

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

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

**COMPLAINT OF INTERVENOR-PLAINTIFF
SOUTHERN CAROLINA REGIONAL DEVELOPMENT ALLIANCE**

I. INTRODUCTION

1. This Complaint by Intervenor-Plaintiff Southern Carolina Regional Development Alliance (“Southern Carolina Alliance”) challenges Defendants’ agency action and / or inaction to indefinitely suspend construction of the mixed oxide fuel fabrication project (MOX Facility) at the Savannah River Site (“SRS”) in contravention of 50 U.S.C. §§ 2566 and legislative

directives expressed through the Congressional appropriations, which statutory obligations are intended to prevent a buildup of defense plutonium and defense plutonium materials at SRS, provide the economic benefit of the MOX Facility to the community, and ensure economic and impact assistance is provided if the MOX Facility is not constructed within statutory deadlines.

II. JURISDICTION AND VENUE

2. This Court has federal question jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, as well as original jurisdiction over the subject matter of this action pursuant to The Mandamus and Venue Act, 28 U.S.C. § 1361.

3. This Court is further authorized to grant declaratory and injunctive relief, and other proper relief, pursuant to 28 U.S.C. §§ 2201-2202.

4. The Administrative Procedures Act, 5 U.S.C. § 701 *et. seq.*, requires a reviewing court to hold unlawful and set aside agency action found to be not in accordance with the law, in excess of the agency's statutory authority, or not in observance of procedures required by law. 5 U.S.C. § 706(2)(A),(C), and (D).

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

III. PARTIES AND STANDING

6. Intervenor-Plaintiff Southern Carolina Alliance is a non-profit entity which is the Lead Organization for the South Carolina Promise Zone, an area designated by the federal government on April 28, 2015 as a high-poverty community where the federal government will partner with and invest in communities to create jobs, leverage private investment, increase economic activity, expand educational opportunities, and reduce violent crime. The South Carolina Promise Zone is home to 90,000 residents, approximately 28.12% of whom live in poverty, and whose Median Income is approximately 45% less than the United States' Median

Household Income. The South Carolina Promise Zone includes Barnwell County and Allendale County, in which the majority of land comprising SRS is located. Southern Carolina Alliance is also one of six economic development alliances in the State of South Carolina. Southern Carolina Alliance represents the most rural economic development region of the state, including Barnwell County and Allendale County. Southern Carolina Alliance owns and operates several multi-county industrial parks encompassing over 2,000 acres of industrial property for development and including areas in proximity to SRS, including ownership of the 600-acre South Carolina Advanced Technology Park directly adjacent to SRS. Individuals and landowners within the immediate vicinity of SRS are intended to be protected by the suspension provisions of 50 U.S.C. §§ 2566 that prevent the buildup of defense plutonium at the SRS. Southern Carolina Alliance as adjacent landowner and federally designated Lead Organization of the South Carolina Promise Zone, therefore has concrete interests that are currently impaired by the Defendants' actions discussed below. *See Exhibit 1* hereto, Affidavit of Danny Black, (March 16, 2016); *Exhibit 2* hereto, South Carolina Promise Zone Fact Sheet (April 2015).

7. Plaintiff State of South Carolina is a sovereign state of the United States and home to SRS.

8. Defendant United States is the federal government of the United States of America, its departments, agencies, and entities.

9. Defendant United States Department of Energy ("DOE") is the federal agency directed and authorized by Congress to carry out the federal statutory mandates related to the disposition of defense plutonium at SRS. Defendant Dr. Ernest Moniz is the United States Secretary of Energy, responsible for administering DOE operations, including administration of

federal statutes related to the disposition of defense plutonium at SRS, and is named in his official capacity.

10. Defendant National Nuclear Security Administration (“NNSA”) is a semi-autonomous agency within DOE. NNSA is responsible for the nation’s nonproliferation program, and administers and manages the design, building, and operation the MOX Facility. Defendant Lieutenant General Frank G. Klotz, USAF (Ret) is the NNSA Administrator, and is named in his official capacity.

IV. FACTUAL BACKGROUND

11. Southern Carolina Alliance reiterates and restates the factual background set forth in the Complaint of Plaintiff South Carolina in this action, to the extent not inconsistent herewith. Southern Carolina Alliance briefly sets forth the factual background below.

