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Baker, JoshJoshBaker@gov.sc.gov
Date: 12/13/2015 4:06:54 PM
Subject: Re: MOX background and outcomes

Thanks David. Can you also add (1) a note about Yucca and how its different from MOX and (2) what other alternatives can DOE pursue to dispose of the waste if MOX is shuttered.

We need any other background that explains why enforcing the penalties is the right thing to do in terms of safety to the public and environment.

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> On Dec 13, 2015, at 3:32 PM, Glaccum, David <DavidGlaccum@gov.sc.gov> wrote:

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> Team - below is a brief background and what I see as the three most likely outcomes of assessing the penalties. I welcome y'all's input.

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> I plan to email this to NRH tomorrow morning in advance of our afternoon MOX meeting.

Alternatively, Swati, because you have had the most contact with NRH on this, please feel free to email this to her at your discretion.

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> Thanks.

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> Background:

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> 1. In September 2000, the U.S. and Russia signed a Plutonium Management and Disposition Agreement by which each agreed to dispose of 34 metric tons of weapons-grade plutonium.

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> 2. DOE planned to dispose the U.S.'s 34 metric tons by converting the plutonium to a mixed-oxide fuel to be used in commercial nuclear power reactors.

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> 3. To implement the plan and per federal statute, DOE began construction of the MOX facility (a mixed-oxide fuel facility) at the Savannah River Site, Aiken, South Carolina.

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> 4. The MOX statute contained various deadlines for plutonium disposition and removal from SC, and included penalties for failure to meet the deadlines. These deadlines have already been extended through legislation once before from Jan. 2014 to Jan. 2016.

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> Possible outcomes from assessing penalties and successful litigation:

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> 1. DOE pays penalty out of MOX plutonium disposition budget, further shuttering the MOX project.

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> 2. DOE is not required to pay the penalty out of the MOX budget, but instead can only pay the

penalty if Congress appropriates additional money for this purpose. Seemingly, this would not immediately effect the MOX project but would certainly delay the payment of the penalty. I say "immediately effect" because if Congress does appropriate money specifically for this penalty, they may also reduce the amount that would otherwise be appropriated for MOX to cover the cost.

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> 3. The penalty is able to be paid out of the DOJ Judgment Fund, which has a permanent appropriation. This would not interrupt current operations at MOX, nor require an additional DOE appropriation. But, Congress may still reduce the amount they would have otherwise appropriated for MOX to cover the cost (MOX is already on shaky ground in Congress as more and more people lose confidence in its ability to accomplish its mission. Therefore, assessing penalties against this program will almost certainly add additional scrutiny and reduce already limited Congressional support).

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