

U.S. Department of Energy
Office of
Policy, Planning and Budget (EM-10)

107683



RECEIVED

APR 06 2001

Referred to

Stellwerck

Answered

Facsimile Cover

Fax: (202) 586-0463

Verify: (202) 586-8754

To:

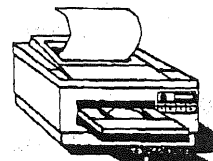
Gov. Hodges

From:

Spencer Abraham

Phone #

Phone #



Fax #

803-734-1598

Comments:

Number of Pages (including cover):

3



The Secretary of Energy
Washington, DC 20585

April 4, 2001

The Honorable Jim Hodges
Governor of South Carolina
Columbia, SC 29211

Dear Governor Hodges:

In my confirmation hearing before the Senate Committee on Energy and Natural Resources, I pledged to work with the Congress, the U.S. Environmental Protection Agency (EPA), and the States to find ways to improve the progress on the Department of Energy's (DOE) program to clean up the environmental legacy of more than 50 years of nuclear weapons production. I take that pledge very seriously and want to work with you on ways to more effectively address these cleanup challenges. I also plan to engage the governors of the states in which our sites are located.

As you know, this Administration is firmly committed to safely cleaning up the DOE complex and complying with applicable environmental laws and regulations. As we embark on this new Administration, we need to take the opportunity to examine whether we are conducting our cleanup in the best and most practical way possible.

Over ten years ago, the Department of Energy committed to clean up the environmental legacy of the Cold War and worked with the states and EPA to establish a compliance framework for all our major sites. Since that framework was established, we have seen a number of changes:

- technology has advanced significantly so that we can now solve cleanup problems that had no solutions ten years ago;
- we have characterized the waste at our sites, improved our knowledge of the risks, and better understand the scope of the problems we are addressing as well as the potential solutions; and
- we have tried some potential solutions - some have worked, some have not.

We have learned from all these experiences. It is clear that we need to continue to push to find more efficient and better ways of doing business at our sites.



2

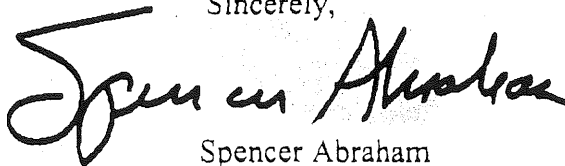
I have directed Dr. Carolyn Huntoon, Acting Assistant Secretary for Environmental Management, to lead an effort in the Department to look for additional ways to strengthen our project management, ensure that work is governed by sound science, and implement contracting strategies that drive cleanup work to be completed safely, on-schedule, and within budget.

The Department can and will work on all of these matters. However, if we are to be successful, we will need your help, as well as help from the States and the communities around our sites. I, therefore, request that you designate a representative who will work with us to examine ways to improve the compliance framework that currently governs much of our work with EPA regions across the country, and promote safe, cost-effective, on-the-ground results.

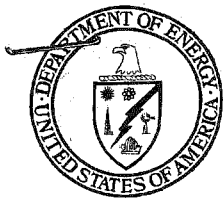
In pursuing these objectives, we would like to examine innovative or non-conventional approaches, including using or testing new technologies. In addition, we may find that modifying the framework and work priorities to reflect new and more effective ways of doing business. Some areas that we could jointly examine range from broad issues, such as agreeing on the end state for site cleanups and the best approaches to achieve that end state, to more specific issues such as more effective ways to manage the disposition of transuranic waste.

My goal is to develop a stronger partnership with EPA and the States that will allow us to pursue the most efficient cleanups possible at our sites. I look forward to working with you. Please feel free to contact me, or Dr. Huntoon, at (202) 586-7709 to discuss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Spencer Abraham". The signature is fluid and cursive, with a large initial "S" and a long, sweeping underline.

Spencer Abraham



The Secretary of Energy
Washington, DC 20585

April 4, 2001

5
RECEIVED

APR 09 2001

Referred to *Stallwood*

ANSWERED *NRN*

107683 Duplicate Not Entered

The Honorable Jim Hodges
Governor of South Carolina
Columbia, SC 29211

Dear Governor Hodges:

In my confirmation hearing before the Senate Committee on Energy and Natural Resources, I pledged to work with the Congress, the U.S. Environmental Protection Agency (EPA), and the States to find ways to improve the progress on the Department of Energy's (DOE) program to clean up the environmental legacy of more than 50 years of nuclear weapons production. I take that pledge very seriously and want to work with you on ways to more effectively address these cleanup challenges. I also plan to engage the governors of the states in which our sites are located.

As you know, this Administration is firmly committed to safely cleaning up the DOE complex and complying with applicable environmental laws and regulations. As we embark on this new Administration, we need to take the opportunity to examine whether we are conducting our cleanup in the best and most practical way possible.

Over ten years ago, the Department of Energy committed to clean up the environmental legacy of the Cold War and worked with the states and EPA to establish a compliance framework for all our major sites. Since that framework was established, we have seen a number of changes:

- technology has advanced significantly so that we can now solve cleanup problems that had no solutions ten years ago;
- we have characterized the waste at our sites, improved our knowledge of the risks, and better understand the scope of the problems we are addressing as well as the potential solutions; and
- we have tried some potential solutions - some have worked, some have not.

We have learned from all these experiences. It is clear that we need to continue to push to find more efficient and better ways of doing business at our sites.



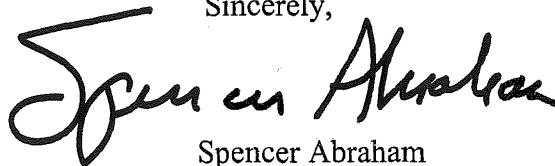
I have directed Dr. Carolyn Huntoon, Acting Assistant Secretary for Environmental Management, to lead an effort in the Department to look for additional ways to strengthen our project management, ensure that work is governed by sound science, and implement contracting strategies that drive cleanup work to be completed safely, on-schedule, and within budget.

The Department can and will work on all of these matters. However, if we are to be successful, we will need your help, as well as help from the States and the communities around our sites. I, therefore, request that you designate a representative who will work with us to examine ways to improve the compliance framework that currently governs much of our work with EPA regions across the country, and promote safe, cost-effective, on-the-ground results.

In pursuing these objectives, we would like to examine innovative or non-conventional approaches, including using or testing new technologies. In addition, we may find that modifying the framework and work priorities to reflect new and more effective ways of doing business. Some areas that we could jointly examine range from broad issues, such as agreeing on the end state for site cleanups and the best approaches to achieve that end state, to more specific issues such as more effective ways to manage the disposition of transuranic waste.

My goal is to develop a stronger partnership with EPA and the States that will allow us to pursue the most efficient cleanups possible at our sites. I look forward to working with you. Please feel free to contact me, or Dr. Huntoon, at (202) 586-7709 to discuss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Spencer Abraham". The signature is fluid and cursive, with a large initial "S".

Spencer Abraham



State of South Carolina

Office of the Governor

JAMES H. HODGES
GOVERNOR

POST OFFICE BOX 11829
COLUMBIA 29211

April 6, 2001

The Honorable Spencer Abraham
U.S. Department of Energy
1000 Independence Avenue
Washington, DC 20585

Dear Mr. Secretary:

I welcome you as our new Energy Secretary. I look forward to continuing the beneficial and productive relationship we have had with the Department of Energy on issues related to the Savannah River Site.

I am deeply concerned with published reports that the Department is contemplating cuts in its FY 2002 environmental management budget for the Savannah River Site -- cuts that will result in massive layoffs and deferred clean up schedules, and cuts that will impact the safety of our citizens. Such cuts are unnecessary and inappropriate. Given the infrastructure needs of the SRS and its current and future missions, which are contingent -- from our point of view -- on a process that ensures that all nuclear materials will be processed and transferred off-site -- this is not a time to reduce funding.

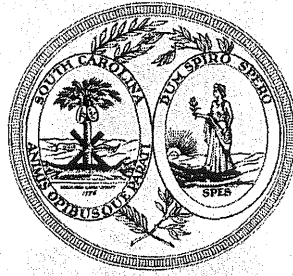
Moreover, I am very disappointed to read in published reports that the Department's proposed budget does not include funds to begin construction of the immobilization plant. Given the Department's apparent and sudden change of plans, which was done without any consultation with my office, I would like a briefing on the Department's intentions with respect to immobilization and how that affects the Department's plans for MOX. In our view, the Department's immediate construction of the immobilization plant is a necessary prerequisite for proceeding with MOX.

In short, I'm hopeful that the Department will keep its commitments to South Carolina. I look forward to working with you on these issues, and please call me at your earliest convenience.

Sincerely,

A handwritten signature in cursive script that reads "Jim Hodges".

Jim Hodges



State of South Carolina

Office of the Governor

Hank W. Stallworth
Director of Natural Resources Policy
P.O. Box 11829
Columbia, SC 29211

Fax Transmittal Sheet

To: Mr. Tom Hamburger

From: Hank Stallworth

Phone:

Phone: 803.734.0423

Fax: 202.293.4891

Fax: 803.734.6453

Number of pages: 22
(Including cover)

e-mail: hstallwo@gov.state.sc.us

Comments:

There has been no response to the December 27, 2001 letter to Dr. Rice or the December 3, 2001 letter to Secy Abraham.



6

State of South Carolina

Office of the Governor

JIM HODGES
GOVERNOR

Post Office Box 11829
COLUMBIA 29211

April 24, 2001

Honorable Spencer Abraham
Secretary of Energy
Forrestal Building
1000 Independence Avenue
Washington, DC 20585

Dear Secretary Abraham:

The revised fiscal year 2002 budget for the Department of Energy's Savannah River Site (SRS) has been received in my office. The FY 2002 budget is \$159 million less than the amount appropriated for the current fiscal year – a year when many important activities were deferred. I am extremely concerned about the unrealistically low level of Environmental Management (EM) funding proposed for the many priority waste management and environmental remediation programs needed at SRS.

My staff has reviewed the budget and has advised me that the proposed level of funding is not adequate for DOE to meet its responsibility to safely store, treat, remediate and dispose of wastes currently at SRS. Specific examples include:

- The removal and vitrification of high-level liquid wastes from underground storage tanks is significantly impacted. These wastes are the greatest threat at SRS to offsite population and the environment. The budget reduction in this area represents a serious violation of previous commitments made by DOE.
- DOE activities to develop and test a new capability to process radioactive salt wastes are not adequately funded even though it has been more than three years since the cancellation of the In-Tank Precipitation process. This capability is necessary to address the space problems at the Tank Farms.

Honorable Spencer Abraham
Secretary of Energy
Page 2
April 24, 2001

- Funds are no longer available for shipment of solid wastes (e.g. TRU wastes) to offsite permanent repositories.
- Many Federal Facility Agreement commitments for environmental restoration will not be met.
- Some commitments associated with Defense Nuclear Facility Safety Board recommendation 2000-1 will not be met.
- Funds for construction of plutonium storage facilities have been deleted.
- Programs to receive, store and treat offsite research reactor spent nuclear fuels have been significantly reduced.

Many other impacts will become apparent as the budget is further understood.

