

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

SAVANNAH RIVER SITE WATCH, TOM)	Civil Action Number: 1:21-cv-01942-MGL
CLEMENTS, THE GULLAH/GEECHEE SEA)	
ISLAND COALITION, NUCLEAR WATCH)	
NEW MEXICO, and TRI-VALLEY)	
COMMUNITIES AGAINST A RADIOACTIVE)	
ENVIRONMENT,)	
)	
Plaintiffs,)	
)	
v.)	
)	
UNITED STATES DEPARTMENT OF)	
ENERGY, JENNIFER GRANHOLM, in her)	
official capacity as the Secretary, The)	
NATIONAL NUCLEAR SECURITY)	
ADMINISTRATION and JILL HRUBY,)	
Administrator,)	
)	
Defendants.)	
)	

DEFENDANTS’ ANSWER TO PLAINTIFFS’ AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 8(b), Defendants, the United States Department of Energy; Jennifer Granholm, in her official capacity as the Secretary; the National Nuclear Security Administration; and Jill Hruby, in her official capacity as Administrator, by and through their undersigned counsel, submit the following Answer to the Plaintiffs’ Amended Complaint. Defendants deny each and every allegation of the Plaintiffs’ Amended Complaint not hereinafter specifically admitted, modified, or explained.

The numbered paragraphs of this Answer correspond to the numbered paragraphs of Plaintiffs’ Amended Complaint.

1. Paragraph 1 contains Plaintiffs’ characterizations of their legal claims in their

Amended Complaint and other conclusions of law, to which no response is required. To the extent a response is required, Defendants deny the allegations.

2. Defendants admit the first sentence of Paragraph 2. Defendants admit the second sentence to the extent that it alleges that LANL reestablished pit fabrication capability at a small capacity on or after December 1996. Defendants admit the third, fourth and fifth sentences of Paragraph 2, but deny that the dual-site plan “has never been evaluated in a PEIS”. The sixth sentence contains legal conclusions, to which no response is required. To the extent these legal conclusions are deemed to contain allegations of fact and/or violations of law, such allegations are denied.

3. Defendants deny the first and second sentences of Paragraph 3. The remaining sentences in this Paragraph contain Plaintiffs’ legal conclusions, to which no response is required. To the extent these legal conclusions are deemed to contain allegations of fact and/or violations of law, such allegations are denied.

4. Defendants deny the allegations in the first and second sentences of Paragraph 4. The remaining sentences in this Paragraph contain Plaintiffs’ legal conclusions, to which no response is required. To the extent these legal conclusions are deemed to contain allegations of fact and/or violations of law, such allegations are denied.

5. Paragraph 5 contain Plaintiffs’ legal conclusions, to which no response is required. To the extent these legal conclusions are deemed to contain allegations of fact and/or violations of law, such allegations are denied.

6. The first sentence of Paragraph 6 contains Plaintiffs’ speculative statements and legal conclusions, to which no response is required. To the extent these speculative statements and legal conclusions are deemed to contain allegations of fact and/or violations of law, such

allegations are denied. Defendants deny the second sentence of Paragraph 6, but admit that the Waste Isolation Pilot Plant (WIPP) is the nation's only deep geologic long-lived radioactive waste repository. The third sentence of this Paragraph is Plaintiffs' characterization of a permit issued to WIPP. That permit speaks for itself and is the best evidence of its contents, and to which no response is required. To the extent the characterization is deemed to contain allegations of fact, such allegations are denied. The fourth sentence in this Paragraph is Plaintiffs' characterization of a report prepared by the National Academies of Sciences, Engineering, and Medicine. That report speaks for itself and is the best evidence of its contents, and to which no response is required. To the extent the characterization is deemed to contain allegations of fact, such allegations are denied. The final sentence of this Paragraph contains legal conclusions, to which no response is required. To the extent these conclusions are deemed to contain allegations of fact and/or violations of law, such allegations are denied.

