

February 20, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

Before Administrative Judges:
Thomas S. Moore, Chairman
Charles N. Kelber
Peter S. Lam

February 25, 2004
(10:11AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)
)
DUKE COGEMA STONE & WEBSTER)
)
(Savannah River Mixed Oxide Fuel)
Fabrication Facility))
_____)

Docket No. 0-70-03098-ML

ASLBP No. 01-790-01-ML

**GEORGIANS AGAINST NUCLEAR ENERGY'S
RESPONSE TO DCS LETTER OF FEBRUARY 10, 2004**

Georgians Against Nuclear Energy ("GANE") hereby responds to Duke Cogema Stone & Webster's ("DCS's") February 1, 2004, letter regarding delays in the start of construction of the MOX Fuel Fabrication Facility.¹ GANE wishes to draw the Atomic Safety and Licensing Board's ("ASLB's") attention to the National Nuclear Security Administration's ("NNSA's") FY 2005 budget request to Congress, which indicates that construction of the proposed MOX Facility may be delayed much longer than the ten months represented in the DCS Letter.²

¹ Letter from Alex S. Polonsky to Administrative Judge Thomas S. Moore re: Notice of Delay in Construction of the MOX Fuel Fabrication Facility; *Duke Cogema Stone and Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), Docket No. 70-3098-ML (February 10, 2004) (hereinafter "DCS Letter").

² Department of Energy FY 2005 Congressional Budget Request, National Nuclear Security Administration, Office of the Administrator, Weapons Activities, Defense

According to the DCS Letter:

the U.S. Department of Energy has officially notified Duke Cogema Stone & Webster LLC (DCS) that the start of construction of the MOX Facility at the Savannah River Site will be postponed from July 2004 until approximately May 2005.

The Budget Request, however, shows that the May 2005 date is a "target" date, not an estimate, because:

[u]ncertainties associated with the international contributions to the Russian program together with Congressional requirements for parallel progress in both nations *make estimation of key schedule milestones inappropriate at this time.* The targets in 2004 and beyond assume the issue of liability will be resolved by April 1, 2004.³

Id. at 480 (emphasis added). May 2005 is also described as the "earliest possible date" for commencement of construction." *Id.* at 503. In his recent annual report to Congress regarding progress on the MOX Facility, the Secretary of Energy provided no further assurance that the DOE could meet the new construction schedule. His statement can only be described as noncommittal:

Accordingly, pursuant to section 3182(a)(3) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003, I certify that it remains possible to meet the MOX production objective by January 2009, if there is no further significant delay in the start of construction due to liability issues and if the annual funding requirements that will be requested by the President in the outyears are made available by Congress.

Nuclear Nonproliferation, Naval Reactors (February 2004) (hereinafter "NNSA Budget Request") (February 2, 2004). Copies of relevant pages are appended as Attachment 1.³ *Id.* Similarly, at page 481, the Budget Request explains that technical work on the design and licensing of the U.S. plutonium disposition facilities to be located at the Savannah River Site "has progressed to the point that DOE is ready to start construction of the Mixed Oxide Fuel Fabrication Facility in May of FY 2005." But in the same paragraph, the Budget Document states that "the Congressional requirement that both the U.S. and Russian program proceed in parallel may impact this schedule." *Id.* Later in the document, the NNSA indicates that the delay is caused by the lack of resolution of "liability issues." *Id.* at 487.

Letter from Spencer Abraham, Secretary of Energy, to Hon. John Warner, Chairman, Senate Committee on Armed Services (February 17, 2004). A copy is appended as Attachment 2. Thus, the targeted construction commencement date of May 2005 is based on the hope that liability issues will be resolved by April of 2004. If those issues are not resolved, then construction will be delayed even longer.