12. In September 2000, the United States and Russia signed a Plutonium Management and Disposition Agreement (“PMDA”), which commits each country to dispose of 34 metric tons of surplus weapon-grade plutonium. To dispose of the surplus weapons-grade plutonium, both the United States and Russia will fabricate it into mixed oxide (MOX) fuel for use in existing nuclear reactors. After the MOX fuel has been irradiated, the plutonium can no longer be used for nuclear weapons.

13. Congress enacted 50 U.S.C. § 2566 to ensure the construction and operation of the MOX Facility at SRS, and established numerous requirements for reporting by Defendants to Congress in furtherance of this mandate.

14. Pursuant to 50 U.S.C. § 2566(h), the “MOX production objective” is defined as:
production at the MOX facility of mixed-oxide fuel from defense plutonium [i.e. weapons-usable plutonium] and defense plutonium materials at an average rate equivalent to not less than one metric ton of mixed-oxide fuel

per year. The average rate shall be determined by measuring production at the MOX facility from the date the facility is declared operational to the Nuclear Regulatory Commission through the date of assessment.

15. Defendants have transferred or caused to be transferred defense plutonium and / or defense plutonium materials to SRS for processing into MOX fuel.

16. Pursuant to 50 U.S.C. § 2566(a)(3), Defendants must submit a report to Congress by February 15th of each year (beginning in 2014) addressing whether the MOX production objective has been met.

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

18. Because the Defendants have failed to meet the MOX production objective and cannot meet the MOX production objective in 2016, 50 U.S.C. § 2566(b)(5) requires that Defendants “shall suspend further transfers of defense plutonium and defense plutonium materials to be processed by the MOX facility until the Secretary certifies that the MOX production objective can be met.”

19. Furthermore, pursuant to 50 U.S.C. § 2566(c), “[i]f the MOX production objective is not achieved as of January 1, 2014, the Secretary shall ...remove from the State of South Carolina, for storage or disposal elsewhere ... not later than January 1, 2016, not less than 1 metric ton of defense plutonium or defense plutonium materials.”

20. Pursuant to 50 U.S.C. § 2566(d):

If the MOX production objective is not achieved as of January 1, 2016, the Secretary shall, subject to the availability of appropriations, pay to the State of South Carolina each year beginning on or after that date through 2021 for economic and impact assistance an amount equal to \$1,000,000 per day, not to exceed \$100,000,000 per year, until the later of-- (A) the date on which

the MOX production objective is achieved in such year; or (B) the date on which the Secretary has removed from the State of South Carolina in such year at least 1 metric ton of defense plutonium or defense plutonium materials.

21. Contrary to the requirements of 50 U.S.C. § 2566, Defendants have not paid economic and impact assistance payments, or removed at least 1 metric ton of defense plutonium or defense plutonium materials, although the MOX production has not and will not be met in 2016.

22. Southern Carolina Alliance is an intended and appropriate beneficiary of economic and impact assistance related to the non-realization of the economic benefits of the MOX Facility and non-removal of defense plutonium and defense plutonium materials from SRS.

23. Congress has and continues to appropriate funding to Defendants to continue construction of the MOX Facility.

24. During or before February 2016, DOE announced the MOX facility will be terminated, despite the clear Congressional mandate and available funding for the MOX facility.

25. In support of its enactment of 50 U.S.C. § 2566, Congress specifically found that

The United States and the State of South Carolina have a compelling interest in the safe, proper, and efficient operation of the plutonium disposition facilities at the Savannah River Site. The MOX facility will also be economically beneficial to the State of South Carolina, and that economic benefit will not be fully realized unless the MOX facility is built.

National Defense Authorization Act for Fiscal Year 2003, Subtitle E, § 3181(5)

26. In support of its enactment of 50 U.S.C. § 2566, Congress further found that:

The State of South Carolina desires to ensure that all plutonium transferred to the State of South Carolina is stored safely; that the full benefits of the

MOX facility are realized as soon as possible; and, specifically, that all defense plutonium or defense plutonium materials transferred to the Savannah River Site either be processed or be removed expeditiously.

National Defense Authorization Act for Fiscal Year 2003, Subtitle E, § 3181(6).