7. Defendants deny the allegations in Paragraph 7.

JURISDICTION AND VENUE

8. The allegations in this Paragraph constitute legal conclusions to which no response is required.

PARTIES

9. The allegations in the first and second sentences of this Paragraph constitute legal conclusions to which no response is required. Defendants admit the allegations in the third sentence that SRS is in Aiken, Barnwell, and Allendale Counties, South Carolina. Defendants admit the allegations in the fifth sentence that repurposing the Mixed Oxide Fuel Fabrication Facility (MOX Facility) at Savannah River Site would produce more pits than have been produced by Defendants since the Cold War and the formal closure of the Rocky Flats Plant but deny that

the proposed plan would “require spending at least \$11 billion” to repurpose the MOX Facility. The remaining allegations in Paragraph 9 constitute legal conclusions and Plaintiffs’ characterization of its case, to which no response is required. To the extent these allegations are deemed to contain allegations of fact, Defendants deny the allegations.

10. Defendants lack sufficient information or knowledge to admit or deny the truth of the allegations in Paragraph 10.

11. Defendants lack sufficient information or knowledge to admit or deny the truth of the allegations in sentences one, two and three of Paragraph 11. Defendants admit that SRS Watch frequently files Freedom of Information Act requests and that SRS is a “site designated on ‘Superfund’ National Priorities List since 1989” by the EPA. The last sentence of Paragraph 11 constitutes Plaintiffs’ characterization of its case, to which no response is required. To the extent these allegations in the last sentence are deemed to contain allegations of fact, Defendants deny the allegations.

12. Defendants lack sufficient information or knowledge to admit or deny the truth of the allegations in Paragraph 12. Defendants admit, however, that Plaintiff submitted “comments on the NEPA documents on pit production at SRS and LANL”, “filed various Freedom of Information Act requests with NNSA on pit production”, and “sent several letters to NNSA on the current pit-production proposals”.

13. Defendants lack sufficient information or knowledge to admit or deny the truth of the allegations in the first sentence of this Paragraph. The allegations in the second sentence constitute legal conclusions and Plaintiff’s characterization of their case, to which no response is required. To the extent that the second sentence is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

14. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of its case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

15. Defendants lack sufficient information or knowledge to admit or deny the truth of the allegations in the first eight sentences of this Paragraph. Defendants admit, however, that "Mr. Clements regularly attends numerous public meetings on SRS matters" and the "SRS CAB"; that "Mr. Clements has submitted comments on the current pit production proposal"; and that "Crackerneck Wildlife Management Area and Ecological Reserve [is] located within the boundary of SRS, owned by the DOE, and managed by the South Carolina Department of Natural Resources." The last two sentences of this Paragraph constitute conclusions of law and Plaintiff's characterization of their case, to which no response is required. To the extent that the last two sentences are deemed to contain allegations of fact and/or violations of law, such allegations are denied.

16. Defendants admit the allegations in Paragraph 16.

17. Defendants admit sentences one, two, and five of this Paragraph. Defendants lack sufficient information or knowledge to admit or deny the truth of the allegations in sentences three and four.

18. Defendants admit the allegations in Paragraph 18.

19. Defendants lack sufficient information or knowledge to admit or deny the truth of the allegations in this Paragraph. Defendants admit, however, that the Savannah River Ecology Lab is located outside the fenced security perimeter for the facility.

20. Defendants lack sufficient information or knowledge to admit or deny the truth of the allegations in this Paragraph. Defendants admit, however, that Mr. Clements attends some

events at or near SRS.

21. Defendants lack sufficient information or knowledge to admit or deny the truth of an allegation about what Mr. Clements “considers” when visiting SRS. The remaining allegations in this Paragraph constitute legal conclusions and Plaintiffs’ characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

22. Defendants admit that Interstate 20 may be used to transport plutonium between various NNSA facilities. Defendants lack sufficient information or knowledge to admit or deny the allegation that “Mr. Clements also regularly travels on Interstate 20”. Defendants admit that the risks of “in-transit accident risks” or “terrorist attack[s]” are “small,” but could hypothetically occur. Defendants lack sufficient information or knowledge to admit or deny the allegation that “Mr. Clements is familiar, in part as he monitored movement of plutonium fuel shipment from Charleston, South Carolina to SRS in 2005.”

23. The allegations in this Paragraph constitute legal conclusions and Plaintiffs’ characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied. To the extent Plaintiffs are referencing the SRS Pit Production EIS the document speaks for itself and is its own best evidence.