Moreover, the Budget Request shows that while the target date for commencement of construction of the MOX Facility and the Waste Solidification Building ("WSB") has fallen behind by ten months, the target date for commencement of construction of the associated Pit Disassembly and Conversion Facility ("PDCF") is now delayed by three years. According to the Draft Environmental Impact Statement ("Draft EIS") for the proposed MOX Facility, both the WSB and the PDCF "would be required to support operation of the proposed MOX facility."⁴ The Draft EIS states that construction of the MOX Facility and the WSB will take five years, and that construction of the PDCF will begin two years after construction of the MOX Facility and the WSB begins. *Id.* at 4-7.⁵

Under this schedule, if construction of the MOX Facility and WSB were to have begun in the spring of 2004, construction of the PDCF would have begun two years later,

⁴ NUREG-1767, Draft Environmental Impact Statement on the Construction and Operation of a Mixed Oxide Fuel Fabrication Facility at the Savannah River Site, South Carolina at xviii (February 2003).

⁵ The Draft EIS gives no construction completion date for the PDCF.

in the spring of 2006. Thus, construction of the PDCF would have been underway for three years when the construction of the MOX Facility and WSB finished in 2008.

The NNSA Budget Request, however, shows that construction of the PDCF will not begin until 2009. NNSA Budget Request at 479. This is three years after the originally planned date for commencement of construction of the PDCF. 2009 is also the NNSA's new target year for completion of the MOX Facility and the WSB. *Id.* at 479. Thus, while the previous plan contemplated that construction of the MOX Facility and the PDCF would overlap several years, the new plan contemplates no overlap at all. This delay in commencement of PDCF construction appears to increase the possibility that the MOX Facility may be completed long before completion of the PDCF, and will run out of feed material after it has begun operation.

In conclusion, the statement by DCS that construction of the MOX Facility has been delayed by ten months is inaccurate. The new construction date is a "target" date, not an estimate. Moreover, the construction schedule for the MOX complex as a whole has slipped by three years, not ten months.

Respectfully submitted,



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Dated: February 20, 2004

DOE/ME-0032
Volume 1

Department of Energy FY 2005 Congressional Budget Request



National Nuclear Security Administration
Office of the Administrator
Weapons Activities
Defense Nuclear Nonproliferation
Naval Reactors

February 2004

Office of Management, Budget
and Evaluation/CFO

Volume 1

Defense Nuclear Nonproliferation

Annual Performance Results and Targets

FY 2000 Results	FY 2001 Results	FY 2002 Results	FY 2003 Results
There were no related targets.	There were no related targets.	Developed a plan for U.S. and Russian plutonium disposition that is politically, fiscally, and technically feasible, and obtain White House approval. (MET GOAL)	Complete Title II (detailed) design of the Mixed Oxide Fuel Fabrication Facility for the disposition of excess US weapons-grade plutonium, and commence down blending of off-specification highly enriched uranium at the Savannah River Site. (MET LESS THAN 80% OF TARGET)

Annual Performance Results and Targets

Performance Indicators	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	Endpoint Target Date
(479) Percentage of the design and construction of the Pit Disassembly and Conversion Facility (PDCF) completed	Completed 60% of the detailed design of the U.S. Pit Disassembly and Conversion Facility.	Complete 85% of the detailed design of the U.S. Pit Disassembly and Conversion Facility.	Complete 100% of the detailed design of the U.S. Pit Disassembly and Conversion Facility. Begin design of PDCF Waste Solidification Building. Accomplish all site preparation activities, including site clearing, grading, installation of utilities and installation of infrastructure support.	Begin construction of the U.S. Pit Disassembly and Conversion Facility WSB. Award construction management contract for WSB.	* Continue construction of the U.S. Pit Disassembly and Conversion Facility WSB.	* Continue construction of the U.S. Pit Disassembly and Conversion Facility WSB. Award construction management contract for PDCF complex.	*Complete construction of U.S. Pit Disassembly & Conversion Facility WSB. Start Construction of PDCF complex.	EOY FY 2013
Percentage of the design and construction of the MOX Fuel Fabrication Facility completed.	Completed 75% of the detailed design of the U.S. MOX Fuel Fabrication Facility.	Complete the last 25% of the U.S. MOX Fuel Fabrication Facility detailed design (total of 100% complete).	* Begin site preparation and construction of the U.S. MOX facility and initiate procurement of long lead equipment.	*Continue the construction of the U.S. MOX Fuel Fabrication Facility.	*Continue the construction of the U.S. MOX Fuel Fabrication Facility.	*Continue the construction of the U.S. MOX Fuel Fabrication Facility.	*Complete the construction of the U.S. MOX Fuel Fabrication Facility	FY 2009

