

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

STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:16-00391-JMC
	)	
UNITED STATES;	)	
	)	
UNITED STATES DEPARTMENT OF	)	
ENERGY;	)	
	)	
DR. ERNEST MONIZ, in his official capacity as	)	
Secretary of Energy;	)	
	)	
NATIONAL NUCLEAR SECURITY	)	
ADMINISTRATION; and	)	
	)	
LT. GENERAL FRANK G. KLOTZ,	)	
in his official capacity as Administrator of the	)	
National Nuclear Security Administration and	)	
Undersecretary for Nuclear Security;	)	
	)	
Defendants.	)	
	)	

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**PLAINTIFF SOUTH CAROLINA’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiff State of South Carolina (South Carolina or State) respectfully moves before this Court for an Order granting summary judgment in its favor on claims presented in the Complaint (ECF No. 1).

As more fully explained in the memorandum supporting this Motion, there is no genuine dispute of any material fact, and the State is entitled to judgment granting the relief sought in the Complaint as a matter of law. The Defendants owe non-discretionary, mandatory duties to the State under 50 U.S.C.A. § 2566 to (1) remove defense plutonium or defense plutonium materials from the State, and (2) to provide economic and impact assistance payments to the State, which

the Defendants undisputedly have not performed. This Court therefore has the jurisdiction and authority pursuant to 28 U.S.C.A. § 1361 and 5 U.S.C.A. 706 to declare the Defendants' failure to perform these duties unlawful and compel the performance of these duties.

Accordingly, the State respectfully prays that this Court grant the State's Motion for Summary Judgment and issue an order:

- A. declaring that the Defendants have failed to comply with their mandatory, non-discretionary duties pursuant to 50 U.S.C.A. § 2566;
- B. declaring and ordering the Defendants to immediately remove from the State one metric ton of defense plutonium or defense plutonium materials pursuant to their obligations under to Section 2566(c);
- C. declaring and ordering the Defendants to remove an additional one metric ton of defense plutonium from the State by December 31, 2016 pursuant to their obligations under Section 2566(d);
- D. declaring and ordering the Defendants not to move or transfer any plutonium to South Carolina, regardless of origin, until this Court enters an order finding the Secretary and DOE are in full compliance with Section 2566;
- E. declaring and ordering the Defendants to pay to the State of South Carolina, by and through the Attorney General of the State of South Carolina, economic and impact assistance in the amount of \$1 million per day, beginning on January 1, 2016, for each day the Secretary and DOE fail to remove one metric ton of defense plutonium or defense plutonium materials from the State during the first 100 days of the year; and

F. retaining continuing jurisdiction over this matter regarding the Defendants' ongoing and continuous compliance with Section 2566.

Respectfully submitted,

Alan Wilson, Fed. Bar No. 10457  
Robert D. Cook, Fed. Bar No. 285  
T. Parkin Hunter, Fed. Bar No. 2018  
**ATTORNEY GENERAL FOR  
THE STATE OF SOUTH CAROLINA**  
Post Office Box 11549  
Columbia, South Carolina 29211-1549  
awilson@scag.gov  
bcook@scag.gov  
phunter@scag.gov  
(803) 734-3970

s/Randolph R. Lowell  
Randolph R. Lowell, Fed. Bar No. 9203  
Benjamin P. Mustian, Fed. Bar No. 9615  
John W. Roberts, Fed. Bar No. 11640  
**WILLOUGHBY & HOEFER, P.A.**  
Post Office Box 8416  
Columbia, South Carolina 29202-8416  
rlowell@willoughbyhoefer.com  
bmustian@willoughbyhoefer.com  
jroberts@willoughbyhoefer.com  
(803) 252-3300

William H. Davidson, II, Fed. Bar No. 425  
Kenneth P. Woodington, Fed. Bar No. 4741  
**DAVIDSON & LINDEMANN, P.A.**  
1611 Devonshire Drive, 2<sup>nd</sup> Floor  
Post Office Box 8568  
Columbia, South Carolina 29202-8568  
wdavidson@dml-law.com  
kwoodington@dml-law.com  
(803) 806-8222

*Attorneys for the State of South Carolina*

April 6, 2016  
Columbia, South Carolina