the disposition rate set forth in paragraph 7(a) of this Article, neither Party shall be obligated to construct, modify or operate facilities to dispose of disposition plutonium pursuant to this Agreement. Notwithstanding this, each Party shall proceed under this Agreement with activities in accordance with paragraph 3 of Article IV of this Agreement necessary for construction, modification or operation of disposition facilities.

12. If one or more parties to the multilateral agreement referred to in paragraph 8 of this Article decide to terminate implementation of their assistance commitments recorded in that agreement, and as a result the Government of the Russian Federation is unable to fulfill its obligations with respect to the achievement of a milestone set forth in the Annex on Schedules and Milestones or of the annual disposition rate specified in paragraphs 1 and 5 of Article IV or paragraph 3 of Article V of this Agreement, whichever is applicable, the Government of the Russian Federation shall have the right, consistent with the requirements of paragraphs 13 and 15 of this Article, to suspend those implementation activities under this Agreement that are affected by such termination.

13. If the Government of the Russian Federation intends to exercise its right pursuant to paragraph 12 of this Article, it shall notify the Government of the United States of America through diplomatic channels at least fourteen (14) days prior to any such suspension of implementation activities and identify what activities are to be suspended, and the Parties shall immediately start consultations. In the event implementation of the recorded assistance commitments referred to in paragraph 12 of this Article is not resumed within one hundred and eighty (180) days after the start of consultations, the Parties will consider whether to resume implementation of or to terminate the Agreement in accordance with Article XIII of this Agreement.

14. In the event the Government of the Russian Federation suspends any implementation activities pursuant to paragraph 12 of this Article, the Government of the United States of

America shall have the right to suspend proportionately its implementation activities under this Agreement.

15. During the consultations referred to in paragraph 13 of this Article, unless otherwise agreed by the Parties in writing, neither Party shall take any action that:

    a) could break the continuity in the other Party's knowledge of disposition plutonium or disposition facilities, that had become subject to monitoring and inspection under this Agreement, in a manner that would prevent that Party from confirming that such disposition plutonium or disposition facilities are not being used in ways inconsistent with the Agreement; or

    b) would be inconsistent with the terms and conditions for assistance that had been provided under this Agreement.

Article X

1. Under this Agreement, no United States classified information or Russian Federation state secret information shall be exchanged, except as may be agreed in writing by the Parties for purposes of exchanging information pursuant to this Agreement related to the quantities and locations of disposition plutonium and blend stock at disposition facilities.

2. The information transmitted under this Agreement or developed as a result of its implementation and considered by the United States of America as "sensitive" or by the Russian Federation as "konfidentsial'naya" must be clearly designated and marked as such.

3. "Konfidentsial'naya" or "sensitive" information shall be handled in accordance with the laws of the state of the Party receiving the information, and this information shall not be disclosed and shall not be transmitted to a third party not participating in the implementation of this Agreement without the written consent of the Party that had transmitted such information.

    a) According to the laws and regulations of the Russian Federation, such information shall be treated as "limited-distribution official information." Such information shall be protected in accordance with the laws and regulations of the Russian Federation.

    b) According to the laws and regulations of the United States of America, such information shall be treated as "foreign government information," provided in confidence. Such information shall be protected in accordance with the laws and regulations of the United States of America.

4. Information transmitted under this Agreement shall be used solely in conformance with this Agreement.

5. The Parties shall minimize the number of persons having access to information that is designated "konfidentsial'naya" or "sensitive" information in accordance with paragraph 2 of this Article.

6. The Parties shall ensure effective protection and allocation of rights to intellectual property, transferred or created under this Agreement, as set forth in this Agreement, including the Annex on Intellectual Property, which is an integral part of this Agreement.

Article XI

1. The Parties shall designate Executive Agents for implementation of this Agreement. The Executive Agent for the United States of America shall be the U.S. Department of Energy. The Executive Agent for the Russian Federation shall be the Ministry of the Russian Federation for Atomic Energy.

2. With the exception of the notification referred to in paragraph 1 of Article XIII of this Agreement, notifications between the Parties that are provided for by this Agreement shall be transmitted between the Executive Agents unless otherwise specified.

3. The Executive Agents may enter into implementing agreements and arrangements as necessary and appropriate to carry out the provisions of this Agreement. When appropriate, the Executive Agents may utilize other agencies or entities to assist in the implementation of this Agreement, such as government agencies, academies, universities, science and research centers, institutes and institutions, and private sector firms.

Article XII

1. The Parties shall establish a Joint Consultative Commission for this Agreement to:

   a) consider and resolve questions regarding the interpretation or application of this Agreement;

   b) consider additional measures as may be necessary to improve the viability and effectiveness of this Agreement; and

   c) consider and resolve such other matters as the Parties may agree are within the scope of this Agreement.

2. The Joint Consultative Commission shall meet within twenty-one (21) days of a request of either Party or its Executive Agent.

3. Each Party shall designate its Co-Chairman to the Joint Consultative Commission. Each Party shall notify the other Party of its designated Co-Chairman in writing within thirty (30) days after entry into force of this Agreement. Decisions of the Joint Consultative Commission shall be made on the basis of consensus.

Article XIII

1. This Agreement shall be applied provisionally from the date of signature and shall enter into force on the date of the last written notification that the Parties have fulfilled the national procedures required for its entry into force.

2. This Agreement may only be amended by written agreement of the Parties, except that the Annex on Schedules and Milestones may be updated as specified in Section II of that Annex.

3. Except as provided in paragraph 4 of this Article, this Agreement shall terminate on the date the Parties exchange notes confirming that thirty-four (34) metric tons of disposition plutonium have been disposed by each Party in accordance with this Agreement, unless terminated earlier by written agreement of the Parties.

4. If additional quantities of weapon-grade plutonium are brought under this Agreement pursuant to paragraph 5 of Article II of this Agreement, this Agreement shall terminate on the date the Parties exchange notes confirming that thirty-four (34) metric tons of disposition plutonium and all such additional quantities of weapon-grade plutonium have been disposed in accordance with this Agreement, unless terminated earlier by written agreement of the Parties.