24. The allegations in this Paragraph constitute legal conclusions and Plaintiffs’ characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied. To the extent Plaintiffs are referencing the SRS Pit Production EIS and/or a United States Geological Survey these documents speak for themselves and are their own best evidence.

25. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied

26. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied. To the extent Plaintiffs are referencing *South Carolina v. United States*, 912 F.3d 720 (4th Cir. 2019), and 40 C.F.R. pt. 300, these legal citations speak for themselves and are their own best evidence.

27. Defendants lack sufficient information or knowledge to admit or deny the allegations in this Paragraph. Defendants admit, however, that "Plaintiff Gullah/Geechee SIC was a signatory to a letter sent to DOE and NNSA on April 20, 2021."

28. Defendants lack sufficient information or knowledge to admit or deny the allegations in this Paragraph.

29. Defendants lack sufficient information or knowledge to admit or deny the allegations in this Paragraph.

30. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

31. Defendants lack sufficient information or knowledge to admit or deny the allegations in this Paragraph.

32. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

33. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

34. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

35. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

36. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

37. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

38. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law.

39. Defendants lack sufficient information or knowledge to admit an allegation about where the Gullah/Geechee SIC's members reside. Defendants lack sufficient information or knowledge about the Gullah/Geechee SIC's membership to admit or deny that the Gullah/Geechee SIC's members are "underserved communities." The remaining allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is

required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

40. Defendants lack sufficient information or knowledge to admit or deny the allegations in this Paragraph.

41. Defendants lack sufficient information or knowledge to admit or deny the allegations in this Paragraph. Defendants admit, however, that NukeWatch has participated in NNSA processes involving expanded pit production.

42. Defendants lack sufficient information or knowledge to admit or deny the allegations in this Paragraph. Defendants admit, however, that the “Overlook is located within six miles of LANL’s plutonium pit production facility.”

43. Defendants lack sufficient information or knowledge to admit or deny the allegations in this Paragraph. Defendants admit, however, that the New Mexico State Roads 501 and 502 pass through LANL.

44. The allegations in this Paragraph constitute legal conclusions and Plaintiffs’ characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

45. The allegations in this Paragraph constitute legal conclusions and Plaintiffs’ characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

46. The allegations in this Paragraph constitute legal conclusions and Plaintiffs’ characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

47. The first two sentences of this Paragraph refer to the 2008 Complex Transformation

Supplemental PEIS, the 2019 CT PEIS Supplemental Analysis, Defense Nuclear Facility Safety Board (DNFSB) estimates, and/or United States Nuclear Regulatory Commission, to which no response is required since these references speak for themselves and are their own best evidence. The remaining allegations in this Paragraph are Plaintiffs' characterization of an event that took place at the WIPP. Defendants deny Plaintiffs' characterization of this event and rely on the formal accident reports as the best evidence of what happened at the WIPP in 2014.

48. The allegations in this Paragraph refer to a September 2020 DNFSB report, to which no response is required since this Report speaks for itself and is its own best evidence. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

49. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

50. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

51. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied. Defendants admit that New Mexico has experienced wildfires, including near LANL.

52. Defendants admit the allegations in this Paragraph.

53. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph

is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

54. Defendants lack sufficient information or knowledge to admit or deny the allegations in this Paragraph.

55. Defendants admit the allegations in this Paragraph, except Defendants lack sufficient information or knowledge to admit or deny the allegations that “Ms. Kelly resides in Livermore, California within six miles of LLNL.”

56. Defendants lack sufficient information or knowledge to admit or deny the allegations in this Paragraph except Defendants admit that Tri-Valley CAREs attended meetings at LLNL and that LLNL is a Superfund site.

57. Defendants lack sufficient information or knowledge to admit or deny the allegations in this Paragraph.

58. Defendants lack sufficient information or knowledge to admit or deny the allegations in this Paragraph

59. The allegations in this Paragraph constitute legal conclusions and Plaintiffs’ characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied. Defendants admit that Plaintiffs Tri-Valley CAREs has written to NNSA regarding a new or supplemental PEIS related to expanded pit production.

60. Defendants lack sufficient information or knowledge to admit or deny the allegations in this Paragraph.

61. The allegations in this Paragraph constitute legal conclusions and Plaintiffs’ characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

62. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

63. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

64. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied

65. The allegations in this Paragraph purport to characterize public comments submitted by Plaintiff Tri-Valley CARE, which speak for themselves and are the best evidence of their contents. Defendants deny any allegations inconsistent with the plain language, meaning, and context of the public comments.