Defense Nuclear Nonproliferation/
Fissile Materials Disposition

FY 2005 Congressional Budget

Performance Indicators	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	Endpoint Target Date
Amount of HEU shipped to the United States Enrichment Corporation (USEC) for down-blending. (EFFICIENCY MEASURE)	Processed the equivalent of 11MT @40% of surplus HEU for shipment to USEC.	Ship an additional 11MT of surplus HEU to USEC for down-blending to LEU. A grand total of 45MT has been shipped.	Complete U.S. 50 MT HEU shipments to USEC. Begin shipments of compensation HEU to USEC.	Complete shipments of compensation HEU to USEC.	N/A	N/A	N/A	FY 2006
Amount of off-specification HEU down-blended.	Completed capital improvements at SRS for off-specification HEU down-blending and deliver resulting LEU and surplus HEU to TVA (equivalent to ~2.4MT of HEU).	Down-blend off-specification HEU at SRS and deliver resulting LEU and surplus HEU to TVA (equivalent to ~9.0MT of HEU for a cumulative total of 12.7 MT).	Down-blend off-specification at SRS and deliver resulting LEU and surplus HEU to TVA (equivalent to ~9.0MT of HEU for a cumulative total of 21.7 MT).	Down-blend off-specification HEU at SRS and deliver resulting LEU and surplus HEU to TVA (equivalent to ~6.0MT of HEU for a cumulative total of 27.7 MT).	Complete U.S. HEU/LEU shipments to TVA.	N/A	N/A	FY 2007
Russianize the design and construct the MOX Fuel Fabrication Facility in Russia.	Finalized decisions on the technical path forward for disposing of surplus Russian weapon-grade plutonium. Began and completed 10% of the Russianization of U.S. MOX facility design.	Complete 60% of the Russianization of the design. Begin characterization of Russian MOX site.	Complete 100% Russianization of the U.S. MOX Fuel Fabrication Facility. Complete 100% characterization of Russian MOX site. Begin site preparation and construction of the Russian MOX Fuel Fabrication Facility.	Complete 40% of the construction of the Russian MOX Fuel Fabrication Facility.	Complete 80% construction of the Russian MOX Fuel Fabrication Facility.	Complete 100% construction of the Russian MOX Fuel Fabrication Facility.		FY 2008

* Uncertainties associated with the international contributions to the Russian program together with Congressional requirements for parallel progress in both nations make estimation of key schedule milestones inappropriate at this time. The targets in 2004 and beyond assume the issue of liability will be resolved by April 1, 2004.

(1480)

Detailed Justification

(dollars in thousands)

FY 2003	FY 2004	FY 2005
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U.S. Plutonium Disposition

DOE is responsible for disposing of 34 metric tons of U.S. surplus weapons grade plutonium, in accordance with a September 2000 U.S.-Russia Plutonium Management and Disposition Agreement and Congressional direction to conduct both disposition programs (U.S. and Russia) in parallel. Two key facilities will be built at the Savannah River Site: a Pit Disassembly and Conversion Facility, which will primarily disassemble nuclear weapons pits and convert the resulting plutonium metal to an oxide form, and a MOX Fuel Fabrication Facility which will mix the plutonium oxide with depleted uranium oxide to produce mixed oxide (MOX) fuel for subsequent irradiation in existing domestic reactors.

Technical work on the design and licensing of the U.S. plutonium disposition facilities to be located at the Savannah River Site (SRS) has progressed to the point that the DOE is ready to start construction of the Mixed Oxide Fuel Fabrication Facility in May of FY 2005. Equipment procurement will be initiated in FY 2005. However, the Congressional requirement that both the U.S. and Russian program proceed in parallel may impact this schedule (see section dealing with the Russian Fissile Material Disposition).