5. Notwithstanding termination of this Agreement in accordance with paragraph 3 or 4 of this Article:

   a) neither Party shall use plutonium, once it is received at any disposition facility, for the manufacture of nuclear weapons or any other nuclear explosive device, for research, development, design or testing related to such devices, or for any other military purpose;

   b) neither Party shall export to a third country plutonium, once it is received at any disposition facility, except by agreement in writing of the Government of the United States of America and the Government of the Russian Federation and subject to international safeguards and other applicable international agreements or arrangements, including INFCIRC/274/Rev. 1, The Convention on the Physical Protection of Nuclear Material;

   c) neither Party shall (i) use any plutonium separated from spent plutonium fuel for the manufacture of nuclear weapons or any other nuclear explosive device, for research, development, design or testing related to such devices, or for any other military purpose, or (ii) export spent plutonium fuel, immobilized forms, or any plutonium separated from spent plutonium fuel to a third country, except by agreement in writing of the Government of the United States of America and the Government of the Russian Federation and subject to international safeguards and other applicable international agreements or arrangements, including INFCIRC/274/Rev. 1, The Convention on the Physical Protection of Nuclear Material;

   d) each Party shall continue to effectively control and account for spent plutonium fuel and immobilized forms, as well as to provide effective physical protection of such material taking into account the recommendations published in the IAEA document INFCIRC/225/Rev. 4, The Physical Protection of Nuclear Material, or subsequent revisions accepted by the Parties;

   e) the obligations set forth in paragraph 3 of Article VI of this Agreement, Article X of this Agreement, paragraphs 6 and 7 of this Article, paragraphs 5, 6, and 7 of the General Assistance Section of the Annex on Assistance, and the Liability Section of the Annex on Assistance shall remain in force unless otherwise agreed in writing by

the Government of the United States of America and the Government of the Russian Federation;

f) the Parties shall consult concerning implementation of existing contracts and projects between the Parties and settlement of any outstanding costs between the Parties; and

g) for any activities under this Agreement and any importation or exportation by the Government of the United States of America, its personnel, contractors and contractors' personnel of equipment, supplies, materials or services that had been required to implement this Agreement, no retroactive taxes shall be imposed in the Russian Federation.

6. At an appropriate early date, but in any event not fewer than five (5) years prior to termination of this Agreement, the Parties shall begin consultations to determine what international monitoring measures shall be applied, after termination, to spent plutonium fuel, immobilized forms, and disposition facilities that are conversion or conversion/blending facilities or fuel fabrication facilities, as well as to any reprocessing of spent plutonium fuel. In the event the Parties do not reach agreement on such monitoring measures prior to the termination of this Agreement, each Party shall:

   a) make such fuel and forms available for inspection by the other Party under established procedures, if the other Party has a question or concern regarding changes in their location or condition; and

   b) unless it can be demonstrated that such facilities have been decommissioned and can no longer be operated, make such facilities available for inspection by the other Party under established procedures, if the other Party has a question or concern regarding the use of such facilities.

7. No spent plutonium fuel shall be reprocessed by either Party after termination of this Agreement unless such reprocessing is subject to monitoring agreed by the Parties pursuant to paragraph 6 of this Article.

8. Nothing in this Agreement shall alter the rights and obligations of the Parties under the Scientific and Technical Cooperation Agreement.

DONE at _____ and _____, the ___ and ___ days of _____, 2000, in duplicate in the English and Russian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:	FOR THE GOVERNMENT OF THE RUSSIAN FEDERATION:

List of Annexes

Annex on Quantities, Forms, Locations, and Methods of Disposition
Annex on Technical Specifications
Annex on Schedules and Milestones
Annex on Monitoring and Inspections
Annex on Assistance
Annex on Intellectual Property

ANNEX
ON
QUANTITIES, FORMS, LOCATIONS, AND METHODS OF DISPOSITION

This Annex to the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Management and Disposition of Plutonium Designated as No Longer Required for Defense Purposes and Related Cooperation, hereinafter referred to as the Agreement, sets forth each Party's declaration of disposition plutonium.

Section I -- Quantities and Methods of Disposition

For the United States of America:

Quantity (metric tons)	Form	Method of Disposition
25.00	Pits and Clean Metal	Irradiation
0.57	Oxide	Irradiation
2.70	Impure Metal	Immobilization
5.73	Oxide	Immobilization

For the Russian Federation:

Quantity (metric tons)	Form	Method of Disposition
25.00	Pits and Clean Metal	Irradiation
9.00	Oxide	Irradiation

Section II -- Forms

1. Pits and Clean Metal: plutonium in or from weapon components or weapon parts, and plutonium metal prepared for fabrication into weapon parts.

2. Impure Metal: plutonium alloyed with one or more other elements in the form of a homogeneous metal, and unalloyed plutonium metal that is not clean metal.

3. Oxide: plutonium in the form of plutonium dioxide.

Section III -- Locations

The Government of the United States of America declares that:

1) all the "pits and clean metal" it declared in Section I of this Annex will be shipped to the Pit Disassembly and Conversion Facility in the United States of America directly from Zones 4 or 12 of the Pantex Plant in Texas, Technical Area 55 at the Los Alamos National Laboratory in New Mexico (LANL TA-55), the Plutonium Finishing Plant complex at 200 West Area the Hanford Site in Washington (Hanford PFP), the Plutonium Building at Lawrence Livermore National Laboratory in California (LLNL Plutonium Building), and the F and K areas at the Savannah River Site in South Carolina (Savannah River F and K Areas);

2) all the "oxide" it declared in Section I of this Annex to be irradiated in reactors as mixed uranium-plutonium fuel will be shipped to its fuel fabrication facility in the United States of America directly from LANL TA-55, LLNL Plutonium Building, and Savannah River F and K Areas;

3) all the "impure metal" it declared in Section I of this Annex will be shipped directly to its immobilization facility in the United States of America from LANL TA-55, Savannah River F and K Areas, Hanford PFP, and LLNL Plutonium Building; and

4) all the "oxide" it declared in Section I of this Annex to be immobilized will be shipped directly to its immobilization facility in the United States of America from LANL TA-55, LLNL Plutonium Building, Savannah River F and K Areas, and Hanford PFP.