66. Defendants admit that Plaintiffs Tri-Valley CAREs submitted public comments related to expanded pit production and aver that those comments speak for themselves and are the best evidence of their contents. Defendants deny any allegations inconsistent with the plain language, meaning, and context of the public comments.

67. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied.

68. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied. To

the extent that Plaintiffs' allegations in this Paragraph characterize the 2021 Stockpile Stewardship and Management Plan, Defendants aver that the Plan speaks for itself and is the best evidence of its contents to which no response is required.

69. The allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain allegations of facts and/or violations of law, such allegations are denied, but Defendants admit that LLNL is a superfund site and cleanup remains ongoing.

70. The first sentence of this Paragraph appears to be Plaintiffs' characterization of a budget request submitted by NNSA. That budget request speaks for itself and is the best evidence of its contents. As to Plaintiffs' second sentence, Defendants admit that a glovebox is utilized for the handling, cutting, and/or experimentation with nuclear material. Defendants deny any remaining allegations contained in the second sentence. As to sentences three and four, Defendants deny the allegations in this Paragraph for lack of sufficient knowledge or information to form a belief as to their truth. The remainder of the Paragraph contains Plaintiffs' statements, allegations, and/or legal conclusions to which no response is required. To the extent that this Paragraph is deemed to contain allegations of fact and/or violations of law, such allegations are denied.

71. Defendants deny the first sentence of this Paragraph to the extent it attributes plutonium shipments from LANL to LLNL to expanded pit production. The remainder of the Paragraph contains Plaintiffs' statements, legal conclusions and/or Plaintiffs' characterization of their case, to which no response is required. To the extent this Paragraph is deemed to contain allegations of fact and/or violations of law, such allegations are denied.

72. Defendants lack sufficient information or knowledge to admit or deny the first and third sentences of this Paragraph. The second sentence refers to certain Department of Labor

statistics which speak for themselves, and to which no response is required. The remaining allegations in this Paragraph constitute legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent that this Paragraph is deemed to contain additional allegations of fact and/or violations of law, such allegations are denied.

73. Defendants deny the allegations in this Paragraph.

74. Defendants admit that Defendant Granholm is the "highest ranking official within DOE" but denies all other allegations and characterizations in this Paragraph.

75. Defendants admit the allegations in this Paragraph.

76. Defendants admit that Defendant Hruby is the "highest ranking official within NNSA" but denies all other allegations and characterizations in this Paragraph.

FACTS GIVING RISE TO PLAINTIFFS' CLAIMS

A. STATUTORY AND REGULATORY BACKGROUND

77. The allegations in this Paragraph (and Paragraphs 78 – 99) purport to characterize the provisions of the APA, NEPA and/or its regulations, Executive Order 14008, and/or case law construing those statutes and associated regulations. These legal citations speak for themselves and are the best evidence of their own contents. Defendants deny any allegations inconsistent with the plain language, meaning, and context of the statutes, regulations, or cited case law. To the extent there are any factual allegations in this Paragraph, they are denied.

78. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

79. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

80. Defendants' response to this Paragraph is the same as their response to the

preceding Paragraph.

81. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

82. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

83. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

84. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

85. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

86. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

87. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

88. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

89. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

90. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

91. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

92. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

93. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

94. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

95. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

96. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

97. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

98. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

99. Defendants' response to this Paragraph is the same as their response to the preceding Paragraph.

B. HISTORY OF PLUTONIUM PIT PRODUCTION

100. Defendants admit the allegations contained in this Paragraph.

101. As to the first sentence of this Paragraph, Defendants admit that in 1989 agents from the Federal Bureau of Investigation (FBI) and U.S. Environmental Protection Agency (EPA) secured the plant to investigate allegations of environmental crimes and Rocky Flats officially closed in 1992. As to the second sentence of this Paragraph, Defendants admit that the Rocky Flats contractor pled guilty to violations of the federal Clean Water Act and the Resources

Conservation and Recovery Act and paid an \$18.5 million fine. All other allegations and characterizations in this Paragraph are denied.