Reactor-Based Technologies	57,400	36,750	38,600
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Reactor Based Technologies activities include work necessary to convert weapons grade plutonium oxide into finished MOX fuel assemblies to be irradiated to the spent fuel standard in commercial reactors.

As part of fuel qualification activities, continue the implementation of the Lead Assembly (LA) work, including initiation of fuel fabrication and completion of the fabrication and insertion of lead assemblies into a mission reactor. Continue fuel transportation and packaging activities, including submitting certification documents to the Nuclear Regulatory Commission (NRC). Develop information and responses to NRC questions to assure NRC approval of the operating license for the MOX FFF, continue modifications to the commercial nuclear reactors, complete irradiation of last test specimens, and perform the bulk of post-irradiation examination of all the test specimens. Begin operations planning activities in support of the MOX FFF, including recruiting, training, manual and procedure development, and personnel costs.

The increase in FY 2005 relative to FY 2004 is due to the increased costs for expansion of operational support levels as the design effort matures, partially offset by the decreased costs relating to the completion of the fabrication and insertion of lead assemblies into a mission reactor.

(dollars in thousands)

FY 2003	FY 2004	FY 2005
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Russian Fissile Materials Disposition

Russian Plutonium Disposition (funds spent in Russia)

The 1998 U.S.-Russia Joint Scientific and Technical Cooperation Agreement, which provided limited liability protection for technical work (pre-construction) in support of plutonium disposition, expired in July 2003. Senior officials in both countries are now working to develop satisfactory liability provisions for the September 2000 U.S.-Russia Plutonium Management and Disposition Agreement. This Agreement covers design, construction and operation of facilities required for plutonium disposition.

Given that preliminary site characterization work in Russia will not start until the spring of 2004 and the U.S. and Russia must exchange detailed technical engineering data to Russianize the design of the MOX Facility, the start of construction in both countries will now begin in FY 2005.

As specified in the U.S.-Russia Plutonium Management and Disposition Agreement, funding from new budget authority continues the work initiated in FY 2002 and 2003. As soon as the U.S. and Russia resolve the liability issues and inform Congress of the revised path forward, the available prior year balances mandated for work in Russia as specified will be obligated.

The Plutonium Conversion and MOX Fuel Fabrication activities and budget, which appeared under this heading in previous years, have been consolidated and placed in a new task entitled "Implementation of MOX FFF Design". Given that Russia has accepted the offer of the design of the U.S.MOX Facility prepared by Duke Engineering Services, COGEMA, Inc. and Stone & Webster (DCS), this task includes both a Russian and a U.S. component.

VVER-1000 Reactors.....	1,700	2,500	3,500
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This effort involves modifying Russian VVER-1000 power reactors to utilize MOX fuel. FY 2005 efforts include: develop reactor physics data for insertion of MOX fuel lead test assemblies. Complete the MOX core design and design for reactor modifications for the lead test assemblies. Upgrade the VVER-1000 safety basis and submit MOX fuel licensing documents to GAN. Obtain licenses for experimental fuel and prepare for the insertion of the lead test assemblies.

The increase will be used to support the modifications to the VVER-1000 reactors for use of MOX, and preparation of licensing documents.

BN-600 Reactor	1,300	2,500	3,500
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This effort involves converting the BN-600 fast neutron breeder reactor into a net burner of plutonium. FY 2005 efforts include: completing the BN-600 uranium core with reflector/shield safety analyses and submit the licensing package to GAN for approval of the blanket replacement. Complete the design upgrade of photo-neutron source and control/shutdown rods and other plant modifications. Fabricate reflector/shield components.

99-D-143, Mixed Oxide Fuel Fabrication Facility, Savannah River Site, Aiken, South Carolina

Significant Changes

The schedule for starting construction of Mixed Oxide Fuel Fabrication Facilities (MOX FFF) in the U.S. and Russia has been adjusted to allow time for resolution of issues regarding Russian tax exemptions and liability. Given the political realities and impacts of these issues, the earliest possible date that construction can begin on the two facilities is May 2005. Despite this delay in the start of construction, the NNSA has structured the program to minimize adverse impacts. The overall program and project costs will be updated in the Program's annual report to Congress.