Approximately 18 months ago, DOE made the decision to locate all three parts of the plutonium disposition program at SRS. With the importation plan for the plutonium, there was also a clear exit strategy. Other commitments for environmental restoration involving high-level wastes as well as other on-site wastes were made. Because DOE cannot or will not meet its responsibilities associated with the large volumes of waste currently at SRS, I must consider all options available to me involving receipt of additional DOE wastes into South Carolina.

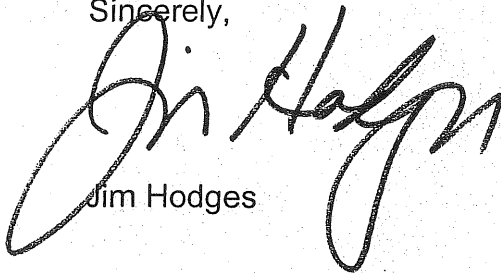
It is unfortunate that your department has unilaterally chosen this route without any discussion with this state. Despite the disproportionately large portion of the budget cuts assigned to SRS, neither you nor your office has attempted to contact me other than with a form letter. When compared to the total EM reduction of six percent, a cut of 14 percent for SRS is unreasonable and inequitable treatment for South Carolina. DOE's responsibility for environmental remediation and waste management are as great or greater at SRS than any other DOE site – yet your budget priorities are not consistent with this fact. I am told that SRS has 60 percent of the Department's inventory of stored high level wastes.

I take very seriously my responsibility to the citizens of South Carolina to assure that their health, safety, environment and quality of life are not jeopardized. Your budget cuts place South Carolina in jeopardy and I cannot accept that.

Honorable Spencer Abraham
Secretary of Energy
Page 3
April 24, 2001

I stand ready to work with you in resolving this situation. I hope we can work together to accomplish that, but I am prepared to seek our own solution if that is our only choice.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Hodges". The signature is stylized with a large, looping initial "J" and a trailing flourish.

Jim Hodges



7

State of South Carolina

Office of the Governor

JIM HODGES
GOVERNOR

Post Office Box 11829
COLUMBIA 29211

June 13, 2001

The Honorable Spencer Abraham
U.S. Department of Energy
1000 Independence Avenue
Washington, DC 20585

Dear Mr. Secretary:

I am following up on my letters to you of April 6, April 24 and May 17, for which I have yet to receive a response, expressing my deep concern about the Department of Energy's proposed budget for the Savannah River Site (SRS).

As I explained in detail in my April 24 letter, DOE's proposed level of funding, \$159 million less than last year, is woefully inadequate and would not permit DOE to meet its obligations to clean up the site. Furthermore, even if funding were to be maintained at last year's level, it still would not permit DOE to satisfy its obligations. That is why at one point last year consideration was given to increasing the budget request for SRS.

Recently, Congress, recognizing the federal government's obligation to keep its commitments to South Carolina and other states in dealing with the legacy of decades of nuclear weapons production, provided an amendment in the budget resolution that states the expectation that additional funds will be provided through supplemental appropriations. I strongly urge you to support our efforts in the Congress to make up the shortfall at SRS. Congress must be made aware that you recognize that your proposed budget was in fact woefully inadequate, and that supplemental appropriations are needed and have your full support. It is my expectation that you will work to ensure that DOE keeps its commitments to South Carolina.

June 13, 2001

Page 2 of 3

Finally, the budgetary issues do not just relate to the clean up. They also relate to DOE's plans for plutonium disposition, and I am deeply concerned about DOE's plans. Citing budgetary constraints, DOE has announced -- unilaterally without any consultation with my office or the state -- its plans not to proceed at this time with the immobilization plant, which is a vital part of our agreement to process plutonium and to assist the nation in its important nonproliferation efforts. In fact, funding for the immobilization plant has been suspended. This funding must be restored.

Because of the legacy of millions of gallons of high level and dangerous nuclear waste that the federal government's operations have generated at SRS over the years, South Carolina has made it abundantly clear that all waste and hazardous materials -- including plutonium from other sources -- sent to SRS must have a clear, assured, and timely exit strategy. When I met with then-Secretary Richardson in September 1999, I received assurances on DOE's commitment to a dual track approach involving the simultaneous construction of both MOX (including the pit disassembly plant) and the immobilization plant. The dual track was an essential component of our agreement since it assured multiple pathways of disposition and decreased the likelihood that South Carolina would become a plutonium dumping ground. South Carolina also received other commitments for environmental restoration involving high-level wastes and other on-site wastes. Relying on those commitments as well as the dual track agreement, South Carolina then accepted its new responsibilities.

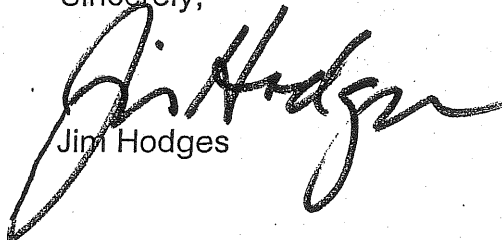
DOE's latest plans, however, appear to disregard those commitments by no longer funding the immobilization plant. I am further concerned that DOE's plan for the disassembly process for MOX fuel no longer involves the new pit disassembly process, and that an F Canyon alternative will have to undergo a lengthy and unpredictable NEPA process. All of these plans renege on commitments that were made to South Carolina and greatly increase the likelihood that South Carolina would become a plutonium dumping ground.

These plans are unacceptable. Failure to keep DOE's commitments regarding plutonium disposition, as well as fully fund SRS's clean up activities, would be unacceptable violations of DOE's agreements with South Carolina. I hope you are taking all steps necessary to maintain the trust between DOE and South Carolina. I stand ready to work with you to resolve this situation.

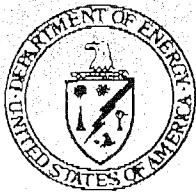
June 13, 2001
Page 3 of 3

I continue to await your response. Please give me a call at your earliest convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim Hodges".

Jim Hodges



8

The Secretary of Energy
Washington, DC 20585

June 26, 2001

The Honorable Jim Hodges
Governor of South Carolina
Washington, D.C. 20001

Dear Governor Hodges:

Thank you for your April 6, April 24, and June 13, 2001, letters regarding proposed reductions in the Environmental Management budget for fiscal year (FY) 2002, and the schedule changes in the plutonium immobilization program. I regret the delay in responding to your letters. Let me assure you that I take your concerns very seriously. I understand the importance of meeting our cleanup responsibilities at the Savannah River Site and fulfilling our commitments to the communities that have contributed, and continue to contribute, to our national security. As Under Secretary Robert Card offered to you last week, we stand ready to brief you or your staff on our plans and programs that affect the State of South Carolina. I hope that you will accept this offer.

As you know, the competition for limited federal funds is intense, and requires a balancing of many important priorities including health care, education and defense, as well as protection of the environment. We faced some tough choices for all of the Department of Energy's (DOE) programs; I believe the end result is a balance among the critical national priorities in the programs administered by DOE. I want to reassure you that protecting the health and safety of our workers and the public will continue to be our highest priority.

Let me address your specific concerns on the important work that will be carried out at the Savannah River Site.

- In its FY 2001 supplemental budget request, the Administration is seeking an additional \$31.7 million for several high priority projects at the site.
- The FY 2002 budget request provides funding for the removal and vitrification of high-level liquid waste to support production of at least 150 canisters of vitrified waste in FY 2002. We remain dedicated to meeting our commitment to complete removal of high-level liquid wastes from all underground storage tanks by 2028, including the design and construction of a pilot plant facility to demonstrate the viability of a processing technology for radioactive salt waste. Additionally, funds are requested for award of a contract to design, construct, and commission a full-scale facility. We continue to focus on maintaining the planned 2010 startup date for the full-scale facility.



- The FY 2002 request also includes funds for the deployment of a mobile system to characterize 600 cubic meters of transuranic (TRU) waste for shipment to the Waste Isolation Pilot Plant (WIPP) in FY 2002. Lower priority waste will continue to be stored safely onsite for future shipment.
- We recognize that achieving some of our Federal Facility Agreement commitments involving lower environmental risks will be challenging. It is premature, however, to say that we will miss any regulatory commitments. We believe that by working with you and the regulatory authorities, more efficient ways of doing business, and perhaps some creative new alternatives, will be found; such break-throughs would provide an opportunity to accomplish more work at the Savannah River Site within the budget requested.
- We believe the FY 2002 budget request provides sufficient funds to make significant progress in meeting our commitments to the Defense Nuclear Facilities Safety Board. We will continue the stabilization of plutonium, uranium, and the americium/curium solutions in the canyons. In addition, design will continue on the plutonium stabilization and packaging system in Building 235-F.
- You accurately noted the cancellation of a construction project for a plutonium storage facility at the site. With the successful completion of renovations to the K-Reactor facility in conjunction with other plutonium storage facilities, we no longer require construction of this facility for storage purposes.
- We believe that the FY 2002 budget request for managing spent nuclear fuels from research reactors, although reduced, is sufficient. Funds for operation of the L-Experimental Facility for demonstrating the viability of the "melt and dilute" technology for treatment of aluminum fuels is requested for FY 2002. Confirmatory data from L-Experimental Facility operations are expected to provide the basis for future budget requests for a full-scale facility.
- The FY 2002 budget request continues our program to blend down and transfer quantities of off-specification highly enriched uranium (HEU) to TVA between FY 2003 and 2007 for use in TVA reactors. For this purpose, DOE has signed an interagency agreement with TVA dated April 5, 2001. The agreement includes revenue sharing with TVA plus significant capital improvements at the Savannah River Site, where approximately 16 metric tons of the HEU will be down-blended.

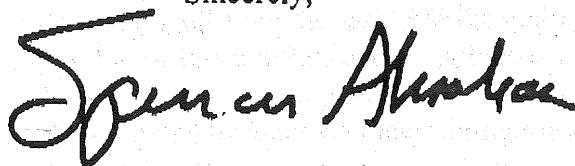
On another matter that you raise, the Administration is reviewing all United States' assistance to Russia, including the National Nuclear Security Administration's (NNSA) nonproliferation programs, to determine its effectiveness in carrying out the Administration's policies. Pending completion of this review, the NNSA continues to plan for the irradiation of mixed oxide (MOX) fuel in domestic reactors and immobilization of surplus U.S. weapons-grade plutonium. However, the costs of simultaneously building three plutonium disposition facilities, together with other national security requirements, make it increasingly unlikely that adequate annual funding will be forthcoming in the future. To reduce the anticipated peak funding requirements in upcoming fiscal years, work on immobilization is being suspended and will be resumed when construction of the MOX Fuel Fabrication Facility and the Pit Disassembly and Conversion Facility are further along.

The Department continues to pursue activities that will enable the United States to begin operation of plutonium disposition facilities no later than December 31, 2007, as called for in the U.S.-Russia Plutonium Management and Disposition Agreement. As a result, we are confident that this decision affecting the schedule for disposition facilities at the Savannah River Site will not jeopardize our overall ability to eliminate surplus plutonium or to comply with the recently signed plutonium disposition agreement with the Russian Federation. Mr. Ed Siskin, Acting Deputy Assistant Administrator for Fissile Materials Disposition, (202) 586-2695, is available to provide you and your staff with information about the Department's plutonium disposition efforts.