The Government of the Russian Federation declares that:

1) all the "pits and clean metal" it declared in Section I of this Annex will be shipped to the conversion/blending facility in the Russian Federation under the Agreement directly from the Fissile Material Storage Facility at Mayak being constructed under the Agreement between the Department of Defense of the United States of America and the Ministry of the Russian Federation for Atomic Energy Concerning the Provision of Material, Services, and Training Relating to the Construction of a Safe, Secure and Ecologically Sound Storage Facility for Fissile Material Derived from the Destruction of Nuclear Weapons of September 2, 1993; and

2) all the "oxide" it declared in Section I of this Annex will be shipped directly to the conversion/blending facility in the Russian Federation from the places where such oxide was stored pursuant to the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning Cooperation Regarding Plutonium Production Reactors, of September 23, 1997.

ANNEX
ON
TECHNICAL SPECIFICATIONS

This Annex to the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Management and Disposition of Plutonium Designated as No Longer Required for Defense Purposes and Related Cooperation, hereinafter referred to as the Agreement, sets forth the criteria for determining that disposition plutonium is disposed.

Section I -- Light Water Reactors

Disposition plutonium irradiated under the Agreement in light water reactors shall be considered disposed when the resulting spent plutonium fuel meets the following criteria:

1. Each spent plutonium fuel assembly contains a unique identifier that demonstrates it to be a fuel assembly produced with disposition plutonium;

2. Each spent plutonium fuel assembly is irradiated to a fuel burn-up level of no less than 20,000 megawatt days thermal per metric ton of heavy metal; and

3. The radiation level from each spent plutonium fuel assembly is such that it will become no less than 1 sievert per hour one meter from the accessible surface at the centerline of the assembly 30 years after irradiation has been completed.

Section II -- Immobilization

Disposition plutonium in immobilized forms shall be considered disposed when the system meets the following criteria:

1. Each can containing disposition plutonium immobilized in a glass or ceramic form designated to be inserted into a canister is marked with a unique identifier that allows for confirming the presence of the can as it is inserted into the canister;

2. Each canister containing cans of disposition plutonium is marked with a unique identifier that allows it to be identified during and after the immobilization process;

3. Each canister does not contain more than 30 kilograms of disposition plutonium; and

4. The radiation level from each canister is such that it will become no less than 1 sievert per hour one meter from the accessible surface at the centerline of the canister 30 years after the canister has been filled with high-level radioactive waste.

Section III -- BN-600 Reactor

Disposition plutonium irradiated under the Agreement in the BN-600 reactor shall be considered disposed when the resulting spent plutonium fuel meets the following criteria:

1. Each spent plutonium fuel assembly contains a unique identifier that demonstrates it to be a fuel assembly produced with disposition plutonium;

2. Each spent plutonium fuel assembly is irradiated to an average fuel burn-up level of no less than nine (9) percent of heavy atoms, unless the Parties agree in writing for safety reasons to a lower average level; and

3. The radiation level from each spent plutonium fuel assembly is such that it will become no less than 1 sievert per hour one meter from the accessible surface at the centerline of the assembly 30 years after irradiation has been completed.

ANNEX
ON
SCHEDULES AND MILESTONES

This Annex to the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Management and Disposition of Plutonium Designated as No Longer Required for Defense Purposes and Related Cooperation, hereinafter referred to as the Agreement, sets forth schedules and milestones for each Party.

Section I -- Schedules and Milestones

For the program of the United States of America:

Date	Milestone
January 2002	Completion of the design of the Pit Disassembly and Conversion Facility
March 2002	Completion of the design of the mixed uranium oxide-plutonium oxide (MOX) Fuel Fabrication Facility
March 2002	Start of excavation for the Pit Disassembly and Conversion Facility
July 2003	Start of excavation for the Immobilization Facility
October 2003	Start of excavation for the MOX Fuel Fabrication Facility
June 2004	Completion of the design of the Immobilization Facility
March 2005	Completion of construction of the Pit Disassembly and Conversion Facility
March 2006	Start of industrial-scale operations of the Pit Disassembly and Conversion Facility
April 2006	Completion of construction of the MOX Fuel Fabrication Facility
December 2006	Completion of construction of the Immobilization Facility
March 2007	Start of operations of the MOX Fuel Fabrication Facility
September 2007	Start of MOX Reactor operations/Irradiation of first batch of MOX in Reactor
March 2008	Start of full-scale production-operations of Immobilization Facility

For the program of the Russian Federation:

Date	Milestone
January 2002	Completion of modification of the State-Scientific-Center Experimental-Research-Complex Research Institute of Atomic Reactors (OIK GNTs RIAR) for fabrication of VIPAC fuel for BN-600 (hybrid core)

October 2002	Completion of the test-fuel line for fabrication of initial VVER-1000 lead-test MOX assemblies (3 MOX LTAs)
January 2003	Completion of modification of the PAKET facility for fabrication of BN-600 pellet fuel (hybrid core)
January 2003	Completion of the Demonstration Conversion Facility (for weapon-grade plutonium to oxide)
July 2003	Start construction of industrial-scale Conversion Facility
July 2003	Start construction of industrial-scale MOX fuel Fabrication Facility
April 2004	Begin transition of BN-600 to a MOX hybrid core
April 2004	Fabrication of initial VVER-1000 MOX lead-test assemblies
August 2004	Completion of the design of industrial-scale Conversion Facility
October 2004	Completion of the design of industrial-scale MOX Fuel Fabrication Facility
July 2006	Completion of construction of industrial-scale Conversion Facility
July 2006	Start of operation of industrial-scale Conversion Facility
December 2007	Completion of construction of industrial-scale MOX Fuel Fabrication Facility
December 2007	Start of operation of industrial-scale MOX Fuel Fabrication Facility
October 2007	Decision on BN-600 life-extension
2008	Fabrication of an industrial batch of VVER-1000 MOX-fuel
2009	Beginning of operations of storage facility for BN-600 spent plutonium fuel

Section II -- Notification of Updates

1. Each Party shall update as necessary the information it has provided in Section I of this Annex in accordance with the following:

   a) the updating Party's Executive Agent shall notify the Executive Agent of the other Party in writing with explanation of the reason for such an update; and

   b) the updating Party's Executive Agent shall provide such notification in writing not later than 90 days after the associated change occurs.

