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**"Freedom of Information Act Appeal" of NNSA's Partial, Inadequate Response to FOIA 21-00282-R (for "Lessons Learned" documents about the Bungled Plutonium Fuel, MOX, Project)**

To Whom it Concerns:

I am hereby formally appealing the response of the National Nuclear Security Administration to the Freedom of Information Act request 21-00282-R, filed by Savannah River Site Watch (SRS Watch) and dated July 20, 2021. That belated NNSA response, dated July 13, 2022, states it is a "final response" to my FOIA request but I contend that such a statement is premature, which will be demonstrated below. I am appealing the FOIA response pursuant to 10 CFR § 1004.8.

The initial FOIA request by SRS Watch was duly filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the Department of Energy (DOE) in 10 C.F.R. Part 1004. In its response letter, NNSA did not challenge that such is the case.

I am filing this appeal as the response was incomplete and did not provide documents that I have identified as being responsive to my original request.

NNSA did not specifically deny release of the responsive documents that I have identified but simply did not name them or provide them to me (though they were named in the documents that were provided). Thus, the NNSA response was incomplete. To be clear, I am not appealing redactions in the provided documents pursuant to 5 U.S.C. § 552(b)(5), Exemption 5 of the FOIA.

My FOIA request, as summarized in the NNSA FOIA response cover letter, dated July 13, 2022, was for the following documents concerning the U.S. Department of Energy's failed MOX Fuel Fabrication Facility (MFFF) construction project (which was carried out by NNSA at the DOE's Savannah River Site in South Carolina until its official termination in 2018):



Any "lessons-learned report(s)" or review(s) analyzing what happened with the bungled MOX project and what can be avoid a similar boondoggle in the future; Any attachments to any MOX "lessons-learned report(s).

According to NNSA's response cover letter, the following documents, with redactions (as noted), were provided to me electronically (and for that I am appreciative):

Document: 1: SR PMO FY20 -AAP Major Project Lessons Learned: PDCF, MOX, Vogtle, Units-3&4 and VC Summer Units-2&3, February 10, 2019, 8 pgs.

Document 2: Mixed Oxide (MOX) Fuel Fabrication Facility (MFFF) Project Closure Report, November 30, 2021, 9 pgs.

Document 3: Mixed Oxide (MOX) Fuel Fabrication Facility (MFFF) Project Closure Report, September 23, 2021, 62 pgs.

The enclosed documents and associated itemized listing contain the information you requested, with redactions pursuant to 5 U.S.C. § 552(b)(5), Exemption 5 of the FOIA.

As a public service, the above MOX Lessons Learned documents are posted for Congressional, media and public review - including readers of this appeal letter - on the SRS Watch website at <https://srswatch.org/savannah-river-site-watch-document-library/savannah-river-site-watch-freedom-of-information-act-documents/>.

While the above-named documents were indeed provided, the response by NNSA to my request is only a partial response and is thus incomplete and wholly inadequate.

The July 13, 2022 response letter to SRS Watch states that the NNSA FOIA office "contacted the Savannah River Field Office (NA-SV) about your request. NA-SV also asked their Management and Operating (M&O) contractor, Savannah River Nuclear Solutions, LLC (SRNS) and Savannah River, Acquisition and Project Management Office (APMO) to conduct a search for responsive records. NA-SV, SRNS and APMO conducted a comprehensive search of their records." As I have identified responsive documents, it appears that either a "comprehensive search" was not conducted or that documents identified as responsive were withheld with no mention of them not being given to me nor reason given to me for them being withheld.

NNSA must be directed to 1) provide all the identified documents which are responsive to the FOIA request - which I mention below, and 2) provide any additional documents that are responsive to my request but that I am not able to identify.