I look forward to working with you on these and other issues we face at the Savannah River Site. I appreciate your willingness to work with us to enhance the Environmental Management program and move forward in cleaning up the Savannah River Site.

Please provide the name of your designee to work with us in this important endeavor to Dr. Carolyn L. Huntoon, Acting Assistant Secretary for Environmental Management. If you have any questions, please contact me or Dr. Huntoon, at (202) 586-7709.

Sincerely,

A handwritten signature in black ink, appearing to read "Spencer Abraham". The signature is fluid and cursive, with a large initial "S" and a stylized "A".

Spencer Abraham

9



Department of Energy
Washington, DC 20585

August 15, 2001

Mr. Hank Stallworth
Director of Natural Resources Policy
Office of the Governor
P.O. Box 11829
Columbia, South Carolina 29211

Dear Mr. Stallworth:

I appreciated the opportunity to discuss the Department of Energy's activities with you last week. Consistent with our discussion, additional information about the packaging and shipment plans associated with the Rocky Flats site is provided below.

The schedule for shipment of plutonium from Rocky Flats has changed over the last year due to the first-of-a-kind packaging operation at the site. With such an operation, it is commonplace to have delays as the workers are fine tuning the procedures and process. In addition, several weeks ago the technical staff from the Rocky Flats and Albuquerque Field Offices reviewed the shipping projections with regard to both the availability of material from the Rocky Flats' packaging operation and the availability of the shipping convoys. Based on that information, the Rocky Flats Office revised the target date for shipment to mid-October.

As a follow-on to our discussion last week concerning the Savannah River site, I would suggest that we meet during the week of August 20, 2001, in Washington, D.C. to discuss thoughtful and forward-looking steps to address the issues involved.

I look forward to our continued discussions.

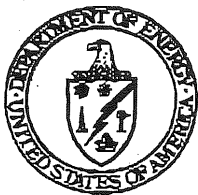
Sincerely,

A handwritten signature in dark ink, appearing to read "Jessie Hill Roberson", is written over a horizontal line.

Jessie Hill Roberson
Assistant Secretary for
Environmental Management



10

**Department of Energy**

Washington, DC 20585

Monday, August 27, 2001

Governor Jim Hodges
Lt. Governor Bob Peeler
Speaker of the House David Wilkins
Office of the Governor
State of South Carolina
P.O. Box 11829
Columbia, SC 29211

Dear Governor Hodges, Lt. Governor Peeler and Speaker Wilkins:

The Department of Energy is, and has been, committed to the safe handling and disposition of material at the Savannah River Site. The Department also is committed to a pathway out of South Carolina for not only new material coming into the site for processing, but for all waste material already at the site. We believe that we have a strategy for accomplishing these objectives and there are many options to meet various concerns that may be expressed by South Carolina. As we have expressed to you and your staff in several meetings, we remain ready to engage in a constructive, bi-partisan dialogue to better understand and respond to the State's concerns.

In this regard, in a meeting last Friday, with Lt. Governor Peeler and Speaker Wilkins, and as requested by Congressman Graham and others, DOE committed to not artificially constrain the timing of our dialog by requiring that our first planned shipment take place in mid-October. We agreed to hold that shipment in abeyance providing that good faith discussions would rapidly commence to gain agreement on a strategy for processing and shipping out the new material. This material was being sent to the Savannah River Site to take advantage of the site's world class and safe plutonium processing capabilities.

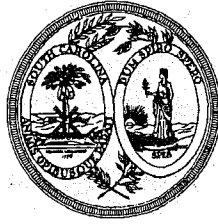
We believe that there is every opportunity to reach agreement before mid-October and avoid a financial impact to South Carolina and the rest of the DOE complex that would be required to store the material at Rocky Flats. It is important and to keep that site's closure on track so its \$650 million annual funding stream may be available to South Carolina and other states following its closure in 2006.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert Card".

Robert Card
Undersecretary of Energy





State of South Carolina

August 30, 2001

Secretary Spencer Abraham
U.S. Dept. of Energy
1000 Independence Ave.
Washington, D.C. 20585

Dear Secretary Abraham:

We appreciate the willingness of the Department of Energy (DOE) to work with the State of South Carolina in resolving the ongoing dispute over the future of plutonium shipments and disposition. It is essential that these issues be resolved prior to shipments to the Savannah River Site (SRS).

Several years ago, DOE approached the State of South Carolina about hosting missions identified as key elements of a successful plan to safely convert and dispose of surplus plutonium. These were the immobilization, MOX fuel fabrication, and pit disassembly and conversion projects. Assurances were provided that the funding needs would be met to build and operate these initiatives. South Carolina agreed to be the host state for implementation in return for those assurances and a guaranteed pathway out of the state.

Since that time, design funding has been cancelled on immobilization and pit disassembly and conversion, and reports indicate MOX may be cancelled. Nevertheless, DOE continues to plan shipments of plutonium to South Carolina without any clear indication of how it will be processed and when it will leave our state.

Secretary Spencer Abraham
U.S. Dept. of Energy
Page 2
August 30, 2001

This is unacceptable. We fear that plutonium disposition funding will not take place and, in effect, the State of South Carolina will become the permanent repository.

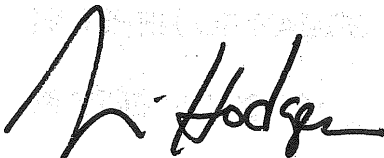
This dispute can be resolved by the agreement of DOE to the following terms and conditions:

1. DOE and the President will agree to do everything in their power, including seeking support from congressional leadership, to support full funding for immobilization, MOX, and pit disassembly and conversion at the Savannah River Site (as established by DOE Records of Decision 1997, 2000) in the federal budget beginning October 1, 2001.
2. In the event funding in an amount satisfactory to the State of South Carolina and its Congressional delegation is not provided for the projects above, DOE will, within 60 days of default, remove any plutonium shipped to South Carolina, and will cease and desist any future shipments to our state.
3. DOE will support funding and construction of the Yucca Mountain repository in Nevada or an alternative permanent repository outside of South Carolina.
4. DOE will agree with the State of South Carolina on immediate, measurable and enforceable milestones, and on penalties for failure to meet such milestones.

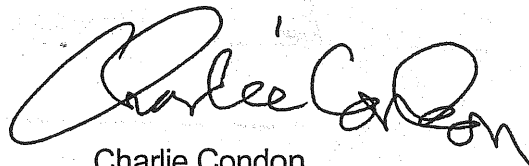
Our Congressional Delegation plans to send a letter representing their position as well. While the Delegation's letter will be more detailed, it will agree with ours in principal. South Carolina will not become the nation's dumping ground.

On all levels of our state's government, we stand united in the hope of resolving this critical issue in the best interest of the health and safety of all South Carolinians.

Sincerely,



Jim Hodges
Governor



Charlie Condon
Attorney General

TRANSMIT REPORT

1901, 08-30 04:35
803 734 6447
MORTON BRILLIANT

COM No.	REMOTE STATION	START TIME	DURATION	PAGES	RESULT	USER ID	REMARKS
598	912025854403	08-30 04:34	00' 59	03/03	OK		

02104



State of South Carolina

Office of the Governor

Jim Hodges
Governor

Post Office Box 11829
Columbia 29211

DATE: August 30, 2001

TO: Secretary Spencer Abraham

NUMBER OF PAGES (Including Cover Sheet): 3

PHONE NUMBER: _____

FAX NUMBER: 202 586-4403

FROM: Governor Hodges

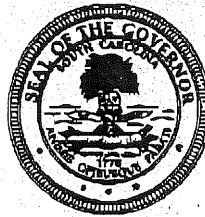
FAX NUMBER: (803) 734-9413

TRANSMIT REPORT

1901,08-30 04:37
803 734 6447
MORTON BRILLIANT

COM No.	REMOTE STATION	START TIME	DURATION	PAGES	RESULT	USER ID	REMARKS
599	2025860148	08-30 04:36	00' 55	03/03	OK		

02104



State of South Carolina

Office of the Governor

Jim Hodges
Governor

Post Office Box 11829
Columbia 29211

DATE: August 30, 2001

TO: Secretary Spencer Abraham

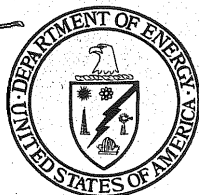
NUMBER OF PAGES (Including Cover Sheet): 3

PHONE NUMBER: _____

FAX NUMBER: 202 586 0148

FROM: Governor Hodges

FAX NUMBER: (803) 734-9413



The Secretary of Energy
Washington, DC 20585

September 21, 2001

RECEIVED

SEP 27 2001

Referred to *file Stallworth*
Answered *NN*
107683

The Honorable Jim Hodges
Governor of South Carolina
Columbia, South Carolina 29211

Dear Governor Hodges:

Thank you for your August 30, 2001, letter regarding planned shipments of plutonium to the Savannah River Site.

I appreciate your concern that any plutonium shipped to the Savannah River Site ultimately has a disposition path that would ensure its removal from the State of South Carolina. I want to reiterate that the Department of Energy shares that goal. In addition to this, the Department has an obligation to consider ways to optimize the application of our resources to accomplish complex-wide cleanup goals in the most efficient manner.

We believe that we have a strategy that is compatible with our mutual objectives. Further, we believe, working in a bipartisan and good-faith manner with you and other officials in South Carolina, we can resolve the issue by looking at a variety of options in a timely manner. I know that this dialogue is occurring, and I appreciate your continued support and attention in bringing it to conclusion.

If you have further questions, please feel free to contact me or Mr. Dan R. Brouillette, Assistant Secretary for Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,

Spencer Abraham
Spencer Abraham





13

State of South Carolina

Office of the Governor

JIM HODGES
GOVERNOR

Post Office Box 11829
COLUMBIA 29211

October 26, 2001

Secretary Spencer Abraham
U.S. Department of Energy
1000 Independence Avenue
Washington, D.C. 20585

Dear Secretary Abraham:

I understand that DOE intends to immediately begin loading plutonium onto trucks at Rocky Flats for transportation to South Carolina. I do not understand your Department's insistence on proceeding at this time with shipments of one of the most dangerous materials known to humankind.

Since August, I have been assured by Undersecretary Card and Assistant Secretary Roberson that plutonium would not be shipped to South Carolina without a mutually agreeable resolution regarding final plutonium disposition. Preparations to ship plutonium suggests Undersecretary Card and other members of your staff are not acting in good faith on their promise to South Carolina.

DOE should not be gambling with the safety and welfare of our citizens. Given the risks of terrorism, this is not the time to be moving highly radioactive material across the nation's highways. Given the lack of a disposition plan to process the highly dangerous material, it makes no sense for plutonium to be dumped indefinitely in South Carolina.

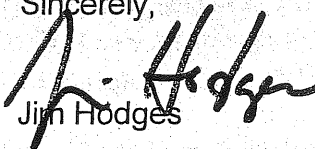
DOE is pursuing a reckless policy that could endanger the lives of citizens in as many as twenty states. By trucking this volatile material across thousands of miles of America's highways, you are creating a new target for terrorism. Then, by dumping this material in South Carolina with no plan for disposition and no specific, clearly defined exit plan, you put the citizens of my state in harm's way for an indefinite period of time.