This schedule adjustment will allow the U.S. to transfer the domestic MOX FFF design to Russia for use in processing Russian surplus plutonium. This approach was proposed to the Russians in April 2002 and accepted in December 2002. It eliminates the 2 to 3 years of time required for Russia to develop their own MOX facility design, and will, ultimately, minimize the cost and schedule of both programs. It will also allow the Congressional requirements for parallel progress in the U.S. and Russia to be met.

1. Construction Schedule History

	Fiscal Quarter				Total Estimated Cost (\$000)	Total Project Cost (\$000)
	A-E Work Initiated	A-E Work Completed	Physical Construction Start	Physical Construction Complete		
FY 2000 Budget Request (A-E and technical design only)	2Q 1999	4Q 2001	1Q 2002	4Q 2005	a	a
FY 2001 Budget Request (Preliminary Estimate)	2Q 1999	3Q 2002	4Q 2002	1Q 2006	a	a
FY 2002 Budget Request (Preliminary Estimate)	2Q 1999	4Q 2002	2Q 2003	1Q 2007	a	a
FY 2003 Budget Request (Preliminary Estimate)	2Q 1999	4Q 2003	2Q 2004	4Q 2007	a	a
FY 2004 Budget Request (Preliminary Estimate)	2Q 1999	1Q 2004	2Q 2004 ^b	4Q 2007 ^b	1,622,000 ^a	1,842,000 ^a
FY 2005 Budget Request (Current Estimate)	2Q 1999	3Q 2004	3Q 2005 ^b	2Q 2009 ^b	TBD ^{ab}	TBD ^a

^a Total Estimate Cost (TEC) and Total Project Cost (TPC) estimates will be updated when the Project Performance Baseline is established in FY 2004.

^b *The Report to Congress: Disposition of Surplus Defense Plutonium at Savannah River Site* dated February 12, 2002, cites a Physical Construction Start date of FY2004, a Physical Construction Completion date of FY 2007, and the first fabrication of MOX fuel in FY2008. These dates will be revised in the 2004 report to Congress.

2. Financial Schedule ^a

(Dollars in thousands)

Fiscal Year	Appropriations	Obligations	Costs ^{b c}
1999	28,000	9,600	2,545
2000	12,375	30,775	33,512
2001	25,943	25,943	29,938
2002	65,993	65,993	52,513
2003	92,088 ^d	92,088 ^d	81,709
2004	399,628 ^e	399,628 ^e	100,000
2004	(11,405) ^{f g}	(11,405) ^f	(11,405) ^f
2005	368,000	368,000	368,000
2006	330,000	330,000	472,125
2007	214,000	214,000	320,313
2008	140,000	140,000	172,362
2009	90,000	90,000	121,010

3. Project Description, Justification and Scope

Description and Scope

The MOX FFF will provide the U.S. with the capability to convert plutonium oxide derived from surplus weapons grade plutonium stocks to MOX fuel suitable for use in U.S. commercial nuclear reactors. Subsequent disposal of the spent fuel will be carried out in accordance with the Nuclear Waste Policy Act. A contract was awarded to a private consortium (Duke Engineering Services, COGEMA, Inc. and Stone

^a As a result of recent budget adjustments made by the Administration, this Budget reflects detailed program changes based on budget numbers not yet developed. Therefore, all outyear cost numbers are preliminary estimates. The program will be undergoing an intensive replanning effort based on these changes.

^b The full amounts of the obligations are needed in order to place on contracts for construction services and plant equipment.

^c Cost beyond FY2003 are projections and updated estimates will be provided in June 2004.

^d The original appropriation amount of \$ 92,687,000 was reduced by FY 2003 Recision amount of \$599,000 to \$92,088,000.

^e The original appropriation amount of \$402,000,000 was reduced by FY 2004 Recision amount of \$2,372,000 to \$399,628,000.