Some of the documents that should have been provided to me but were not are actually named in two of the documents which were provided to me. For example, I cite these named documents or sets of documents (which I mark in bold text) that were not provided to me:



1. In document number 2 above, entitled *Mixed Oxide (MOX) Fuel Fabrication Facility (MFFF) Project Closure Report*, dated November 20, 2021, it is stated on the last page of that document, page 7 of 7, that:

**"A complete Lessons Learned document is in development and will be provided under separate cover."**

The above stated **"Lessons Learned document"** was not provided to me in response to my FOIA request. Per FOIA request 21-00282-R, it is clear that in response to the request that the above-mentioned "complete Lesson Learned document" should have been provided and would have been identified if the NNSA's search had been "comprehensive." I assume that the document exists as I do not have evidence to the contrary. I request in this appeal that the hearing officer direct the NNSA to provide the document to me.

2. In document number 3 above, entitled *Mixed Oxide (MOX) Fuel Fabrication Facility (MFFF) Project Closure Report*, dated September 23, 2021, it is stated on page 8 that "appropriate elements identified in DOE G 413.3-16A, Project Completion/Closeout Guide," include a **"Lessons Learned" analysis**. The document includes a "Lessons Learned" section (# 5.9), on page 38. That section states:

The **MOX Termination Project employed a Lessons Learned program** that was procedurally implemented and executed in accordance with DOE Order 210.2A, DOE Corporate Operating Experience Program and DOE O 413.3B, Program and Project Management for the Acquisition of Capital Assets. The procedure defined the processes by which Lessons Learned were received, identified, documented, validated, and disseminated. Various sources and projects were systematically reviewed and Lessons Learned were determined applicable to the project based on the nature of the work, hazards, organizational complexities, similar projects, and trends.

No Lessons Learned documents prepared as part of the MOX Termination Project via the above-named procedures have been provided in response to my FOIA request. While some examples of lessons learned are mentioned on page 38 in the MOX Closure Report, I request that the hearing officer direct NNSA to conduct a search with the goal to provide documentation of all Lessons Learned. I am willingly to discuss this matter but anticipate at least a list of "Lessons Learned Items" will be provided (as it appears that the examples listed on page 38 may have been taken from such a list).

3. Also on page 38, the following document is mentioned as being part of Lessons Learned for the MOX project: **NNSA, APM Lessons Learned Report, 2021**. This documents is also listed at the end of the MOX Closure Report in "references," on page 60.

I request that the *NNSA, APM Lessons Learned Report, 2021* document be provided to me.

4. On the top of page 39 of the MOX Closure Report, it is stated that **"The MOX-T project will submit a Lessons Learned document by December 31, 2021** in accordance with the milestone listed in the statement of work document, *DNN Construction FY 2022 Implementation Plan*, Rev 0.0 dated 8/31/2021."

I hereby request that the hearing officer direct NNSA to provide the mentioned MOX-T Lessons Learned document. I have no reason to doubt the existence of this document.

I hereby request that the four documents (or sets of documents) mentioned above, whether prepared by NNSA or Savannah River Nuclear Solutions (SRNS) or any other contractor, be immediately provided. All such documents are the property of NNSA. No reason or claim of exemption for not providing them was given.

The documents named above - generated for or by DOE or NNSA as required by regulations or under DOE or NNSA direction - and now requested appear to be discrete documents (or sets of documents) that exist. They should have been identified in the earlier "comprehensive search" for documents. I will assume the search was simply inadequate and the exclusion of the documents was not nefarious in nature.

The DOE's FOIA website states: "When information is withheld from disclosure, the DOE's written response ordinarily identifies what records have been withheld and specifies the FOIA exemption that permits the withholding." No such written response pertaining to the documents listed in this letter and not provided was presented in the FOIA response letter of July 13, 2022. Likewise, NNSA did not state in the FOIA response letter to SRS Watch that the documents that I have identified did not exist. Nor was I notified in writing that the DOE does not have the above-named records.

In any event, NNSA did not meet this standard concerning the identified but not provided documents: "If responsive documents cannot be located, the requester must be told whether the requested record is known to have been disposed of or never to have existed. 10 C.F.R. § 1004.4(d)."