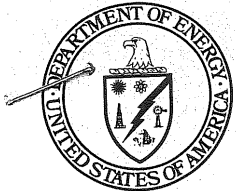
Secretary Spencer Abraham
October 26, 2001
Page 2 of 2

I will not subject South Carolinians to needless risks. DOE must recognize and honor their previous commitments to this state and its citizens. I insist DOE create a plan for the safe disposition of this material and a clear exit strategy with enforceable milestones.

My resolve is stronger than ever. South Carolina will not be the nation's plutonium dumping ground.

Sincerely,


Jim Hodges



Department of Energy

Washington, DC 20585

October 29, 2001

118912
RECEIVED

(14)

S. Tolson

NOV 19 2001

Referred to

Answered

The Honorable Jim Hodges
Governor of South Carolina
Post Office Box 11829
Columbia, South Carolina 29211

Dear Governor Hodges:

Thank you for your October 26, 2001, letter to Secretary Spencer Abraham urging the Department of Energy to create a plan for the safe disposition of plutonium and a clear exit strategy with enforceable milestones.

The Office of Environmental Management is preparing the response to your letter. If you have any questions, please contact me at (202) 586-5450.

Sincerely,

Dan R. Brouillette
Assistant Secretary
Congressional and Intergovernmental
Affairs





The Under Secretary of Energy
Washington, DC 20585

November 16, 2001

15
RECEIVED

NOV 27 2001

Referred to

Stallworth

Answered

Duplicate NRW

117093

The Honorable Jim Hodges
Governor of South Carolina
P. O. Box 11629
Columbia, SC 29211

Dear Governor Hodges:

Thank you for your letter to Secretary Abraham dated October 26, 2001, regarding planned shipments of plutonium to the Savannah River Site. I appreciate your concern that any plutonium shipped to the Savannah River Site ultimately has a disposition path that would ensure its removal from the State of South Carolina. I want to reiterate that the Department of Energy shares that goal.

We recognize your concern regarding the transportation of the plutonium material. Any shipments made would be done consistent with the methods the Department has used for the last 40 years to safely and securely transport weapons-like material. We have made thousands of safeguarded shipments over the last few decades and we have an excellent record. I would also like to remind you that we made over 40 shipments of waste out of South Carolina last year - all safe shipments.

The Department, as directed by the National Security Council is nearing completion of a review of the Russian and United States surplus plutonium disposition programs. That review and a corresponding decision will be completed early next year. We will keep you informed.

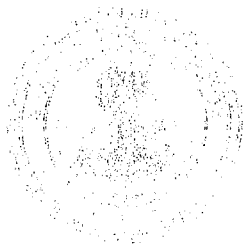
As stated in my previous letter, we will notify the State before we will release shipments.

If you have further questions, please feel free to contact me or Dan R. Brouillette, Assistant Secretary for Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,

Bob Card





16

State of South Carolina

Office of the Governor

JIM HODGES
GOVERNOR

Post Office Box 11829
COLUMBIA 29211

December 3, 2001

Secretary Spencer Abraham
U.S. Department of Energy
1000 Independence Avenue
Washington, D.C. 20585

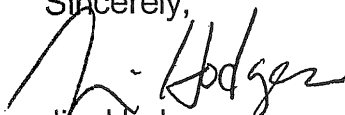
Dear Secretary Abraham:

I read with interest recent news reports of Undersecretary Robert Card's prior service as CEO of Kaiser Hill, the company involved in the management of the Rocky Flats, Colorado facility. The reports indicate that Kaiser Hill stands to make over \$300 million in bonuses if certain milestones are met related to the shipment of plutonium from Rocky Flats to the Savannah River Site in Aiken, South Carolina.

I am disturbed by these revelations. Undersecretary Card has been involved at a substantive level in discussions regarding the postponement of shipments of plutonium to South Carolina, and has been a vigorous supporter of continuing the shipments. His prior service at a minimum constitutes an appearance of a conflict of interest, and he should no longer be involved in negotiations on these matters.

Let me again reiterate South Carolina's desire that the Department of Energy will honor its prior commitment to our state to undertake a dual track strategy to dispose of surplus plutonium at the Savannah River Site. Now, more than ever, this strategy is clearly in the national and international interest. Until then, I remain opposed to any shipments of plutonium to our state.

Sincerely,


Jim Hodges



17

State of South Carolina

Office of the Governor

JIM HODGES
GOVERNOR

POST OFFICE BOX 11829
COLUMBIA 29211

December 27, 2001

Dr. Condoleezza Rice
Assistant to the President for National Security Affairs
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Dr. Rice:

I understand that you and the National Security Council (NSC) are reviewing disposition plans for excess plutonium. These plans, by necessity and international agreement, involve both the United States and Russia.

Your review has heightened the already considerable existing uncertainty revolving around domestic plutonium disposition. The Department of Energy (DOE) under the previous administration made certain commitments, which are now, at the very least, in question. At this time there is no defined plan for processing plutonium that would be brought to South Carolina, much less for its eventual removal. I have been forced to voice my severe opposition to any shipment of the materials to this state.

I certainly understand and support the NSC effort to reduce the threat of nuclear proliferation. In these uncertain times, the need to safeguard the nation is the number one priority of all Americans. As part of that mission, South Carolina agreed to a two track process for disposing of excess weapons plutonium. Final disposal was to be at a designated federal facility, most likely Yucca Mountain, designed for the long-term storage of these materials. However, I cannot abide or trust repeated pledges of fair and equal treatment for my state when there is now nothing more than a string of broken promises from the federal government.

There is great concern here that this administration may try to ship materials to this state without concrete plans for removal to a permanent repository. There are recent indications from the DOE suggesting that storing weapons ready plutonium for up to 50 years at the Savannah River Site is acceptable. That is clearly not the case. Furthermore, this is counterproductive to the goals of the NSC. Simply put, we cannot pretend to say we will take care of the nuclear weapons issue when all we are doing is removing warheads from missiles without providing for their disposal.

It is my understanding that you may not have been adequately briefed on all facts concerning disposition agreements between the DOE and South Carolina. I strongly urge you and the rest of the Council to contact me so that a full accounting can take place.

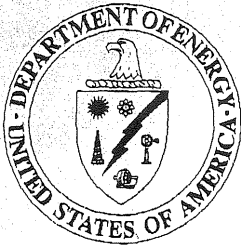
Sincerely,

A handwritten signature in black ink that reads "Jim Hodges".

Jim Hodges

201633

18



United States Department of Energy
Office of the General Counsel

FACSIMILE TRANSMISSION FORM

RECEIVED

JAN 22 2002

Referred to Stallworth
Answered N/A

Facsimile from:

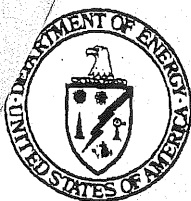
Lee Liberman Otis
General Counsel
Forrestal Building, Room 6A245
1000 Independence Avenue, SW
Washington, DC 20585

Phone: 202-586-5281
Facsimile: 202-586-1499

To: The Honorable Jim HodgesFacsimile number(s): 803-734-9413Date: Jan. 18, 2002Pages: 4 (including cover page)

Message:

This facsimile is intended only for the use of the recipient(s) to whom it is addressed and may contain information that is privileged and confidential. If you are not the intended recipient (or a person responsible for delivering this to the intended recipient), you are hereby notified that any disclosure, distribution or copying of this information is strictly prohibited. If you have received this facsimile in error, please notify Judith Quinn immediately at 202-586-5281 and return the facsimile to her at the address shown above via the United States Postal Service. Thank you.



Department of Energy
Washington, DC 20585

January 18, 2002

The Honorable Jim Hodges
Governor of South Carolina
Columbia, South Carolina 29211

Dear Governor Hodges:

Secretary Abraham has asked me to respond to your letter of December 3, 2001, in which you repeat claims in a recent news story regarding an alleged conflict of interest on the part of Under Secretary Card in connection with the disposal of surplus plutonium. This allegation, which my office has carefully reviewed, is unfounded.

As I understand it, the thrust of the allegation is that 1) because Rocky Flats has some of the surplus plutonium at issue, and 2) because Under Secretary Card's former employer, Kaiser-Hill, will obtain certain incentive fees if Rocky Flats closes on schedule, and 3) because delays in removing surplus plutonium from Rocky Flats will delay the Rocky Flats closure date, and 4) because any such delay will affect the incentive fees Kaiser-Hill can collect under its contract with the Department, decisions whether to move surplus plutonium to Savannah River would affect the financial interests of the Under Secretary's former employer. Therefore, it is alleged, it is a conflict of interest for him to participate in these decisions.

This is not true. The Rocky Flats Kaiser-Hill contract -- which may be examined by anyone on the Internet at www.rfets.gov/RFOffices/RFFO/DOEprocurement/Index.htm -- makes it quite clear that Kaiser-Hill's incentive fees will be entirely unaffected by any delay in removing plutonium from Rocky Flats if the delay is due to the government's failure to designate an alternative place to put it. Under the contract, Kaiser-Hill's incentive fee for finishing the cleanup of Rocky Flats turns on its "physical completion of the contract" before a specified target completion date. But the contract also specifies that "physical completion of the contract" is not affected if there is a need to continue to store nuclear materials at Rocky Flats because of the Department of Energy's not having designated a receiver site to which to move these materials. See section C.1.2 and F.3 of the contract. Accordingly, Kaiser-Hill's closure incentive fee will not be affected one way or the other by a Departmental decision to move (or not move) surplus plutonium to Savannah River.

Kaiser-Hill can also earn an incentive fee through "total allowable cost" reductions below a specified target. See Contract Clause I.23, adopting Federal Acquisition Regulation ("FAR") clause 52.216-10, "Incentive Fee" (Mar. 1997). The FAR, however, also specifically excludes from the definition of "total allowable costs" costs resulting from causes "beyond the control and without the fault or negligence of the Contractor." FAR 52.216-10; 52.249-14. Costs resulting from DOE's designation or failure to designate the place to which to remove the Rocky Flats



plutonium are a classic instance of this kind of excluded cost. Therefore Kaiser Hill's entitlement to this second incentive fee would likewise be unaffected by costs resulting from Department decisions to move or not move the Rocky Flats plutonium to Savannah River.

I should add for the record that Mr. Card has severed all financial ties with Kaiser-Hill other than his vested interest in its defined benefits pension plans and therefore he has no relevant interest in Kaiser-Hill for purposes of the federal conflict of interest statute, 18 U.S.C. 208. What limits his participation in Kaiser-Hill matters is not that law but regulatory requirements that bar him from participating in particular matters where his former employer is or represents a party or where a reasonable person would question his impartiality. The plutonium disposition issues raised in the article obviously do not trigger this prohibition since Kaiser-Hill is not party to them and since, for all the reasons explained above, there is no basis for a reasonable person to question Mr. Card's impartiality with respect to these issues on account of his former affiliation with Kaiser-Hill.

Thus, it cannot reasonably be argued that there is an appearance issue, let alone grounds for conflict of interest allegations, with respect to Mr. Card's participation in these decisions.

It has also been suggested that the conflict allegations are buttressed by the Administration's budget request for FY 2002, which sought less funding for plutonium disposition at Savannah River than had previously been contemplated. This reduction in the funding request, the suggestion has it, was so inexplicable that the only possible reason for it must have been improper bias on the Under Secretary's part.