Section III -- Completion Criteria

The Executive Agents will develop an agreed set of completion criteria for the milestones set forth in this Annex by not later than six (6) months after the signature of the Agreement.

ANNEX
ON
MONITORING AND INSPECTIONS

This Annex sets forth principles and provisions to govern the development of procedures for, and the implementation of, monitoring and inspection activities pursuant to Article VII of the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Management and Disposition of Plutonium Designated as No Longer Required for Defense Purposes and Related Cooperation, hereinafter referred to as the Agreement.

Section I -- Definitions

For purposes of the Agreement, the following definitions shall apply:

1. "Monitoring" means a set of measures and activities, including inspections, use of special equipment, and review of documents (records and reports), that together provide data to the monitoring Party on disposition plutonium, blend stock, spent plutonium fuel, immobilized forms, or disposition facilities.

2. "Inspection" means a monitoring activity conducted by the monitoring Party on-site at a facility in order to obtain data and make observations on disposition plutonium, blend stock, spent plutonium fuel, immobilized forms, or disposition facilities.

Section II -- General Principles

1. *Scope*: Monitoring and inspection activities shall be conducted in accordance with the Agreement, this Annex, and procedures to be agreed by the Parties pursuant to Section V of this Annex.

2. *Purpose*: In accordance with paragraph 1 of Article VII of the Agreement, monitoring and inspection activities shall be designed and implemented to ensure that the monitoring Party has the ability independently to confirm that the terms and conditions of the Agreement with respect to disposition plutonium, blend stock, spent plutonium fuel, immobilized forms, and disposition facilities are being met, specifically: paragraphs 1, 6 and 7 of Article II; paragraph 2 of Article III; Article VI; and paragraph 2 of Article VII of the Agreement.

3. *Systems of Control and Accounting*: The Parties shall implement national systems of control and accounting for nuclear materials to account for and keep records of disposition plutonium, blend stock, spent plutonium fuel, and immobilized forms. Operators of disposition facilities shall use this national system of control and accounting in order to prepare agreed data to be included in their reports. Such reports shall be provided to the monitoring Party according to procedures to be developed pursuant to Sections III and V of this Annex.

4. *Inspections*: The number, intensity, duration and timing of inspections, and the intensity of other monitoring activities, shall be kept to the minimum consistent with the effective

implementation of agreed monitoring activities pursuant to the Agreement and this Annex. Procedures for monitoring shall be designed so as to minimize, to the extent possible, interference with the operation of facilities, and to avoid affecting their nuclear safety or the safety of inspectors. Specific inspection procedures shall be developed pursuant to Section V of this Annex.

5. Inspectors shall be permitted access to disposition facilities sufficient for them to be able to attain the agreed goals of the inspection, using agreed procedures designed to avoid disclosure of United States classified information and Russian Federation state secret information in accordance with the provisions of paragraph 1 of Article X of the Agreement. The monitored Party shall take every necessary measure, in accordance with agreed procedures, to ensure the access of the monitoring Party's inspectors to those facilities, and shall undertake to provide all necessary conditions for successful inspection implementation.

6. Each Party shall treat with due respect the inspectors of the other Party present on its territory in connection with monitoring activities under the Agreement and shall take all appropriate measures, consistent with its national law, to prevent any attack on the person, freedom and dignity of such personnel.

7. Each Party, in accordance with agreed procedures, shall facilitate the procurement of required services and use of equipment, the entry and exit of personnel of the other Party into and out of its territory, and the import into and export from its territory of materials and equipment for carrying out monitoring and inspection activities in accordance with the Agreement including this Annex.

8. *Relationship to Other Monitoring Regimes*: For disposition plutonium that comes from a facility subject to another U.S.-Russian bilateral monitoring regime, or an international monitoring regime that has been agreed by the Parties, monitoring under the Agreement shall take into account that other monitoring regime, and shall not conflict with the transfer requirements of that other monitoring regime. In developing monitoring and inspection procedures in accordance with the Agreement, the Parties should avoid duplicating the efforts of such other monitoring regimes.

9. *Pu-240/Pu-239 Ratio*: The monitoring Party shall be allowed to confirm, using an agreed method, that the Pu-240/Pu-239 ratio of the disposition plutonium is no greater than 0.10. Confirmation of this ratio shall occur after receipt but before processing of disposition plutonium at a conversion facility, or upon receipt at a fuel fabrication facility or immobilization facility, whichever occurs first for any given disposition plutonium.

10. *Protection of Information*: Measurements on plutonium, if required to protect United States classified information or Russian Federation state secret information from disclosure, shall be made by techniques using information barriers. Such measurements shall not be required, however, for any disposition plutonium in containers for which such measurements:

    a) had already been made under another agreement accepted by the monitoring Party; and

    b) are confirmed by the monitoring Party to remain valid.

11. *Blend Stock Measurements*: The monitoring Party shall have the right to confirm that the mass of any blend stock does not exceed what is allowed pursuant to paragraphs 6 and 7 of Article II of the Agreement, upon receipt of such blend stock at a disposition facility, using agreed procedures developed pursuant to Section V of this Annex. Information concerning the composition of the blend stock shall not be provided to, or obtained by, the monitoring Party.