If what is said in the documents that were provided is accurate, I am certain "that there are additional records responsive" to my request that were not provided. (Quote is from DOE's FOIA webpage.) I am hereby complying with this statement on the DOE FOIA webpage: "If you are appealing because you believe there are additional records, you must specify why you believe that records exist and, if possible, where you believe they might be located." I have fulfilled this stipulation.

NNSA has not presented any argumentation concerning the withholding in their entirety the responsive of documents that I have identified or stipulated that the documents will not be released due to special circumstances. As the documents were readily identifiable by me, it appears that the NNSA has made no reasonable effort to locate the mentioned documents and



provide them. As stated on the DOE's FOIA website, DOE has not complied with this basic FOIA stipulation by DOE: "When information is withheld from disclosure, the DOE's written response ordinarily identifies what records have been withheld and specifies the FOIA exemption that permits the withholding."

No argument has been presented to me by NNSA to justify a partial response to my request or why the response was deemed to be final when, in fact, it is clear that responsive documents were not provided and thus the response was not final. No argument were presented in the response letter to SRS Watch of July 13, 2022 about reasons for withholding or applying any exemptions to the responsive documents that I have identified but which were not provided to me. I assume that NNSA cannot now make claims that the documents will not be provided. Thus, to underscore, I request that NNSA be directed by the appeal officer that the identified documents be immediately provided to me in full. I further request that a search for documents that I have not identified be conducted.

As stated in my original FOIA request, dated July 20, 2021, I affirm that this statement would apply to the newly identified documents: "If any claim is made that any portion of any newly located documents are sensitive in nature or meet FOIA exclusions, I request that redacted copies of such documents be provided to me and that a full explanation be provided as to the reasons for any redactions."

In my original FOIA request, I also asked for "any attachments to any MOX "lessons-learned report(s)." Nothing of this nature, which might include staff analyses of the documents or NNSA or contractor emails concerning the documents, was provided. I request the hearing officer direct NNSA to comply with this part of my original request as it applies to documents provided as well as the new documents named by NNSA and identified by me.

There may well be more MOX Lessons Learned documents in the possession of NNSA than the ones I have pointed out. Thus, the hearing officer should consider requiring that NNSA produce an index of responsive documents, whereby I can see that a full and comprehensive search for responsive documents was actually conducted and that they are identified and described.

As is too often the case, I am concerned about the slowness of the response and that it took NNSA over a year to respond to my original request. This is unfortunately indicative of the chronic problem that I am familiar with in the proper processing of FOIA requests in a timely and complete manner by DOE and NNSA. I believe the fault lies with the program offices.

In conclusion, for the reasons stated above and due to DOE's discretionary rights and in the public interest, I hereby request that NNSA/DOE be directed to immediately release the documents in their totality unless sound legal reasons can be made for any redactions made to the documents. I have waited too long for these documents to now be withheld for internal reasons and request that their release be expedited. I reserve the right to further appeal your decision if release of the documents or any portion of them is denied.

The documents obtained via this FOIA request will help not only in reviewing why the MOX project failed but also will help in assessing the ability of NNSA and contractors to properly manage the construction and equipment stockpiling for the costly and complex SRS plutonium pit plant (proposed to be located in the partially finished MOX building).

In summary, I request that the hearing officer remand this matter to NNSA for further processing and that the relief that I am seeking be granted: that NNSA be ordered to immediately provide the responsive documents identified by Savannah River Site Watch, as discussed in this appeal, and that NNSA be directed to search for and provide any other documents that I have not been able to identify and which are responsive to my request.

Per the DOE's FOIA appeal requirements, I am emailing this appeal, the original FOIA request by SRS Watch and the NNSA's response letter of July 13, 2022 to [OHA.filings@hq.doe.gov](mailto:OHA.filings@hq.doe.gov).

Please get in touch with me if you wish to discuss this matter further or when you want to inform me of actions regarding your decision in response to this appeal.

Sincerely,



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