In fact the Secretary has repeatedly explained that the Administration's FY 2002 funding request was issued in the context of a quite public decision made not by the Department of Energy but by the entire Administration to have the Department prepare for the National Security Council's consideration a review of all options for plutonium disposition. As the Secretary has also previously explained, that review is expected to be concluded shortly and will inform this year's budget decisions as well.

The theory that Mr. Card was the real force behind the FY 2002 funding request levels cannot be squared with the timing of the Administration's decisions on those levels. As you may recall, the President transmitted his budget on February 28, 2001, with a follow-up transmittal with further details on April 7. The President did not nominate Mr. Card as Under Secretary until May 2, and Mr. Card was not appointed until early June, after the Senate had confirmed his nomination. As everyone who participated in the preparation of the FY 2002 budget will confirm, Mr. Card had no role in shaping the Department's or the Administration's budget deliberations until after his appointment.

Let me further assure you that the Secretary of Energy has made clear that he will make decisions about the disposition of surplus plutonium impartially and objectively on the basis of what he believes to be in the best interests of the United States. This includes giving fair consideration to the legitimate concerns of the State of South Carolina, where so much of the

3

nation's strategic defense effort has occurred. He has accordingly committed that the Department will notify the State before releasing any shipments. He has also repeatedly indicated that he shares the State's goal that any plutonium shipped to the Savannah River site ultimately have a disposition path that would ensure its removal from South Carolina.

The effort to resolve these matters is not advanced by unwarranted personal allegations. Since, for the reasons explained here, the Secretary believes that these allegations are entirely baseless, and thinks any fair-minded person would reach the same conclusion, he trusts that future discourse on this subject will focus on more relevant and appropriate topics.

Sincerely,



Lee Liberman Otis



19

State of South Carolina

Office of the Governor

JIM HODGES
GOVERNOR

POST OFFICE BOX 11829
COLUMBIA 29211

February 22, 2002

The Honorable Spencer Abraham
Secretary of Energy
United States Department of Energy
1000 Independence Avenue
Washington, DC 20585

Dear Secretary Abraham:

I appreciate your invitation to attend a briefing on Yucca Mountain on Tuesday, February 26th at the Department of Energy (DOE) Headquarters Office. I will be pleased to be there.

I also appreciate the efforts of your office and those of the Administration to move this project forward. It is clearly the best solution to the spent fuel storage issue and is also critical to clean up strategies at Savannah River Site (SRS) and other DOE Complex sites.

As you know, Ambassador Linton Brooks and Dr. Ed Siskin came down to share with me your most recent plan for plutonium disposition. My staff has been in contact with the Ambassador to follow up that initial briefing. I believe progress is being made, but would like to take the opportunity of our being together next Tuesday to further discuss several disposition issues.

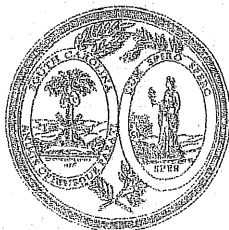
Principal among these will be a written agreement with enforceable milestones. With the abandonment of the two track strategy and the sole focus being on MOX, I feel this is more important than ever. I know time is of the essence to you and the Department as you work to clean up and close Rocky Flats; however, there are still several issues that must be resolved before shipping to South Carolina may begin.

I look forward to your briefing on Yucca Mountain and to the opportunity to discuss these other matters of mutual interest.

Sincerely,

A handwritten signature in cursive script that reads "Jim Hodges".

Jim Hodges



20

State of South Carolina

Office of the Governor

JIM HODGES
GOVERNOR

Post Office Box 11829
COLUMBIA 29211

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.

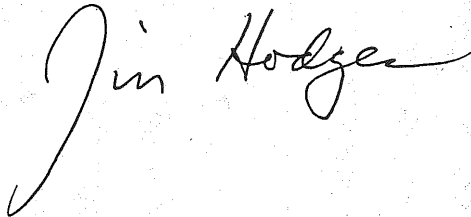
Secretary Spencer Abraham
U.S. Dept. of Energy
Page 2
April 10, 2002

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,

A handwritten signature in cursive script that reads "Jim Hodges". The signature is written in dark ink and is positioned below the word "Sincerely,".

Jim Hodges



22

State of South Carolina

Office of the Governor

JIM HODGES
GOVERNOR

Post Office Box 11829
COLUMBIA 29211

April 11, 2002

Secretary Spencer Abraham
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

Dear Spence:

Thank you for your letter of April 11, 2002. Your allegations that the State of South Carolina has modified its position on a plutonium disposition plan are simply wrong. At our meeting in February, you expressed the Department's willingness to agree to timetables for shipments and an enforcement mechanism to ensure that the federal government keeps its promises to South Carolina. Unfortunately, everything your letter and agreement offer can be changed unilaterally by the current or any future administration.

We are willing to accept the promises contained in your letter but we must have confidence that promises made will be promises kept. In keeping with the precedent set by DOE in dealing with a similar situation several years ago with the State of Idaho, we suggest the use of a consent order as the primary enforcement mechanism. To that end, we will agree to incorporate the terms of your proposed agreement, along with appropriate remedies and penalties for non-performance, into a Consent Order filed in the Federal District Court in the District of South Carolina.

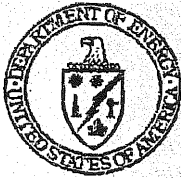
I look forward to hearing from you and once and for all resolving this important issue.

Sincerely,

A handwritten signature in cursive script that reads "Jim Hodges".

Jim Hodges

21



The Secretary of Energy
Washington, DC 20585

April 11, 2002

The Honorable Jim Hodges
Governor
State of South Carolina
P.O. Box 11829
Columbia, SC 29211

Dear Governor Hodges:

I am writing in response to your letter of last night. I must say I was surprised and disappointed that my attempt yesterday to propose a solution to our negotiations and ask for your views was met by a response that seemed to reflect no awareness of what I had proposed and that instead claimed that the Department had made no effort to address the issues we have spent the last month trying to resolve.

In case this is somehow the result of confusion or miscommunication, I thought I should communicate to you personally, formally and in writing what I am proposing. When you have had the opportunity to review this letter and the attached material, I hope you will agree that the Department has gone the extra mile in this matter to completely address all the concerns raised by South Carolina while at the same time meet our nation's international and domestic commitments.

To that end, I have attached to this letter the text of a final agreement that contains all the provisions that the Department and South Carolina have been discussing. I have signed this agreement. I hope you will as well. I am also sending you the text of an amended Record of Decision formally stating the decisions the Department would make if we do reach agreement. I am prepared to authorize issuance of this Record of Decision immediately upon receiving a signed agreement from you.

As we come to this crucial decision point, it is important to recall how we got here. The United States and the Russian Federation have agreed, under the September 2000 *U.S.-Russian Plutonium Management and Disposition Agreement*, to each dispose of 34 metric tons of plutonium, enough to make over 4,200 nuclear weapons. The previous Administration formulated a plan for implementing this agreement through the construction of three facilities at the Savannah River Site: a Mixed Oxide (MOX) Fuel Fabrication Facility, a Pit Disassembly and Conversion Facility, and an Immobilization Facility. Under the prior Administration's plan, there were no commitments of any kind to the State of South Carolina limiting the amount of plutonium brought into the State, obligating the Federal government to remove that material if future plans changed, or providing for any commitment of out-year funding for the program.

When President George W. Bush took office, we undertook a major review of all non-proliferation programs with Russia, including the plutonium disposition program. As a result of that review, we concluded that we should eliminate the Immobilization



Facility. This would preserve the MOX component needed to induce the Russian Federation to move forward with its own decommissioning program; save nearly \$2 billion dollars; reduce technical risk; and speed up the program by three years, all while preserving the non-proliferation benefits to the world and the economic benefits to South Carolina.

While our review was in progress, you stated that South Carolina would not accept any plutonium shipments without assurances that there was a clear pathway out of the State should our revised program not come to fruition. This position not only called into question our ability to carry out the disposition program; it also jeopardized cleanup activities in other states. As we have made clear many times, we are committed to close the Rocky Flats site in 2006. Doing so requires us to begin shipments of plutonium to Savannah River in the near future, well in advance of the construction of the MOX Fuel Fabrication Facility. Savings from the Rocky Flats closure will be used to fund additional cleanup activities at Savannah River and other sites.

As I have indicated in our various personal meetings and phone conversations, I appreciate your concerns that any plutonium that comes into the State have a credible pathway out. That is why when we spoke on February 26, I personally assured you that our new approach would not transport any plutonium to South Carolina unless our plans for fabricating it into MOX fuel were progressing in a fashion that assured that it would be able to be disposed of through this process. In further support of this position and to be responsive to your stated requests, the President included \$384 million to fully fund the plutonium disposition program in the fiscal year 2003 budget. That budget also specifically noted that the project would require funding of \$3.8 billion over 20 years, thereby signaling the Office of Management and Budget's commitment to the program well beyond just this upcoming fiscal year. We have also made our commitment to the program clear in every possible forum, public and private, national and international.

Because we understand that the program will extend for decades, we have gone even further. Specifically, we have included in the proposed agreement terms developed through negotiations with your staff to guide the program in the future, including the following firm commitments:

1. A commitment to construct two facilities at SRS, including milestones;
2. A commitment by the Department of Energy, backed up by language in the President's FY 03 budget, to request all needed funds to carry out this program at Savannah River (estimated to be \$3.8 billion over 20 years);
3. The establishment of annual funding targets;
4. A commitment to notify the State of all plutonium shipments into South Carolina; and
5. A commitment to maintain a pathway out of South Carolina for any plutonium brought into the State, including firm dates by which such material would be removed from the State if DOE, for any reason, were to be unable to secure the funding necessary to build the MOX facility.

Despite our efforts to meet the State's concerns, those concerns keep changing. The State expressed concern that we might build the facility and then not use it; we took that into account in the agreement. The State became concerned about the rate of removal; we specified that in the agreement. The State became concerned about future funding; we accommodated that in the agreement. The State became concerned with enforceability. At first I believed that it would be impossible to address this concern, since the Executive Branch cannot waive the Constitutional sovereign immunity of the United States. Because, however, we sought to go the extra mile to meet the State's needs, we devised a unique legal strategy to make the agreement an integral element of the formal Record of Decision, enforceable pursuant to the National Environmental Policy Act. The State then suggested inclusion of additional language stating that any change to the agreement would be a material change in the program. We have included that as well.

Despite even this effort the State has contended that it does not believe such an approach would be sufficiently enforceable. Consequently, the State suggested legislation as an additional enforcement mechanism. Notwithstanding our belief that the aforementioned approaches would satisfactorily permit the enforcement of our agreement, we are also prepared to support a legislative fix as well. To that end, the agreement I am forwarding you contains a legislative proposal that specifically requires the Department to remove all plutonium brought to Savannah River after April 15, 2002 if the MOX facility is not built and operating on schedule. The Department is fully prepared to support this proposal as the final piece of this agreement, provided that the State is willing to do so as well.