12. *Procedures at Specific Facilities*: Each Party shall provide and update as appropriate a list of its disposition facilities as their specific locations are determined. The monitoring Party shall have the right to conduct monitoring activities, including inspections and other measures, at disposition facilities. These measures shall provide continuity of knowledge of disposition plutonium and blend stock necessary for the monitoring Party to determine whether the objectives of the Agreement are being met.

13. Pursuant to paragraph 1 of Article X of the Agreement, inspectors shall not have access to any parameters that are United States classified information or Russian Federation state secret information because of their relationship to nuclear weapon design or manufacturing.

14. *Conversion Product*: The blended or unblended plutonium-oxide at the post-processing storage location within a conversion or conversion/blending facility (hereinafter referred to as the "conversion product") shall have no characteristics that are considered classified by the United States of America or state secret by the Russian Federation.

15. The monitoring Party shall have the right to confirm the mass and relevant isotopic composition of the conversion product (even if it contains United States "sensitive" information or Russian Federation "konfidentsial'naya" information), using agreed measurement procedures, without the application of "yes/no" techniques or information barriers.

16. *Design Information*: For the purpose of developing agreed measures pursuant to Section V of this Annex, the Parties shall identify an agreed set of design information to be provided to the monitoring Party for disposition facilities. Once the set of design information is identified, that information shall be provided to the monitoring Party at an agreed time. The monitoring Party shall be allowed access to disposition facilities before operations and thereafter, as necessary to confirm design information, using agreed procedures.

17. *Unexpected Circumstances*: Procedures developed pursuant to Section V of this Annex shall include provisions, including monitoring activities as appropriate, concerning unexpected technical circumstances.

Section III -- Records and Reports

1. Based on its national system of control and accounting, each Party shall periodically submit to the other Party reports that were agreed upon in accordance with Section V of this Annex. Such reports shall at a minimum contain information on the quantity of plutonium at each disposition facility, as well as the quantities of plutonium received or shipped from that facility (including the plutonium in spent plutonium fuel, but not that in other spent fuel).

2. The Parties shall develop agreed methods of recording for disposition plutonium, blend stock, spent plutonium fuel, and immobilized forms, and the formats of reports to the monitoring Party on disposition activities.

Section IV -- General Approach to Confirm Disposition of Disposition Plutonium

1. The monitoring Party shall have the right, using agreed procedures, to confirm that spent plutonium fuel assemblies and immobilized forms meet the criteria specified in the Annex on Technical Specifications.

2. Monitoring rights on spent plutonium fuel and immobilized forms shall include procedures, designed with a view to minimize costs, that will allow confirmation that such fuel and forms remain in their declared locations.

Section V -- Development of Specific Procedures and Administrative Arrangements

1. The Parties shall seek to complete by December 2002 an agreed set of detailed measures, procedures, and administrative arrangements, consistent with the terms of the Agreement (including this Annex), for monitoring and inspections of disposition plutonium, blend stock, spent plutonium fuel, immobilized forms, and disposition facilities. This set of detailed measures, procedures, and administrative arrangements shall be completed in writing prior to beginning construction of industrial-scale disposition facilities in the Russian Federation. The development of these measures, procedures, and administrative arrangements shall be coordinated at an early stage with, and be made compatible with, the design effort for the disposition facilities.

2. Procedures agreed pursuant to paragraph 1 of this Section shall specify, among other things, the rights and responsibilities of the facility personnel and inspectors, types of and content of reports, how measurements are to be done, and how independent conclusions are to be arrived at, including, among other things, appropriate procedures for applying containment and surveillance measures, and technical goals for monitoring, with a view to minimizing costs. These agreed procedures shall include, but not be limited to, measures to:

   a) provide assurance that at all times prior to completion of the disposition of the thirty-four (34) metric tons of disposition plutonium under the Agreement: (i) conversion product resulting from the blending of those thirty-four (34) metric tons with the allowed additional quantity of blend stock under the Agreement is the only plutonium that enters disposition facilities that are fuel fabrication facilities in the United States of America and the Russian Federation; and (ii) all plutonium (including the plutonium in spent plutonium fuel, but not that in other spent fuel) entering or leaving disposition facilities does so in accordance with the Agreement, appropriately taking into account waste, as necessary;

   b) confirm the fulfillment of the criteria specified in the Annex on Technical Specifications; and

   c) allow each Party to distinguish spent plutonium fuel from other spent fuel that may be located in the same storage area.

ANNEX
ON
ASSISTANCE

This Annex to the Agreement between the Government of the United States of America and the Government of the Russian Federation Concerning the Management and Disposition of Plutonium Designated as No Longer Required for Defense Purposes and Related Cooperation, hereinafter referred to as the Agreement, sets forth the agreed procedures and provisions to govern assistance provided by the Government of the United States of America for the activities to be undertaken in the Russian Federation as provided for in Article IX of the Agreement.

Section I -- General Assistance Provisions

1. The steps and estimated funding levels for assistance provided by the Government of the United States of America are set forth in the attachment to this Annex. The estimated allocation in that attachment may be revised and updated as the Executive Agents may agree in writing.

2. All equipment, supplies, materials or other assistance provided under the Agreement shall be delivered to mutually-agreed points of entry, unless otherwise agreed in writing. The provider of such equipment, supplies, materials or other assistance shall notify the recipient of the planned date of arrival and point of entry in advance. The recipient shall take possession of all such equipment, supplies, materials and other assistance upon its arrival at the point of entry, unless otherwise agreed in writing.

3. Title to all equipment and facilities provided under the Agreement to, and accepted by, the Government of the Russian Federation, or entities under its jurisdiction or control, shall pass to the Government of the Russian Federation or entities under its jurisdiction or control unless agreed otherwise in writing by the Parties.

4. Equipment, supplies, materials, services, technology or other assistance provided under the Agreement shall be utilized only in accordance with the terms and purposes of the Agreement.