27. 50 U.S.C. § 2566 was intended to prevent the possibility of a buildup of defense plutonium and defense plutonium materials at the SRS and to ensure the economic benefits related to the construction and operation of the MOX facility are realized.

28. As the owner and operator of properties in close proximity and adjacent to SRS, and as the federally-designated Lead Organization for the South Carolina Promise Zone which includes the majority of SRS, Southern Carolina Alliance has sustained and continues to sustain particular and concrete injuries caused by the Defendants' actions and failures to act in accordance with Congressional commands intended to prevent such injuries.

V. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION: 50 U.S.C. § 2566

29. Southern Carolina Alliance incorporates by reference all preceding allegations as if fully set forth herein verbatim.

30. Defendants did not meet the MOX production objective as defined in 50 U.S.C. § 2566 by January 1, 2016, and cannot meet the MOX production objective in 2016.

31. Contrary to the requirements of 50 U.S.C. § 2566, Defendants have not paid economic and impact assistance payments, or removed at least 1 metric ton of defense plutonium or defense plutonium materials, although the MOX production has not been met and will not be met in 2016.

32. The actions and inactions of Defendants set forth above constitute unlawful and unreasonable actions which contravene Congressional mandate, violate the Constitutional

doctrine of Separation of Powers, exceed the Defendants' statutory authority, violate statutory deadlines, and constitute unreasonably withheld agency action for which no other remedy exists.

33. As the owner and operator of properties in close proximity and adjacent to SRS, and as the federally-designated Lead Organization for the South Carolina Promise Zone (which includes the majority of SRS), Southern Carolina Alliance has sustained and continues to sustain particular and concrete injuries caused by the Defendants' actions and failures to act in accordance with 50 U.S.C. § 2566, which actions and failures to act have resulted in the indefinite storage of defense plutonium at SRS while preventing the realization of the economic benefits of the MOX Facility to an area of federally-recognized need.

34. For the foregoing reasons, Southern Carolina Alliance seeks an order compelling defendants to make the impact assistance payments mandated by 50 U.S.C. § 2566 until either (a) Defendants have achieved the MOX production objective or (b) Defendants remove one metric ton of defense plutonium or defense plutonium materials from SRS. South Carolina Alliance further seeks an order of this Court making an equitable determination that Southern Carolina Alliance is an intended and appropriate beneficiary of economic and impact assistance related to the non-realization of the economic benefits of the MOX Facility and non-removal of defense plutonium and defense plutonium materials from SRS and awarding it an equitable portion of any economic and impact assistance payments;

VI. PRAYER FOR RELIEF

35. For the foregoing reasons, Southern Carolina Alliance prays that this Court issue an Order:

- a. Determining that Defendants have violated the requirements of 50 U.S.C. § 2566;

- b. Compelling Defendants to make the impact assistance payments mandated by 50 U.S.C. § 2566 until either (a) Defendants have achieved the MOX production objective or (b) Defendants remove one metric ton of defense plutonium or defense plutonium materials from SRS;
- c. Making an equitable determination that Southern Carolina Alliance is an intended and appropriate beneficiary of economic and impact assistance related to the non-realization of the economic benefits of the MOX Facility and non-removal of defense plutonium and defense plutonium materials from SRS and awarding it an equitable portion of any economic and impact assistance payments;
- d. Retaining jurisdiction of this matter to ensure Defendants' compliance with 50 U.S.C. § 2566;
- e. Awarding Southern Carolina Alliance reasonable costs, litigation expenses, and attorney fees associated with this litigation as provided by the Equal Access to Justice Act, 28 U.S.C. § 2412 or other applicable law; and,
- f. Granting any other relief as the Court may deem just and proper.

[signature page follows]

HAYNSWORTH SINKLER BOYD, P.A.