^f A total of \$11,405,000 is proposed to be reallocated to project 99-D-141, Pit Disassembly and Conversion Facility, Savannah River Site, Aiken, South Carolina, as part of a reprogramming action.

^g The FY 2004 appropriated amount has not been adjusted for the FY 2004 Congressional Omnibus Appropriations Bill rescission amount of .59 percent.

& Webster (DCS) on March 22, 1999 for the design of a MOX FFF to be built at the DOE Savannah River Site (SRS) and licensed by the Nuclear Regulatory Commission.

The MOX FFF will produce completed MOX fuel assemblies for use in existing domestic, commercial nuclear power reactors. The MOX FFF will be designed to receive and process 3.5 MT per year of plutonium powder from the Pit Disassembly and Conversion Facility (PDCF) and other selected inventories of weapon-grade plutonium oxide available within the DOE complex and accommodate about two-years storage for the incoming plutonium powder. The MOX FFF is capable of expanding throughput to 4 MT per year to meet provisions in the Russian agreement. The facility's operating life is expected to be approximately 12 years.

Design of the MOX FFF is based on processes and facilities currently being successfully operated in Europe, specifically the MELOX and La Hague facilities in France. The MOX fuel fabrication design will replicate the automated MELOX equipment and facility design and will include lessons learned from operations and maintenance experiences. The MOX FFF will be designed and built to meet U.S. conventions, codes, standards, and regulatory requirements (Americanization process). After completing its mission, the facility will be deactivated, decontaminated, and decommissioned over a three- to four-year period.

The MOX FFF will require approximately 366,000 square feet to perform all material processing and fabrication operations to produce MOX fuel. Specific MOX FFF operations include the following: aqueous polishing (to purify plutonium before fabrication into fuel); blending and milling; pelletizing; sintering; grinding; fuel rod fabrication; fuel bundle assembly; storage of feed material, pellets, and fuel assemblies; a laboratory; and space for use by International Atomic Energy Agency (IAEA). The facility also requires 120,000 square feet of structures adjacent to the MOX process areas for secure shipping and receiving, material receipt, utilities, and technical support.

Cost and Schedule

The TEC for the MOX FFF is TBD due to FY 05 budget changes. These changes require a revision to the overall cost and schedule estimates for the MOX FFF. Cost and schedule estimates in this Data Sheet are preliminary. The revised cost and schedule will be completed by June 2004.

The overall process and facility design (also known as base design) is 75% complete as of September 1, 2003. Title I (preliminary) design began in mid FY 1999 and was completed in December 2000. Title II (detailed design) began in January 2001 and will be completed in 2004. The Title II design has taken longer than planned due to scope changes to accommodate impure plutonium previously destined for immobilization and delays dictated by the Russian program. In order to maintain project schedule and reflect industry experience, glove box and equipment design efforts were initiated in FY 2002.

FY 2004 and FY 2005 Description of Activities

The main FY 2004 activities include completing the base design of the MOX FFF and continuing the manufacturing design activities of the process equipment units. In the base design, the structural design will be completed to develop construction bid packages to support construction commencement in May 2005. The remaining design packages (mechanical, electrical, etc.) will also be completed in FY 2004 to

support the construction schedule in FY 2005 and beyond. Construction planning will fully commence in FY 2004 with the finalizing of Construction Management Plans.

For FY 2005, the initial suite of construction work packages will be issued to support the schedule and site preparation activities and will include land clearing and grading, temporary road construction, and establishment of temporary construction services. Procurement of the MOX FFF structural subcontract will begin in 2nd quarter FY 2005 with award in the third quarter. Initial mobilization and material procurement will begin in FY 2005 with MOX FFF building excavation scheduled in early FY 2006.

The FY 2005 construction TEC activities will also cover finalization of manufacturing design and continuation of software design for process equipment. Initiation of long lead equipment procurement and equipment fabrication will commence.