5. Equipment, supplies, materials, services, technology, or other assistance provided under the Agreement shall not be used for the production of nuclear weapons or any other nuclear explosive device, for research or development, design or testing related to such devices, or for any other military purpose.

6. Equipment, supplies, materials, services, technology, or other assistance provided under the Agreement, or developed with assistance provided under the Agreement, shall not be exported, re-exported, or transferred from the jurisdiction of the recipient without the written consent of the Parties.

7. Prior to the export to a third party of any equipment, supplies, materials, services, technology, or other assistance provided under the Agreement, the Parties by mutual agreement in writing shall define the conditions in accordance with which such items will be exported, re-exported, or transferred from the jurisdiction of the third party.

8. The Government of the Russian Federation notes that the Government of the United States of America intends to seek accreditation, as administrative and technical staff of the Embassy of the United States of America in Moscow, of United States Government personnel present in the territory of the Russian Federation on a regular basis for activities related to assistance provided under the Agreement, and hereby confirms that the Government of the Russian Federation will accredit such personnel. Upon entry into force of the Agreement, the Parties will consult on the overall number of United States Government assistance-related personnel envisioned for activities under the Agreement. Each Party shall treat with due respect the unaccredited personnel of the other Party present on its territory in connection with activities related to assistance under the Agreement and shall take all appropriate measures, consistent with its national law, to prevent any attack on the person, freedom and dignity of such personnel.

9. Each Party shall facilitate the movement of persons and the transfer of currencies as necessary for implementation of the Agreement.

10. Facilities in the Russian Federation that have been constructed or modified using assistance provided under the Agreement shall be used only for mutually-agreed purposes.

11. A Party, its Executive Agent, or other agents authorized to act on behalf of a Party or its Executive Agent, that awards contracts for the acquisition of articles and services, including construction, research and development, licensing, design, or other activities to implement the Agreement, shall select suppliers or contractors in accordance with the laws and regulations of that Party.

12. The Executive Agents shall establish and maintain a register of equipment, supplies, materials, services, technology and other assistance subject to the provisions of this Annex.

Section II – Liability

1. The Parties shall continue negotiations on liability provisions to apply to all claims that may arise from activities undertaken pursuant to the Agreement and shall seek to conclude an agreement in writing containing such provisions at the earliest practicable date, and, in any event, not later than entry into force of the multilateral agreement referred to in paragraph 8 of Article IX of the Agreement.

2. Until entry into force of the agreement containing liability provisions referred to in paragraph 1 of this Section:

   a) assistance activities under the Agreement shall be limited to appropriate pre-construction design work;

   b) neither Party shall be obligated under the Agreement to construct, modify, or operate disposition facilities, including reactors; and

   c) the Russian Federation shall not utilize in any way the pre-construction design work conducted under the Agreement including for the construction, modification, or operation of disposition facilities (including reactors).

Section III -- Taxation of Assistance

1. The Government of the United States of America, its personnel, contractors and contractors' personnel shall not be liable to pay any tax or similar charge by the Russian Federation or any of its instrumentalities on activities undertaken in accordance with this Agreement. The provisions of this paragraph shall not exempt any contractor's personnel who are nationals of or permanently resident in the Russian Federation, and are present in the Russian Federation in connection with such activities, from income, social security, or any other taxes imposed by the Russian Federation, or by any instrumentalities thereof, regarding income received in connection with the implementation of programs of assistance provided by the Government of the United States of America.

2. The Government of the United States of America, its personnel, contractors, and contractors' personnel may import into, and export out of, the Russian Federation any equipment, supplies, materials or services required to implement this Agreement. Such importation and exportation shall be exempt from any license fees, restrictions, customs duties, taxes or any other charges by the Russian Federation or any of its instrumentalities, but not from the procedures called for by the export control system.

Section IV -- Audits and Examinations

1. Upon request, representatives of the Government of the United States of America shall have the right to examine the use of any equipment, supplies, materials, training or other services provided under the Agreement, if possible at sites of their location or use, and shall have the right to inspect any and all related records or documentation during the period of the Agreement and for three (3) years thereafter.

2. Appropriate arrangements in support of the conducting of audits and examinations shall be developed by the Executive Agents. The right to conduct the audits and examinations set forth in paragraph 1 of this Section shall not be contingent upon the development of these arrangements.

Section V -- Equipment Certification

1. The Executive Agent or designated agent of the Government of the Russian Federation shall examine all equipment, supplies, and other materials in each shipment received pursuant to this Agreement and within ten (10) days of receipt shall provide written confirmation to the Executive Agent of the Government of the United States of America, its designated agent or contractor of acceptance or rejection based on whether the equipment, supplies, or other materials conform to specifications mutually coordinated in advance for said equipment, supplies or other materials. Upon request, one or more representatives of the Government of the United States of America or its designated agent may be present at the examination of the equipment, supplies, materials, or other assistance being delivered. Basic certification procedures shall be agreed in writing by the Executive Agents.

Attachment to Annex on Assistance

Provision of assistance in accordance with paragraph 1 of Article IX of the Agreement will begin in calendar year 2000 and will continue thereafter to support disposition of disposition plutonium of the Russian Federation, in accordance with the steps and quantities below. Development of the disposition process will continue to be funded under the Scientific and Technological Cooperation Agreement.

Purpose	Funding Level	Time Frame
Design of Industrial-scale Facilities	Up to U.S.$70 Million	2000-2003
Construction of Industrial-scale Facilities	Up to U.S.$130 Million plus future appropriations including non-U.S. sources	2003-2007
Operation of Industrial-scale Facilities	Future appropriations including non-U.S. sources	2007 and onward

ANNEX
ON
INTELLECTUAL PROPERTY

This Annex to the Agreement between the Government of the United States of America and the Government of the Russian Federation Concerning the Management and Disposition of Plutonium Designated as No Longer Required for Defense Purposes and Related Cooperation, hereinafter referred to as the Agreement, sets forth the procedures governing the protection and allocation of rights to intellectual property transferred or created under the Agreement.