By: _____

Robert Y. Knowlton (DSC No. 2380)

S. Ross Shealy (DSC No. 10733)

1201 Main Street, Suite 2200 (29201)

Post Office Box 11889

Columbia, South Carolina 29211

(803) 799-3080

*Attorneys for Southern Carolina Regional
Development Alliance*

_____, 2016

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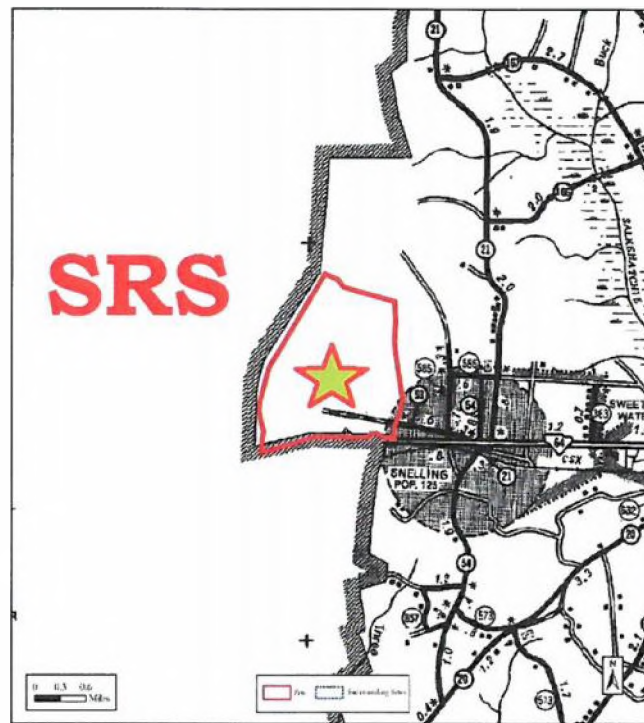
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)	
UNITED STATES DEPARTMENT OF)	
ENERGY;)	
)	
DR. ERNEST MONIZ, in his official capacity)	
as Secretary of Energy;)	
)	
NATIONAL NUCLEAR SECURITY)	
ADMINISTRATION; and)	
)	
LT. GENERAL FRANK G. KLOTZ,)	
in his official capacity as Administrator of the)	
National Nuclear Security Administration and		
Undersecretary for Nuclear Security;		
Defendants.		

AFFIDAVIT OF DANNY BLACK

Comes now the affiant, Danny Black, who hereby states:

1. I am an adult over the age of 18 years and I am competent to make this Affidavit.
2. I am the President and CEO of SouthernCarolina Regional Development Alliance ("SouthernCarolina Alliance"), a non-profit entity.

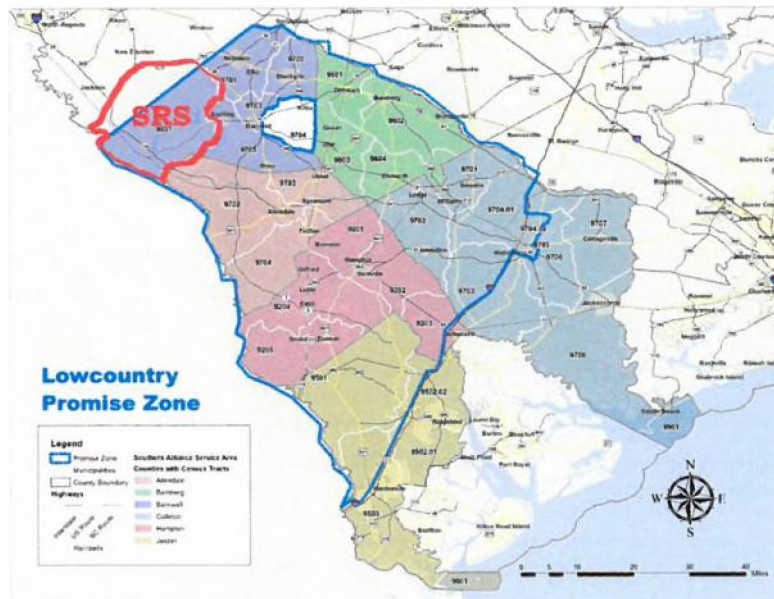
3. Southern Carolina Alliance owns and operates several multi-county industrial parks encompassing over 2,000 acres of industrial property for development and including areas in proximity to the Savannah River Site (“SRS”), including ownership of the 1600-acre South Carolina Advanced Technology Park directly adjacent to SRS. The border of the South Carolina Advanced Technology Park and SRS is depicted below, with the South Carolina Advanced Technology Park indicated by a star:



4. Southern Carolina Regional Development Alliance (“Southern Carolina Alliance”) is also the Lead Organization for the South Carolina Promise Zone, an area designated by the federal government on April 28, 2015 as a high-poverty community where the federal government will partner with and invest in communities to create jobs, leverage private investment, increase economic activity, expand educational opportunities, and reduce violent crime.