Finally, the State has expressed concern about what will happen if legislation is not enacted before the Congress adjourns. Let me say that I firmly believe that if we and the State join hands and work together to promote this legislative solution, we can succeed in achieving it. Nevertheless, to accommodate this concern, I have included in the agreement I am transmitting a commitment that the Department will move no more than 3.2 metric tons of plutonium into the State before October 15, 2002 -- the amount suggested by the State. At that juncture, if legislation has not been enacted by that time, we will halt shipments and immediately begin working with South Carolina and Colorado to determine an alternative path forward. And, as I have repeatedly assured you, no plutonium will move into the State of South Carolina without a pathway for that plutonium to come out.

In short, I believe we have gone to extraordinary lengths to endeavor to accommodate your concerns on every point. I believe we have succeeded.

It is now time to bring this process to a close. Further delay in reaching agreement will undermine important international and domestic priorities of the United States. First, it will undermine the U.S. plutonium disposition agreement with Russia. We need to move forward with the MOX plant that will be used to dispose of the plutonium at issue in order to honor our commitments to the Russian Federation. That will be very difficult to do in the face of potential litigation from the Governor of the

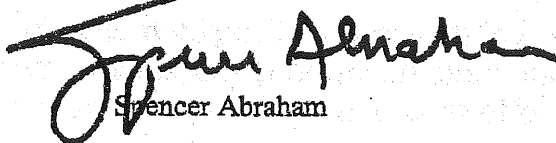
State where the plant is to be located. Second, as I noted earlier, our inability to reach agreement is also jeopardizing cleanup activities across the nation. In particular, a continued impasse will also directly cause the closure of Rocky Flats to slip past 2006.

Accordingly, as noted, I am enclosing a signed copy of our agreement and a draft amended Record of Decision that incorporates that agreement by reference. I urge you to sign the agreement, after which I will formally issue the Record of Decision and authorize the issuance of a 30-day notice of our intent to begin shipping surplus plutonium from the Rocky Flats Site immediately thereafter.

If you are unable to accept this agreement, I will proceed to take the steps I believe necessary to meet our national security and environmental cleanup objectives. Consistent with applicable law, on April 15, I will authorize issuance of an amended Record of Decision that does not incorporate the terms of the attached agreement and will direct issuance of the requisite a 30-day notice of our intent to begin shipping.

I believe reaching agreement and moving ahead now is in the best interests of the people of South Carolina, of the dedicated workers at the Savannah River Site, of our long-term environmental clean up efforts, and of the important cause of international stability and nuclear nonproliferation. I hope you will agree. Please call me if you have any questions about this matter.

Sincerely,



Spencer Abraham

Enclosure

AGREEMENT

The Department of Energy (hereinafter "DOE"), acting through the Secretary of Energy and the State of South Carolina (hereinafter "South Carolina"), acting through its Governor (hereinafter "the parties") enter into this AGREEMENT to facilitate the shipment into South Carolina and the disposition of weapons-usable plutonium (hereinafter "plutonium").

WHEREAS, there is an overriding national security interest in disposing of surplus plutonium in a prompt, effective, and safe manner;

WHEREAS, DOE intends to dispose of 34 metric tons of plutonium by the end of 2019, through the conversion of the material to a mixed-oxide fuel (MOX) for use in commercial nuclear power reactors; and

WHEREAS, the plutonium disposition program is necessary for DOE to remediate its former weapons production sites, including the Savannah River Site, in a safe, expeditious and cost effective manner, and

WHEREAS, the State of South Carolina has a legitimate interest in assuring itself, on behalf of its citizens, that there is a clear disposition path for weapons-usable plutonium sent to the Savannah River Site;

THEREFORE, the parties have agreed as follows:

DOE will transfer no plutonium to the Savannah River Site without a clear path out of South Carolina ("the State"). Further, if DOE fails to adhere to the construction, disposition and all other milestones contained herein, DOE will, unless otherwise agreed to by South Carolina, immediately cease further shipments of plutonium to South Carolina. Further, under certain provisions set forth below,

DOE will package and remove any plutonium sent to South Carolina under this Agreement.

PLUTONIUM DISPOSITION FACILITIES

DOE intends to construct two major facilities at the Savannah River Site in South Carolina: a MOX Fuel Fabrication Facility (FFF), to be in operation by July 2007, and a Pit Disassembly and Conversion Facility (PDCF), to be in operation by October 2009.

DOE will:

Complete the design of the MOX FFF by September 30, 2003.

Begin construction of the MOX FFF by March 30, 2004. The MOX FFF will be commissioned for operations by July 30, 2007.

Begin the removal of plutonium from Savannah River Site by initial shipments of MOX fuel to commercial nuclear reactors by September 30, 2008.

Begin construction of the PDCF by March 31, 2007 and start up of the facility by September 30, 2009.

The attached funding plan sets forth the funding necessary to construct the MOX FFF. If annual appropriations enacted by Congress are below the amount listed in this plan by twenty percent in any given year, DOE will cease all shipments of plutonium destined for the MOX FFF to the Savannah River Site. Unless the Parties agree otherwise, shipments may resume if, and only if, the subsequent year's appropriations restore the funding set forth in the attached plan.

REMOVAL OF MATERIAL FROM SOUTH CAROLINA

In the event that unforeseen technical, fiscal, international, legal or other circumstances preclude completion of the MOX FFF, DOE will promptly notify South Carolina of the event precluding DOE's compliance, will immediately cease all shipments of plutonium intended for disposition through the MOX facility to the Savannah River Site, and will initiate discussions with South Carolina to reach agreement on appropriate adjustments to the commitments made in the AGREEMENT, consistent with its spirit and intent.

For purposes of this AGREEMENT, if enacted funding for MOX FFF is below the amount listed in the attached plan by twenty percent in each of two successive years, the Parties shall consider this reduced funding as precluding completion of the MOX FFF.

For purposes of this AGREEMENT, the Parties shall consider a delay in completion of the MOX FFF by more than eighteen months as precluding completion of the MOX FFF. Delays of less than one year shall not be so considered.

DOE will identify an alternative path for disposition satisfactory to South Carolina or DOE will begin packaging for removal from the state plutonium equal to the amount brought to Savannah River Site after the date of this agreement and intended for disposition through the MOX facility in any of the following circumstances:

If unforeseen technical, fiscal, international, legal or other circumstances preclude completion of the MOX FFF, and the discussions referred to above do not result in agreement on appropriate adjustments to the commitments made in this AGREEMENT.

If, in any eighteen month period beginning after the end of the first full calendar year after initial operation of the MOX Fuel Fabrication Facility, less than one metric ton of plutonium is processed through the MOX facility.

DOE will remove the material packaged as indicated above from South Carolina in compliance with the provisions of the National Environmental Policy Act on an expeditious schedule that recognizes any legal restrictions on or technical limitations of other locations where the material could be shipped for storage. At least one ton will be removed within two years and all material will be removed within no more than eight years.

DOE's obligations to remove material from Savannah River Site shall be subject to the provision of the necessary funding by the Congress. DOE will make every effort to ensure the necessary funding is appropriated, including the use of reprogramming if necessary.

The parties agree to support legislation including the following provisions:

"If the MOX Fuel Fabrication Facility is not producing at least one metric ton of MOX per year by January 1, 2009, the Secretary of Energy shall, consistent with the NEPA and other governing laws and subject to the availability of appropriations, remove at least one ton of weapons-usable plutonium by January 1, 2011, and shall remove an amount of weapons-usable plutonium equal to the amount of weapons usable-plutonium transferred to the Savannah River Site after April 15, 2002 by January 1, 2017."

If such legislation is not enacted by October 15, 2002, DOE will halt plutonium shipments and the parties will immediately consult to determine an alternative path forward.

SHIPMENT OF MATERIALS

DOE will provide South Carolina notice of shipments of plutonium to the Savannah River Site at least thirty days in advance of such shipments, unless South Carolina and DOE agree otherwise. For security reasons, DOE will not provide exact dates or routes of the shipments.

Shipments will be subject to the following restrictions:

DOE may ship no more than six metric tons of plutonium, consisting of all the plutonium now located at Rocky Flats, Colorado, to Savannah River Site beginning no sooner than 30 days after the appropriate notice is provided to South Carolina and continuing in an efficient and uninterrupted manner.

DOE may ship no more than one-half metric ton of material from the Lawrence Livermore National Laboratory, Livermore, California to Savannah River Site beginning no sooner than 30 days after the appropriate notice is provided to South Carolina and continuing in an efficient and uninterrupted manner. DOE will only ship material as necessary to make room for comparable amounts of material coming to the Lawrence Livermore National Laboratory from Rocky Flats, Colorado. The total material shipped from Rocky Flats Colorado and the Lawrence Livermore National Laboratory under these provisions shall not exceed six metric tons.

No more than 3.2 metric tons will be shipped before October 15, 2002.

Except by prior agreement with South Carolina, DOE will make no other shipments of plutonium until one year prior to the scheduled completion of construction of the MOX FFF and in no case prior to July 1, 2006. Prior to making any shipments after July 1, 2006, DOE will certify to South Carolina that construction of the MOX FFF remains on schedule.

DOE will make no shipments of "pits" (classified components of nuclear weapons) now located at the PANTEX Facility in Amarillo, Texas until twelve months prior to the scheduled start up of the PDCF. Ongoing shipments of this material will be at a rate commensurate with the disposition rate through the PDCF.

Provided that the provisions of this AGREEMENT are being met South Carolina agrees that it will not pose any objections, now or

in the future, or interfere with any shipments made in accordance with the provisions of this AGREEMENT.

MISCELLANEOUS PROVISIONS

DOE acknowledges that the K-Reactor is not intended for use as a long-term storage facility. DOE agrees not to use K-reactor for storage of plutonium beyond that required in support of the MOX FFF without the agreement of South Carolina.

DOE will arrange to process requests by appropriate South Carolina officials for DOE security clearance ("Q clearance") on an accelerated basis in order to allow monitoring of data relating to plutonium shipments.

The Parties acknowledge that acts addressed by this agreement are agreed to subject to the provisions of the National Environmental Policy Act and other governing laws and shall be taken in accordance with those laws.

NOTICE

Any formal communication to DOE under this AGREEMENT shall be provided to the Manager, Savannah River Site:

Manager,
U.S. Department of Energy
Savannah River Site
Building 703A
Aiken, South Carolina 29808

Any formal communication to South Carolina under this AGREEMENT shall be provided to:

Governor of South Carolina
State House, 1st Floor
P.O. Box 11829
Columbia, South Carolina 29201

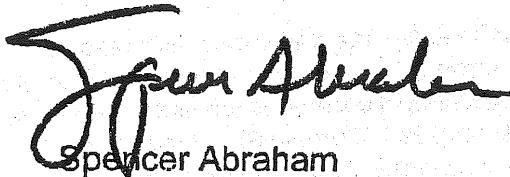
EFFECTIVE DATE

This AGREEMENT shall be effective upon signature by the parties.

Done on April 11, 2002 in the cities of Washington D.C. and Columbia, South Carolina.