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Agreement. The Parties agree to notify one another in a timely fashion of all intellectual property created and results of scientific and technical work obtained under this Agreement and to seek protection for such intellectual property in a timely fashion. Rights to such intellectual property shall be allocated in keeping with the provisions of this Annex.

Section I -- Definitions

1. The term "intellectual property" shall have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, which was signed in Stockholm on July 14, 1967.

2. The term "participants" shall mean natural persons or legal entities participating in joint activities within the framework of implementation of the Agreement.

3. The term "background intellectual property" shall mean intellectual property created outside the Agreement and belonging to the participants, the use of which is necessary for the implementation of activities under the Agreement.

Section II -- Scope

1. This Annex is applicable to all cooperative activities undertaken pursuant to the Agreement, except as otherwise agreed by the Parties or their Executive Agents.

2. This Annex addresses the allocation of intellectual property rights and takes into consideration the interests of the Parties.

3. Each Party shall ensure that the other Party can obtain the rights to intellectual property allocated in accordance with this Annex. If necessary, each Party shall obtain those rights from its own participants through contracts, license agreements or other legal documents. This Annex does not in any other way alter or prejudice the allocation of rights between a Party and its participants.

4. Disputes concerning intellectual property arising under the Agreement shall be resolved through discussions between the participants, or, if necessary, the Parties or their Executive Agents, which may for these purposes utilize the Joint Consultative Commission. Upon mutual agreement of the Parties or participants, a dispute shall be

submitted to an arbitral tribunal for binding arbitration in accordance with the Agreement and the applicable rules of international law. Unless the Parties or their designees agree otherwise in writing, the arbitration rules of UNCITRAL shall govern.

Section III -- Allocation of Rights

1. Each Party, its Executive Agent or other authorized representative designated by a Party shall be entitled to a nonexclusive, irrevocable, royalty-free license for non-commercial purposes in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, papers, reports, and books directly resulting from cooperation under this Agreement. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly expresses the desire to remain anonymous.

2. Rights to all forms of intellectual property created under the Agreement, other than those rights set forth in paragraph 1 of this Section, shall be allocated as follows:

   a) For intellectual property created during joint research, for example, if the Parties or their participants have agreed in advance on the scope of work, each Party, its Executive Agent or other authorized representative designated by a Party shall be entitled to all rights and interests in its own country. Rights and interests in third countries shall be determined in implementing agreements, taking into consideration the following factors, as appropriate:

      1) the nature of the cooperation,

      2) the contributions of each of the Parties and its participants to the work to be performed, including background intellectual property,

      3) the intentions, capabilities, and obligations of each of the Parties and its participants to provide legal protection of intellectual property created, and

      4) the manner in which the Parties and their participants will provide for the commercialization of intellectual property created, including, where appropriate and possible, joint participation in commercialization.

      In addition, each person named as an inventor or author shall be entitled to receive rewards in accordance with the policies of each Party's participating institution.

   b) Visiting researchers not involved in joint research, for example, scientists visiting primarily in furtherance of their education, shall receive intellectual property rights under arrangements with their host institutions. In addition, each such visiting researcher shall be entitled to receive rewards in accordance with the policies of the host institution.

   c) In the event either Party believes that a particular joint research project under the Agreement will lead, or has led, to the creation or furnishing of intellectual property of a type that is not protected by the applicable laws of the United States of America or the Russian Federation, the Parties shall immediately hold consultations to determine the allocation of the rights to the said intellectual property. Such joint activities shall be suspended during the consultations unless otherwise agreed to by the Parties. If no

agreement can be reached within a three-month period from the date of the request for consultations, the Parties shall cease the cooperation under the project in question.

3. Rights to background intellectual property may be transferred by the Parties and their participants through license agreements between individuals and/or legal entities. Such license agreements may reflect the following:

   a) definitions,

   b) identification of intellectual property being licensed and the scope of the license,

   c) royalty rates and other compensation,

   d) requirements for protection of business-confidential information,

   e) requirements to comply with the relevant intellectual property and export control laws of the United States of America and the Russian Federation,

   f) procedures for record keeping and reporting,

   g) procedures for dispute resolution and termination of each agreement, and

   h) other appropriate terms and conditions.

Section IV -- Business-Confidential Information

In the event that information identified in a timely fashion as business-confidential is furnished or created under the Agreement, each Party and its participants shall protect such information in accordance with applicable laws, regulations, and administrative practices. Information may be identified as "business-confidential" if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, if the information is not generally known or publicly available from other sources, and if the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential. Neither Party nor its participants shall publish or transfer to third parties business-confidential information furnished or created under the Agreement without the prior written consent of the other Party or its participants.

JOINT STATEMENT
CONCERNING NON-SEPARATION OF WEAPON-GRADE PLUTONIUM
IN CONNECTION WITH
THE AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE RUSSIAN FEDERATION
CONCERNING THE MANAGEMENT AND DISPOSITION OF PLUTONIUM
DESIGNATED AS NO LONGER REQUIRED FOR DEFENSE PURPOSES AND
RELATED COOPERATION

The Government of the United States of America and the Government of the Russian Federation, hereinafter referred to as the Parties, have already taken significant steps toward ending the production of fissile material for use in nuclear weapons. These steps include the signing of the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning Cooperation Regarding Plutonium Production Reactors (PPRA) of September 23, 1997, concerning the cessation of the generation of weapon-grade plutonium at United States and Russian plutonium production reactors.

One of the key objectives of the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Management and Disposition of Plutonium Designated as No Longer Required for Defense Purposes and Related Cooperation, hereinafter referred to as the Agreement, is to reduce irreversibly stockpiles of weapon-grade plutonium from each side's nuclear weapons programs. Both Parties recognize that this disposition will require significant resources. Both Parties also recognize that it would make little sense for either side to commit significant financial and other resources to dispose of such plutonium if either side were planning to continue to separate and accumulate new weapon-grade plutonium.