5. The South Carolina Promise Zone includes Barnwell County and Allendale County, in which the majority of land comprising SRS is located.

6. A map showing the South Carolina Promise Zone (referred to therein as the “Lowcountry Promise Zone” and outlined in blue) is shown below, with SRS outlined in red:



FURTHER AFFIANT SAYETH NOT.

By: Danny Black
 Danny Black

Sworn to and subscribed before me
 this 16 day of March 2016.

Rebecca S. Bly
 Notary Public for South Carolina

My commission expires: 6/27/2024



South Carolina Promise Zone

Second Round

Lead Organization:

Southern Carolina
Regional Development
Alliance

Population:

90,004

Poverty Rate:

28.12%

Unemployment rate:

14.7%

Key Partners:

South Carolina Housing
Authority; South
Carolina Department
of Commerce; Electric
Cooperatives of
South Carolina; South
Carolina Department
of Agriculture; South
Carolina Victim's
Assistance Network;
GrowFoods Carolina;
Palmetto Project;
Lowcountry Council of
Governments

Contact:

Danny Black

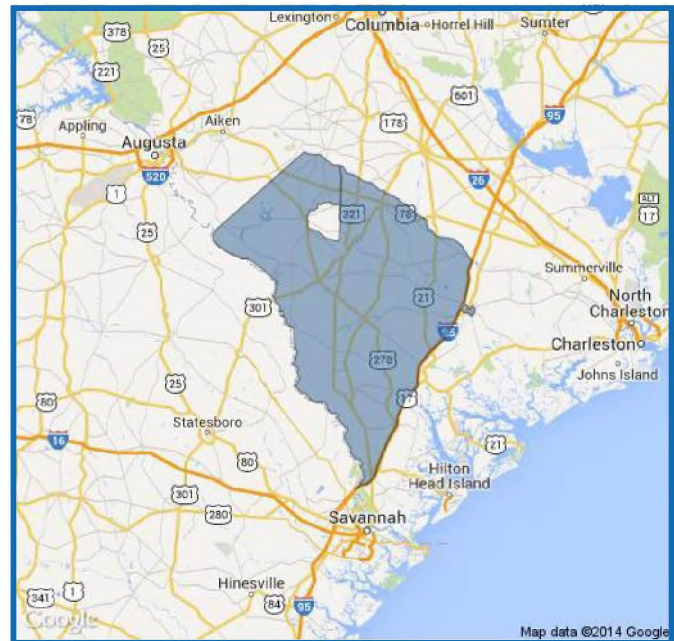
dblack@southerncarolina.org

About the South Carolina Promise Zone

The South Carolina Promise Zone is located in the Low Country, and encompasses portions of Allendale, Bamberg, Barnwell, Colleton, Hampton and Jasper counties. The area is home to 90,000 residents, 28.12% of whom live in poverty. The 2012 Median Income for the Promise Zone counties is \$32,705, or 25% less than South Carolina's Median Household Income and 45% less than the United States' Median Household Income. Educational attainment and employment rates are low among residents and quality affordable housing is scarce.

Promise Zone Leadership and Goals

The Southern Carolina Regional Development Alliance (SCA) will lead the Promise Zone in partnership with more than 28 organizations within the Promise Zone and across the State. With 20 years of experience in the region, the SCA is well positioned to promote collaboration



among partners to revitalize the community and improve the quality of life for residents. The Promise Zone designation will catalyze an effort across the South Carolina Low Country to meet identified goals essential to increasing the quality of life and accelerating efforts to create comprehensive community revitalization in the region:

- Create Jobs Improve Educational Outcomes
- Increase Economic Activity Leverage Private Capital
- Expand Affordable Housing Stock
- Improve Public Safety

EXHIBIT 2

"We believe that our County can benefit from the provisions of the Promise Zone and would welcome an opportunity to work with the Alliance to reduce poverty and its associated consequences."

James L. Pinkney, Sr., County Chairman, Allendale County