102. Defendants admit the allegations contained in this Paragraph.

103. As to the first sentence of this Paragraph, Defendants admit that LANL reestablished pit fabrication capability at a small capacity on or after December 1996. All other allegations and characterizations in the first sentence are denied. Plaintiffs' second sentence appears to characterize a budget request submitted to Congress. The document speaks for itself and is the best evidence of its contents to which no response is required. To the extent that the allegations in the second sentence are deemed to contain allegations of fact and violations of law, such allegations are denied. The final sentence in this Paragraph is Plaintiffs' speculation and opinion; the truth of which Defendants lack sufficient knowledge, information or belief. To the extent the final sentence is deemed to contain allegations of fact and violations of law, such allegations are denied.

104. Defendants admit that DOE/NNSA issued a Stockpile Stewardship and Management Programmatic Environmental Impact Statement ("1996 SSM PEIS") in 1996. The 1996 SSM PEIS and the Record of Decision for that document ("1996 SSM PEIS ROD") speak for themselves, are the best evidence of their content, and no response is required to allegations characterizing the contents of these documents. To the extent the Paragraph is deemed to include allegations of facts and/or violations of law, the allegations are denied.

105. Plaintiffs' allegations in this Paragraph refer to the 1996 SSM PEIS and 1996 SSM PEIS ROD which speak for themselves and are the best evidence of their content, to which no response is required. To the extent this Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

106. The allegations in this Paragraph characterize the decision in *Nat. Res. Def. Council v. Pena*, 20 F.Supp.2d 45 (D.D.C. 1998). The cited decision speaks for itself and is the best evidence of its contents; therefore, no response about the contents of this decision is required.

107. The allegations in this Paragraph refer to the 2008 Complex Transformation Supplemental Programmatic Environmental Impact Statement (“2008 CT SPEIS”) which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and violations of law, the allegations are denied.

108. The allegations in this Paragraph refer to the 2008 CT SPEIS Record of Decision (“2008 CT SPEIS ROD”) which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

109. The allegations in this Paragraph refer to the 1996 SSM PEIS and the 2008 CT SPEIS which speak for themselves and are the best evidence of their contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied

110. The allegations in this Paragraph refer to the 2008 CT SPEIS, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

111. The allegations in this Paragraph refer to the 2008 CT SPEIS ROD which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are

denied.

112. Defendants admit the allegations in this Paragraph.

113. The allegations in this Paragraph refer to 50 U.S.C. § 2538a which speaks for itself and is the best evidence of its contents; and therefore, no response about the contents of 50 U.S.C. § 2538a is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

114. The allegations in this Paragraph refer to the NNSA Final Report for the Plutonium Pit Production Analysis of Alternatives which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

C. PIT PRODUCTION EXPANSION PLAN

115. Defendants deny the first sentence of Paragraph 115. The remaining allegations in this Paragraph refer to the 1996 SSM PEIS and the 2008 CT SPEIS, which speak for themselves and are the best evidence of their contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of facts and/or violations of law, the allegations are denied.

116. The allegations in this Paragraph refer to the 2018 Nuclear Posture Review which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of facts and/or violations of law, the allegations are denied.

117. This Paragraph appears to be Plaintiffs' characterization of a May 10, 2018, joint statement issued by Ellen M. Lord, former Under Secretary of Defense for Acquisition and Sustainment, and Lisa E. Gordon-Hagerty, former Under Secretary of Energy for Nuclear Security

of the United States and NNSA Administrator on the Recapitalization of Plutonium Pit Production. The May 10, 2018, joint statement speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include statements of facts and/or violations of law, the allegations are denied.

118. Defendants admit that Defendant NNSA received a letter dated February 10, 2021, from SRS Watch, Nuke Watch, and Tri-Valley CAREs requesting that a programmatic EIS be conducted. Defendant NNSA replied to Plaintiffs' letter on March 22, 2021. Defendants further admit that DOE and NNSA announced on May 31, 2019, that they would prepare an EIS for the portion of the federal action involving production at the SRS facility and that the scoping process was commenced in June of 2019.