In this light:

- The Parties reaffirm their intentions not to produce any new weapon-grade plutonium, including by reprocessing of spent fuel or by any other technological process, for nuclear weapons or other nuclear explosive devices or for any military purposes.

- The Government of the United States of America also reaffirms its intention not to separate any new weapon-grade plutonium by any means for any other purposes.

- The Government of the Russian Federation also reaffirms its intention not to build up any stockpile of newly separated weapon-grade plutonium for civil purposes and not to produce any newly separated weapon-grade plutonium unless and until justified for civil power production purposes. In the event that spent fuel containing weapon-grade plutonium were to be reprocessed in the future, the Government of the Russian Federation will take all necessary measures to ensure that any such reprocessing and its products are as proliferation-resistant as possible. The Government of the Russian Federation also confirms its intention to ensure that separation of any plutonium through reprocessing or other technological processes will be keyed to the demand in the civil sector, so as to ensure no unnecessary build up of any civil plutonium stockpiles.

- The Parties note that, during the duration of the Agreement, the BN-600 blanket will be removed in stages to achieve its maximum reduction as quickly as possible, consistent with safety considerations, and that all fuel used in that reactor will not be reprocessed during the duration of the Agreement. After termination of the Agreement, any reprocessing of BN-600 spent fuel containing weapon-grade plutonium resulting from irradiation during the duration of the Agreement will be subject to international monitoring under agreed procedures.

- The Parties note their intention to intensify consultations concerning possible cooperation outside the Agreement on immobilization technologies, including immobilization of waste products containing weapon-grade plutonium, to develop alternatives to separation of such plutonium in the Russian Federation.

- The Parties affirm that, if any of these intentions should change in the future, the Parties will consult in advance of such change, for the purpose of reaching new understandings and agreeing on appropriate measures.

The Parties understand the term "reprocessing" to have its internationally agreed definition, that is, the "separation of irradiated nuclear material and fission products," and note that cleaning up existing separated weapon-grade plutonium to remove Am-241, minor alloying elements, or other impurities, does not constitute reprocessing or new production.

The Parties also note that this Joint Statement of intentions does not:

(1) affect the ongoing separation activities related to weapon-grade plutonium for small-scale research and development or clean-up efforts, or efforts to address urgent environmental or safety hazards, involving small numbers of kilograms; or

(2) alter or affect ongoing separation activities related to weapon-grade plutonium generated by the three plutonium production reactors still operating at Seversk and Zheleznogorsk prior to their being converted under the PPRA, provided that all such plutonium is subject to monitoring in accordance with that agreement.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

_____

_____, 2000

FOR THE GOVERNMENT OF THE RUSSIAN FEDERATION:

_____

_____, 2000

State of South Carolina

Office of the Governor

JIM HODGES
GOVERNOR

POST OFFICE BOX 11829
COLUMBIA 29211

2002-007154 Apr 11 A 7:58

April 10, 2002

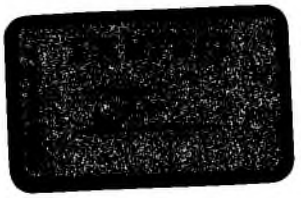
Secretary Spencer Abraham
U.S. Dept. of Energy
1000 Independence Ave.
Washington, D.C. 20585

Dear Secretary Abraham:

I was encouraged when we met in Washington on February 26, 2002, that we were very close to a solution to the plutonium disposition problem we face. In that meeting, you promised to set forth in a legally enforceable document mutually agreeable schedules for the funding and construction of the MOX program and for the shipment to and storage of plutonium at the Savannah River Site. You assured me that DOE would be bound by law to retake possession of the plutonium if the Federal Government failed to live up to its commitment.

After our discussion, our staffs explored several approaches to fulfilling the terms of the agreement that you set forth. Unfortunately, your staff has directly or indirectly resisted suggested methods of legal enforceability, leaving us both in a difficult situation. On March 8, 2002 Ambassador Brooks of your staff wrote, "The bottom line here is that our draft is in effect a political agreement whose enforcement mechanism is political."

I must insist upon an ironclad agreement that is fully enforceable in a court of law. The stakes are too high to accept mere political assurances. I will not risk the health and welfare of South Carolina by allowing the enforceability of any agreement to be bound only by federal departmental policy that changes according to political considerations beyond our control.



When I left Washington I was hopeful of a workable solution because of your personal assurances. As staff negotiations have failed so far to produce a legally enforceable agreement, my hopes have diminished but not vanished.

I am convinced that your renewed personal involvement in the negotiation process is essential to South Carolina and DOE reaching a satisfactory and legally enforceable agreement. Approaches exist that have not been seriously explored that could result in a viable and enforceable agreement. Before DOE takes any unilateral action, we must investigate all possible avenues of accord.

I urge you to hold off on any immediate shipments of plutonium to South Carolina and to become personally engaged once again in our negotiations. With your authority and commitment, I still believe that we can achieve a legally binding agreement with enforceable milestones. I continue to stand ready to sign such an agreement.

Sincerely,

Jim Hodges

Jim Hodges

CERTIFICATE OF SERVICE

I certify that true and correct copies of the foregoing Motion for Summary Judgment on Counterclaim and supporting Memorandum for Summary Judgment on Counterclaim were served **via HAND DELIVERY**, on the 24 day of May, 2002, to the following:

Stephen Bates, General Counsel
Office of the Governor, State of SC
1100 Gervais Street
Columbia, SC 29211

I certify that true and correct copies of the foregoing Motion for Summary Judgment on Counterclaim and supporting Memorandum for Summary Judgment on Counterclaim were sent **via first class mail, postage prepaid**, on the 24th day of May, 2002, to the following:

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cc: Lucy Knowles, Esq.
Marc Johnston, Esq.
John Cruden, Esq.
Lee Otis, Esq.
Steven Ferguson, Esq.
Scott Simpson, Esq.
Greg Page, Esq.