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**WATCHDOG GROUPS FILE LEGAL PETITION WITH ENERGY DEPT:
Allege Agency is Slow Walking “Record of Decision” Re: Plutonium Bomb Core
Production to Prevent Judicial Review; Stage Set for Litigation on Expanded Production**

Today, legal counsel for the public interest groups Nuclear Watch New Mexico, Tri-Valley Communities Against a Radioactive Environment, Savannah River Site Watch and the Natural Resources Defense Council took a significant step toward a potential legal challenge to the U.S. Department of Energy’s plans for expanded production of plutonium cores, or “pits,” for new-design nuclear weapons.

The groups demanded, in a petition filed with the Dept. of Energy (DOE) Secretary and the head of the National Nuclear Security Administration (NNSA), that the agencies promptly issue a formal Record of Decision (ROD) on plans for expanding production of plutonium pits at the Los Alamos National Lab and the Savannah River Site.

Specifically, the petition addresses the agencies’ refusal to conduct programmatic environmental review of the plutonium pit program - all the while continuing to implement it in the absence of a published ROD, which is the usual trigger for litigation. The letter states:

“DOE and NNSA appear to be deliberately slow-walking the issuance of a formal Record of Decision on expanded plutonium pit production in an apparent effort to prevent the federal courts from reviewing the agencies’ failure to comply with the National Environmental Policy Act.”

The National Environmental Policy Act (NEPA) is commonly referred to as "our basic national charter for protection of the environment." The law requires that the federal government must consider public comments and credible alternatives before implementing major proposed actions and take a "hard look" at potential environmental consequences.

In May 2018 the NNSA announced its plans to expand the production of plutonium “pit” bomb cores to at least 30 pits per year at the Los Alamos National Laboratory (LANL) in northern New Mexico and at least 50 pits per year at the Savannah River Site (SRS) in South Carolina. In October 2018 the watchdog groups wrote to NNSA asserting that NEPA requires the agency to complete a nation-wide programmatic environmental impact statement (PEIS) for expanded plutonium pit production followed by site-specific environmental impact statements at both sites. NNSA ignored their letter.

On May 17, 2019 Nick Lawton of Eubanks and Associates LLC and Geoff Fettus of NRDC, representing the four groups, wrote NNSA reiterating their demands. On May 31, 2019, NNSA indirectly responded by formally announcing its intent to prepare a site-specific EIS for pit

production at SRS. However, the agency conceded to only preparing a “Supplement Analysis” (SA) considering whether or not to prepare a new PEIS.

In today’s letter the four public interest organizations note:

“NNSA issued its Final Programmatic Supplement Analysis in early December 2019. The Final Programmatic SA reflects the refusal of DOE and NNSA to prepare any new or supplemental PEIS in association with the agencies’ decision to produce plutonium pits at both LANL and SRS. In particular, the Final SA “determined that no further NEPA documentation is required at a programmatic level, and NNSA may amend the existing 2008 Complex Transformation Supplemental PEIS Record of Decision (ROD).” However, although DOE and NNSA issued their Final SA in early December 2019—roughly six months ago—the agencies have not issued any Amended ROD.”

The four groups contend that NNSA’s reliance on the 2008 Complex Transformation Supplemental PEIS is not legally sufficient because it did not consider simultaneous plutonium pit production at two sites, nor did it consider credible alternatives to new production such as the extensive reuse of existing pits. Further, independent experts have concluded that plutonium pits last at least a century, and at least 15,000 existing pits are already stored at the NNSA’s Pantex Plant near Amarillo, TX, making expanded production unnecessary.

NNSA’s planned future plutonium pit production is NOT to maintain the safety and reliability of the existing, already extensively tested stockpile. Instead, future production will be for modified pits for speculative new-design nuclear weapons (specifically the W87-1 ICBM warhead and W93 sub-launched warhead). This could lower stockpile confidence since the modified pits cannot be full-scaled tested because of the current testing moratorium, or alternatively could prompt the U.S. to resume nuclear weapons testing, which the Trump Administration is reportedly already considering.

The groups’ letter continues:

“In the absence of any Amended ROD at the programmatic level, DOE and NNSA’s continued implementation of the action proposed in the Final Programmatic SA is not lawful... DOE and NNSA’s current tactic of slow-walking an Amended ROD altering the 2008 Complex Transformation SPEIS ROD appears to be nothing more than an attempt to prevent the federal courts from conducting any effective review of the agencies’ decisions... The agencies’ approach of slow-walking an Amended Programmatic ROD is a flagrant effort to deprive the federal courts of the power to issue a timely ruling that may have any practical impact on the agencies’ chosen course of action. This tactic profoundly undermines NEPA and the role of the federal courts in ensuring that federal agencies comply with the nation’s bedrock environmental laws.”

Their letter concludes:

“For all the reasons described above and in our earlier letters, DOE and NNSA are currently in violation of NEPA. To correct their violations of NEPA, the agencies must prepare a new or supplemental PEIS in association with their decision to expand plutonium pit production by producing pits at multiple sites. At a minimum, the agencies must immediately issue an Amended ROD reflecting the decision that the agencies have already made in the Final Programmatic SA, and to ensure that the agencies properly sequence their decision-making as NEPA requires... If the agencies

refuse to issue an Amended ROD immediately, we hereby request that the agencies provide a “statement of the grounds” on which they refuse to do so... We request a response to this letter in no more than 30 days.”

Marylia Kelley, Executive Director of Tri-Valley CAREs, noted, “Today’s action marks a necessary and significant step in our efforts to force an out-of-control Energy Department to comply with our Nation’s most fundamental environmental law. We are sending a clear message: No agency, much less one that controls nuclear weapons, has the right to run roughshod over the law.”

Jay Coghlan of Nuclear Watch New Mexico concluded, “We stand at the intersection of policy and environmental enforcement. Internationally the Trump Administration is breaking arms control treaties and starting a new nuclear arms race while at home it is gutting environmental regulations. Through our actions to enforce the National Environmental Policy Act we hope to help guarantee that American taxpayers have their legally required opportunity to raise their voices against unnecessary, expensive and provocative plutonium pit bomb core production.”

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The four groups’ letter to DOE and NNSA is available at <https://nukewatch.org/petition-for-programmatic-rod/>

For additional background on NNSA’s refusal to complete a new programmatic environmental impact statement on plutonium pit production see <https://nukewatch.org/newsite/wp-content/uploads/2020/01/PR-Pits-NNSA-final-Supplement-Analysis.pdf>

This press release is available online at <https://nukewatch.org/plutonium-pit-rod-pr/>