For the Department of Energy

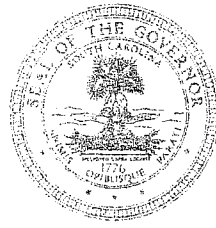
For the State of South Carolina



Spencer Abraham

Jim Hodges

Attachment



23

State of South Carolina

Office of the Governor

JIM HODGES
GOVERNOR

POST OFFICE BOX 11829
COLUMBIA 29211

April 11, 2002

VIA FAX NO. 202.586.1499

Lee Otis
Office of General Counsel
U.S. Dept. of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585

Dear Ms. Otis:

I am writing on behalf of Governor Jim Hodges of South Carolina regarding the Department of Energy's (DOE's) recently announced changes to the surplus plutonium disposition program, in large part to be carried out at the Savannah River Site (SRS) in South Carolina. Governor Hodges continues to seek a negotiated agreement regarding these changes which will be acceptable to DOE and South Carolina. We understand from your staff, however, that DOE is preparing to proceed unilaterally with the new program without reaching an enforceable agreement with South Carolina on it. If DOE does proceed unilaterally, we intend to sue to prevent plutonium shipments to SRS prior to DOE's preparation of a Supplemental Environmental Impact Statement because the changes to the program are significant and would have substantial environmental impacts at SRS and elsewhere that have not been examined.

DOE issued a ROD on January 21, 1997, on the storage and disposition of weapons-usable fissile materials. In that ROD, DOE chose to dispose of surplus plutonium through a hybrid approach of immobilization in existing high-level waste, and mixed oxide (MOX) fuel irradiation in light-water reactors. The ROD stated that the hybrid approach was warranted "by the increased flexibility it would provide . . . to ensure the plutonium disposition could be initiated promptly should one of the approaches ultimately fail or be delayed." 62 Fed. Reg. 3027 (Jan. 21, 1997). DOE amended this ROD on August 13, 1998, and stated that plutonium from Rocky Flats and Hanford "would not be moved to SRS

unless the Department decides to disposition (immobilize) the non-pit surplus weapons-usable plutonium at SRS." 63 Fed. Reg. 43387-88 (Aug. 13, 1993). On January 11, 2000, DOE issued a ROD on surplus plutonium disposition, which affirmed the hybrid approach and selected SRS as the site for the immobilization and MOX facilities.

Under the immobilization approach, plutonium would be immobilized in a ceramic form, sealed in cans, which would then be placed in canisters to be filled with highly radioactive nuclear waste. Those canisters would be disposed of at another site. The MOX approach would involve production in a MOX fuel fabrication facility, with subsequent irradiation in existing domestic, commercial reactors. Both processes have been determined to provide a radiation barrier sufficient to meet the "spent fuel standard."

On January 23, 2002, DOE announced a dramatic change in the plutonium disposition program. In a press release of that date, DOE stated that it would eliminate the immobilization track of the program and proceed exclusively with disposition via MOX. The enormous change in direction was emphasized by the press release's statement: "The decision on plutonium disposition comes after a thorough reexamination of more than 40 disposition alternatives"

The changes made by DOE to its plutonium program mean that much more surplus plutonium will have to be processed at SRS prior to MOX fabrication, including plutonium that was previously considered too contaminated to be processed through the MOX approach. The contaminated plutonium previously slated for immobilization will have to be cleaned in a process that will yield significant new waste streams. The design of the MOX facility will have to be revised to allow processing of contaminated plutonium and other facilities will have to be built to accommodate the new program, such as a waste solidification plant to process and solidify the liquid transuranic and uranium waste streams coming from the MOX plant. Additionally, some plutonium could be purified in existing and aging reprocessing facilities, also yielding significant waste streams that would require treatment. In the last few months, DOE has announced inconsistent numbers of metric tons being shipped to SRS that are not suitable to be processed for MOX, the only disposition approach DOE now maintains it is pursuing. Apparently, DOE is now conceding that there are up to 3 metric tons of plutonium-bearing waste at Rocky Flats that it evidently plans to move to SRS and for which "no disposition pathway" beyond SRS has been identified.

The recent changes to the plutonium disposition program make it less certain that the surplus plutonium will in fact be processed at SRS in the near term as opposed to being left there indefinitely. This is because immobilization is

Lee Otis
Office of General Counsel
U.S. Dept. of Energy
Page 3
April 11, 2002

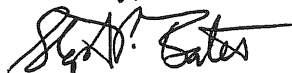
no longer available to handle the plutonium materials slated for MOX if MOX does not work. Additionally, the funding commitment to accomplish the new MOX program is inadequate and several additional commercial reactors are needed under the new program but have not yet been identified in any National Environmental Policy Act (NEPA) documentation.

We understand that one of the main purposes of beginning the shipments of plutonium to SRS now is to facilitate the closing of the Rocky Flats facility in Colorado. While that is a worthy goal, it should not be done at the expense of violating the requirement of NEPA that a Supplemental Environmental Impact Statement (SEIS) be prepared when "substantial changes" are made to an existing EIS. The irreparable harm that will occur to South Carolina if any of the plutonium is moved to SRS without NEPA compliance is that DOE will be increasingly committed to a program of carrying out the critically important plutonium disposition program through an approach that environmental review may reveal is flawed. What would happen to the plutonium hastily shipped to SRS without compliance with law if this is the case? Would it be shipped to another state or would it remain in South Carolina as a burden for this state rather than Colorado?

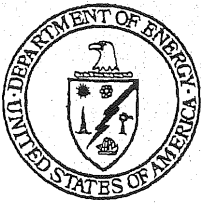
South Carolina has shown that it is prepared to take the plutonium and process it at SRS. The program under which it agreed to do so, and the program presented to the public via the NEPA process, however, has been vastly changed in the last two months. We suggest that South Carolina and DOE cooperate in reaching an agreement that assures plutonium is processed at SRS rather than languishes there in unsuitable facilities. The history of nuclear wastes is that it remains in place indefinitely while its ultimate disposition is endlessly debated. Plutonium should not be moved to SRS until there is assurance that this will not be the case here.

If DOE attempts to make the plutonium shipments under the new program without an agreement with South Carolina assuring its ultimate processing, we will sue to require that DOE meet this obligation of its NEPA regulations: "DOE shall prepare a supplemental EIS if there are substantial changes to the proposal or significant new circumstances or information relevant to environmental concerns."

Sincerely,



Stephen P. Bates
Chief Legal Counsel



The Secretary of Energy
Washington, DC 20585

April 12, 2002

The Honorable Jim Hodges
Governor of South Carolina
Columbia, South Carolina 29211

Dear Jim:

Thank you for your letter of yesterday. I am pleased that the assurances I offered in my letter of that same date are acceptable to you in terms of their content. The remaining issue seems to be limited to how we go about formalizing our agreement on these terms.

Before discussing that in detail, I do want to start out by explaining why I believe that even without the proposal I transmitted yesterday, the Administration has already gone to considerable lengths to provide more than a unilateral promise from me as Secretary of Energy designed to address your concern that any plutonium that comes into South Carolina have a pathway out. First, after you raised that concern as stemming from uncertainty about the United States' disposition plans overall, we accommodated it by refraining from moving any plutonium into South Carolina for an initial period of seven months, until the National Security Council's review of disposition options was complete. At the end of that period, the Administration announced a formal policy decision that it was reaffirming the prior Administration's agreement with the Russian Federation regarding plutonium disposition. It also announced that it intended to implement that agreement by fabricating plutonium destined for disposition under that agreement into Mixed Oxide (MOX) fuel. And it transmitted a formal letter and report to Congress stating that this was its intention.

Second, at the beginning of February, the President announced inclusion of funding for the plutonium disposition plan, including the MOX facility, in his FY 03 budget. And third, the FY 03 budget also included an out-year funding profile for the MOX facility, thereby demonstrating more than a one year commitment to the program on the part of the Administration.

These announcements were the culmination of a formal interagency policymaking process by all affected elements of the Administration on a key foreign policy issue. They are not the kinds of decisions an Administration changes lightly. Since you had previously agreed to accept shipments proposed by the prior Administration without any additional commitments, in the judgment of many observers these announcements alone should have been sufficient to allay your concerns.



Nevertheless, you indicated that South Carolina still wanted further assurances. In response, we continued to refrain from shipping any plutonium for an additional three months while we sought to determine what you felt was needed and provide it. From your letter of yesterday, I understand that we have now agreed on the content of these assurances, consisting of four specific points: a timeline and milestones for design and construction of the MOX facility; a funding profile for that facility; limitations on the timing and amounts of plutonium we propose to ship while that facility is being completed; and a commitment to remove any plutonium brought into the State if the facility is not built and operating on schedule.

You then stated that you wanted some means of enforcing these commitments. It seemed to me that a formal written assurance from me, contained in a signed agreement, should address that concern, since that is the kind of commitment that an Administration walks away from unilaterally only at considerable political peril. You stated, however, that you were seeking a legally enforceable approach. We explained that there were potentially insuperable limits on the Executive Branch's authority to enter into such an agreement because we cannot superimpose a legally binding policy limit of our own devising that has not been legislated by Congress. Nevertheless, after giving much thought to the question, we devised a unique solution that does give the State a substantial measure of enforceability by offering to incorporate the limitations we were committing to in the written agreement into a formal Record of Decision enforceable through the National Environmental Policy Act. You then suggested that as an additional protection, the State would like language stating that any further modification to that Record of Decision ("ROD") that related to the terms of the agreement would constitute a material change, and we have now incorporated that language into the proposed ROD.

That accomplished, I believed we had addressed every issue and that we should be in a position to move forward. At that point, however, you suggested that since what prevented us from binding ourselves further was the lack of a relevant legislative limitation on our authority, perhaps this could be addressed through a legislative change. As you know, that too implicates an interagency process, since Cabinet Departments cannot unilaterally commit to supporting legislation. It is also an extraordinary act for the Executive Branch to support legislation limiting its own discretion, especially on a matter of this type implicating significant national security interests of the United States. Nevertheless, after considerable deliberation, the Administration has accommodated you even on that point, as manifested by my inclusion in yesterday's letter of a legislative proposal that would actually put into positive law a requirement that the Department of Energy remove any plutonium brought to Savannah River if the MOX facility is not constructed and operating on schedule. The final objection I heard you had raised was that the legislation might not be enacted. Yesterday, therefore, we added to our proposal a

commitment that we would ship no more than 3.2 metric tons of plutonium before October 15, 2002, and that if the legislation were not enacted by that time, we would suspend shipments.

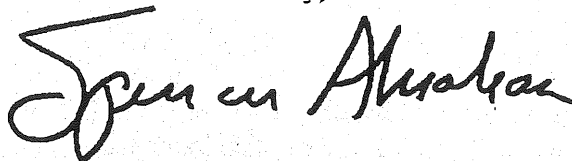
Your latest suggestion of yesterday, however, that the Department of Energy and South Carolina essentially turn these issues over to the courts by entering into a consent decree, goes beyond what we can do. In the first place, there is real doubt whether we have the legal authority to take such an action. As I indicated before, there is no relevant legislative limitation that requires the United States to do what we have offered to do, and the Executive Branch is not free to impose one on its own. Using the pretext of a lawsuit on unrelated issues as the occasion to ask a court to impose such limitations without prior Congressional action seems to me to be of dubious legality and propriety. In the second place, it would be wholly irresponsible for the country to attempt to conduct its national security and foreign policy affairs through the judicial process, but that is what we effectively would be committing ourselves to doing. The courts are an appropriate forum for handling lawsuits, not for performing such Executive Branch duties as overseeing and implementing the U.S.-Russian nuclear non-proliferation agreement. This is especially true at this time, when we have clear evidence that terrorist groups are seeking access to nuclear materials.