4. Details of Cost Estimate ^a

	(dollars in thousands)	
	Current Estimate	Previous Estimate
Design Phase		
Preliminary and Final Design costs (Design Drawings and Specifications)	163,300	153,300
Contingencies (4.7% of TEC)	8,000	18,018
Total, Design Phase (TBD% of TEC)	171,300	171,318
Construction Phase		
Improvements to Land	TBD	N/A
Buildings	TBD	N/A
Other Structures	TBD	N/A
Utilities	TBD	N/A
Standard Equipment	TBD	N/A
FY03 Procurement Engineering and Site Preparation	TBD	53,993
FY04 Procurement Engineering and Site Preparation	TBD	74,000
FY03 Physical Construction and Long Lead Procurments	TBD	328,000
Removal less salvage	TBD	N/A
Inspection, design and project liaison, testing, checkout and and acceptance (0.0% of TEC)	TBD	N/A
Construction Management (0.0% of TEC)	TBD	N/A
Project Management (0.0x% of TEC)	TBD	N/A
Total, Construction Costs (72.7% of TEC)	0	455,993
Contingencies.....	TBD	N/A
Design Phase (0.0% of TEC)	TBD	N/A
Construction Phase (0.0x% of TEC)	TBD	N/A
Total, Contingencies (0.0% of TEC)	0	0
Total, Line Item Costs (TEC)	171,300	627,311

^a Amounts and schedules to be finalized by June 2004.



The Secretary of Energy
Washington, DC 20585

February 17, 2004

The Honorable John Warner
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Section 3182(a)(3) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Pub. L. No. 107-314) requires the Department of Energy to submit to Congress, not later than February 15 of each year beginning in 2004, a report on the implementation of the February 2003 plan for the construction and operation of the mixed oxide fuel (MOX) facility at the Savannah River Site, Aiken, South Carolina. The report is to include "(i) an assessment of compliance with the schedules included with the plan...and (ii) a certification whether or not the MOX production objective can be met by January 2009."

Schedule Assessment

In the Congressional Report on the Plan for Construction and Operation of MOX Facility that was submitted in February 2003, the Department listed its key milestones, which included the start of construction of the facility in FY 2004 and the initial fabrication of plutonium into MOX fuel in FY 2008. This strategy for U.S. plutonium disposition was based on continuing work in Russia without interruption and on obtaining the estimated annual funding requirements that were presented in the report to Congress, *Disposition of Surplus Defense Plutonium at Savannah River Site dated February 2002*.

We completed overall design of the MOX fabrication facility on schedule by the end of FY 2003. Since the 2003 plan was submitted, however, the U.S. and the Russian Federation have disagreed on liability protections for work done in Russia. This disagreement has resulted in the interruption of critical work in Russia, which (in light of the Administration's and congressional intent that the two programs proceed in rough parallel), has delayed the start of construction of both MOX facilities and delay of a number of the interim milestones identified in the 2003 plan. The liability problem remains unresolved. However, we are determined to resolve this issue in time to prevent slippages that will prevent us from meeting our 2009 commitments.



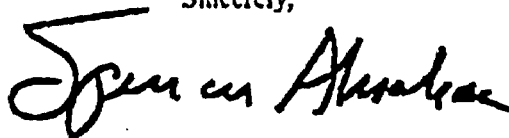
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While the start of construction will be delayed due to our ongoing disagreement with Russia regarding liability, we are confident that we will be able to meet overall program objectives – the elimination of enough weapon-grade plutonium for thousands for nuclear weapons. We are still reviewing how to minimize any impacts that this delay might have on the overall program milestones and cost. We will notify Congress if it becomes necessary to modify program schedule or to adjust the funding profile.

Accordingly, pursuant to section 3182(a)(3) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003, I certify that it remains possible to meet the MOX production objective by January 2009, if there is no further significant delay in the start of construction due to liability issues and if the annual funding requirements that will be requested by the President in the outyears are made available by Congress.

I appreciate your continued support for this important nonproliferation program. If you have any further questions, please contact Mr. Rick A. Dearborn, Assistant Secretary for Congressional and Intergovernmental Affairs, at (202) 586-5450.

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

cc: The Honorable Carl Levin
Ranking Minority Member