In the third place, there is no mechanism under which the Department of Energy and South Carolina can simply go to the courts and ask them to ratify and enforce an agreement that we and the State devise. Rather, once this matter is in litigation, other parties will be entitled to try to intervene and gain status to influence current and future decisions on these issues. Even groups who oppose the objectives or the particulars of our non-proliferation programs, for example those who oppose construction of any MOX facility, could inject themselves into the process. The result would be to turn over to the courts decisions that are integrally related to the foreign policy of the United States, up to and including how much plutonium the United States disposes of and when it disposes of it. Moreover, under a litigation or consent decree scenario, that could happen not only today, but even ten years from now.

I believe the prior steps I have taken, as outlined above, demonstrate my strong personal interest in and commitment to accommodating the reasonable requests of the State of South Carolina. I also believe my proposal of yesterday actually addresses each of the concerns you have raised. I hope that rather than electing to throw this matter into litigation, thereby vastly complicating its resolution, you will

reconsider, accept the proposal I have offered, sign the proposed agreement which I believe gives you very substantial protection against a unilateral change of course, and if you believe more is needed, join hands with me to seek swift passage of the legislation I have proposed. That would allow us to move forward together in the best interests of the people of South Carolina and the United States.

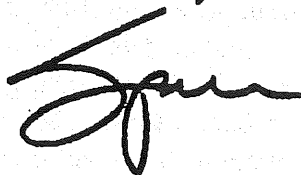
Sincerely,

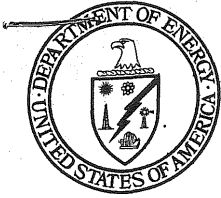


Spencer Abraham

Jim -

Let's work together to get
this legislation done in the
next 30 days.

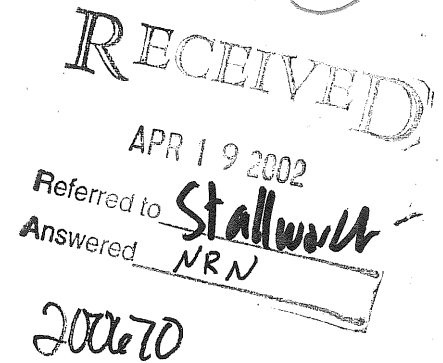




The Secretary of Energy
Washington, DC 20585

April 15, 2002

The Honorable Jim Hodges
Governor of South Carolina
Columbia, South Carolina 29211



Dear Jim:


It was good to talk to you this morning. I look forward to discussing Congressman Graham's draft bill once it is complete and, hopefully, to working with you to seek passage of legislation designed to address your remaining concerns.

Because it is essential that we begin shipments of materials from Rocky Flats to South Carolina by approximately May 15, 2002 in order to meet the nation's goal of closing that facility in 2006, because Congress has legally stipulated that we provide it with at least thirty days notice prior to initiating such shipments and because I believe that working together we can pass legislation swiftly, I am transmitting a letter and supporting Amended Record of Decision notifying the House and Senate Armed Services Committees of the Department's intent to begin shipping plutonium from Rocky Flats to Savannah River no sooner than thirty days from today.

Because no shipments can take place for thirty days and therefore no interest of South Carolina can be affected during that time, I hope that we can spend this interval working together to move legislation.

I think we can get the job done, and I am prepared to personally commit to fully engage in the effort.

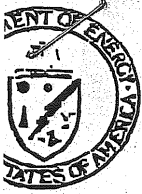
Sincerely,


Spencer Abraham

Good to talk - I will stay in touch
Spencer



(25)

DEPARTMENT OF ENERGY
Washington, DC 20585

OFFICE OF THE SECRETARY

OFFICE OF THE SECRETARY

FACSIMILE TRANSMISSION SHEET

To	<i>Gov. Iodys</i>	From	<i>Secretary Abraham</i>
Office	<i>803 734.9400</i>	Date	<i>4/15/02</i>
Fax Number	<i>803.734.9413</i> <i>803 734.6447</i>	Fax Number	202/ 586-7644
Office Number		Office Number	202/ 586-6210

Comments:

Attn: Billy Boar

Pages: _____, including this cover sheet.

IF TRANSMITTAL IS INCOMPLETE, PLEASE PHONE *Jay* AT 202/ 586-6210.

**The Secretary of Energy**

Washington, DC 20585

April 15, 2002

The Honorable Carl Levin
Chairman, Committee on Armed Services
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with *The National Defense Authorization Act for Fiscal Year 2002*, Public Law 107-107, Section 3155(b), and consistent with the Conference Report accompanying the Fiscal Year 2002 Energy and Water Development Appropriations Act, this letter provides notification of my intention to resume shipments of surplus plutonium materials from the Rocky Flats Environmental Technology Site (RFETS) in Colorado to the Savannah River Site in South Carolina. Options for storage and disposition of these surplus plutonium materials were evaluated in the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement (DOE/EIS-0229, December 1996) and Surplus Plutonium Disposition Environmental Impact Statement (DOE/EIS-0283, November 1999). In accordance with the requirements of that law, shipments will commence no sooner than 30 days from this date. The plutonium materials will be packaged in about 1900 plutonium storage containers, referred to as "3013 containers" and require around 76 Safe Secure Transport (SST) trailers. RFETS projects the campaign to start no earlier than mid-May 2002 and be completed around June 2003, at a rate of about nine SST trailers per month for the entire duration.

As you are aware, two months ago the Department forwarded its report, *Disposition of Surplus Defense Plutonium at Savannah River Site*, (supplemented by a letter on March 5, 2002) describing the Department's disposition strategy. That strategy calls for disposing of 34 metric tons of plutonium by fabricating it into mixed-oxide fuel, thus assuring a pathway out of South Carolina for all plutonium being transported there. The Department is in the process of analyzing the further actions needed to carry out that plan, including analysis conducted pursuant to the National Environmental Policy Act, and will further inform the Committee of the details of those actions after it has completed that analysis.

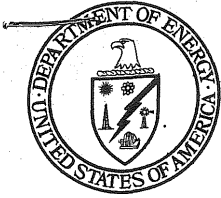
I appreciate your continued support and attention to this matter. If you have any further questions, please contact me or Mr. Dan R. Brouillette, Assistant Secretary, Office of Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,


Spencer Abraham

Enclosure

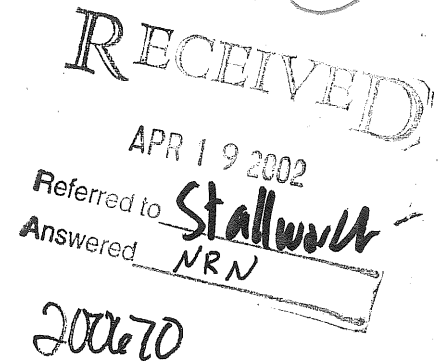
cc: The Honorable John W. Warner
Ranking Minority Member



The Secretary of Energy
Washington, DC 20585

April 15, 2002

The Honorable Jim Hodges
Governor of South Carolina
Columbia, South Carolina 29211



Dear Jim:


It was good to talk to you this morning. I look forward to discussing Congressman Graham's draft bill once it is complete and, hopefully, to working with you to seek passage of legislation designed to address your remaining concerns.

Because it is essential that we begin shipments of materials from Rocky Flats to South Carolina by approximately May 15, 2002 in order to meet the nation's goal of closing that facility in 2006, because Congress has legally stipulated that we provide it with at least thirty days notice prior to initiating such shipments and because I believe that working together we can pass legislation swiftly, I am transmitting a letter and supporting Amended Record of Decision notifying the House and Senate Armed Services Committees of the Department's intent to begin shipping plutonium from Rocky Flats to Savannah River no sooner than thirty days from today.

Because no shipments can take place for thirty days and therefore no interest of South Carolina can be affected during that time, I hope that we can spend this interval working together to move legislation.

I think we can get the job done, and I am prepared to personally commit to fully engage in the effort.

Sincerely,


Spencer Abraham

Good to talk - I will stay in touch
Spencer



Secretary Abraham Meeting

①
Briefing paper
from me to Gov before
he went to Washington
last time.

Rocky Material. The 6.4 tons of plutonium that are to come from Rocky Flats are nuclear waste. The weapons to ploughshares argument is correct for the pits (the remainder of the 34 tons) that are to come from Pantex, but they are not scheduled to arrive until the plant to treat them (Pit Disassembly and Conversion Facility) is in place (2009). The need to move the material from Rocky is one based on money: as soon as they can remove the material, clean up the site and close it, the more money they save on "guns, guards and gates." The Denver Post articulated recently what you have said many times: nuclear waste follows the path of least resistance. And nuclear waste is what we are talking about this first stage.

A second waste issue is the method and place of treatment for two tons of Rocky material that the latest DOE plan does not address except to say they will figure it out later. They plan to substitute two tons of MOX suitable plutonium to make up the required 34 tons. Where and how they treat this material is very relevant to us as we will not want that to come here. Senator Dominici has made a very big deal out of not allowing this material into the WIPP facility in his state.

All 8.4 tons of the Rocky material was originally slated for immobilization because it was not readily convertible to MOX. This is particularly true for the last two tons I spoke of.

Russian Situation. The Russia/US agreement calls for plutonium disposition to follow a linked path, both in terms of the method and time of disposition. The program appears to be in disarray.

A change in the senior management of the Russian Ministry of Atomic Energy may cause a delay as that administration does what DOE did with new leadership: they halted everything while they performed a review of the program.

DOE says that the Russian MOX program will use a never operated Siemens owned MOX plant in Hanau, Germany. No arrangements have been made and Siemens is now accepting bids to dismantle that plant and sell off the pieces as they can.

There is serious concern that there won't be enough money from the G-7 to finance a MOX facility in Russia. So far, \$400 M has been committed, but this is \$600 M short, even if the Siemens' plant is available.

MOX licensing and operation: There are many bumps in the road for licensing and burning MOX, both here and abroad.

Lead Test Assemblies of MOX must be created so they can be burned in the Duke reactors. Los Alamos was doing this, but stopped because of excess cost and slipped schedules. This leaves several European options, but none are easy. First because just shipping plutonium oxides out of this country and MOX back in is politically difficult (Abraham wrote a letter opposing the shipment of a small amount of MOX through his state from Canada when he was Senator) and secondly because the existing plants are already booked.

DOE makes up a great deal of its \$2 B cost savings through expedited processing of plutonium. But processing more on the front end means you have to

burn more on the back end. To do that will require more reactors than the two in SC and the two in NC. Though unidentified in DOE's plan, the only two others Duke has are in SC. I am told that to meet the 3.5 ton throughput, there will need to be 3-4 reactors. Again, this may represent another licensing delay.

KAMS- the K Reactor Material Storage Facility. KAMS is allowed 10 years of storage life under the Environmental Impact Statement that has been performed. What happens if there are delays in this end of the MOX program? Has DOE considered other facilities such as the Device Assembly Facility in Nevada or the Kirkland Underground Munitions Storage Facility in New Mexico as interim storage? Would DOE agree not to store plutonium at SRS (in KAMS or some alternative we don't know about) until some agreeable point?