119. Defendants admit that DOE and NNSA issued a Final Supplement Analysis of the PEIS ("2019 Final SA") in December 2019. The remaining allegations in this Paragraph attempt to characterize the 2019 Final SA which speaks for itself and is the best evidence of its contents; therefore, no response is required to these allegations. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

120. The allegations in this Paragraph refer to the 2019 Final SA which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of facts and/or violations of law, the allegations are denied.

121. The Defendants admit that the SRS Draft EIS for Pit Production was published in the Federal Register on April 3, 2020, and that the NNSA and DOE received public comments, which speak for themselves and are the best evidence of their content, to which no response is required.

122. Defendants admit the allegations in this Paragraph.

123. The allegations in this Paragraph refer to the Final Environmental Impact Statement for the Plutonium Pit Production at the Savannah River Site in South Carolina (“SRS Pit Production EIS”) which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of facts and/or violations of law, the allegations are denied.

124. The allegations in this Paragraph refer to the SRS Pit Production EIS ROD which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of facts and/or violations of law, the allegations are denied.

125. The allegations in this Paragraph refer to the 2008 CT SPEIS AROD which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of facts and/or violations of law, the allegations are denied.

126. Defendants admit NNSA issued a second AROD on November 5, 2020, for the 2008 CT SPEIS. The remaining allegations in this Paragraph refer to the Second Amended Record of Decision for the 2008 CT SPEIS which speaks for itself and is the best evidence of its contents; therefore, no response is required to these allegations. To the extent the Paragraph is deemed to include allegations of facts and/or violations of law, the allegations are denied.

127. The allegations in this Paragraph refer to the Second Amended ROD for the 2008 CT SPEIS which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of facts and/or violations of law, the allegations are denied.

D. TRU WASTE STORAGE/DISPOSAL UNCERTAINTIES

128. The definition of TRU waste speaks for itself; however, Defendants do not dispute Plaintiffs' characterization of TRU waste. Defendants admit the remaining allegations contained in this Paragraph.

129. The allegations in this Paragraph refer to the hazardous waste permit applicable to the Waste Isolation Pilot Plant, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of facts and/or violations of law, the allegations are denied.

130. The allegations in this Paragraph refer to a comment submitted by NMED, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of facts and/or violations of law, the allegations are denied.

131. This Paragraph refers to the Waste Isolation Pilot Plant Land Withdrawal Act of 1992, which speaks for itself and is the best evidence of its contents; and therefore, no response is required to Plaintiffs' characterizations of the statute.

132. The allegations in this Paragraph contain Plaintiffs' characterization of administrative decisions relating to the WIPP, collateral litigation, or the Final Supplement Analysis of the Complex Transformation Supplemental Programmatic Environmental Impact Statement. To the extent Plaintiffs' characterizations involve administrative documents or the Final Supplement Analysis of the CT SPEIS, those documents speak for themselves and are the best evidence of their contents, to which no response is required. To the extent Plaintiffs are characterizing collateral litigation, no response is required. To the extent the Paragraph is deemed to include allegations of facts and/or violations of law, the allegations are denied.

133. The allegations in this Paragraph refer to comments submitted by the NMED on the 2020 Supplement Analysis of the 2008 Site-Wide Environmental Impact Statement for the Continued Operation of Los Alamos National Laboratory for Plutonium Operations. The NMED comments speak for themselves and are the best evidence of their contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of facts and/or violations of law, the allegations are denied.

134. The allegations in this Paragraph contain refer to settlement agreements involving WIPP. Any such agreements speak for themselves and are the best evidence of their contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of facts and/or violations of law, the allegations are denied.

135. The allegations in this Paragraph refer to a comment submitted by the NMED on the 2020 Supplement Analysis of the 2008 Site-Wide Environmental Impact Statement for the Continued Operation of Los Alamos National Laboratory for Plutonium Operations. The NMED comment speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of facts and/or violations of law, the allegations are denied.

136. The allegations in this Paragraph refer to comments submitted by the NMED on the Supplement Analysis of the Site-Wide Environmental Impact Statement for the Continued Operation of Los Alamos National Laboratory for Plutonium Operations. The NMED comments and the Final Supplement Assessment for the 2008 Site-wide Environmental Impact Statement for the Continued Operation of the Los Alamos National Laboratory speak for themselves and are the best evidence of their contents, to which no response is required. To the extent this Paragraph is deemed to include allegations of facts and/or violations of law, the allegations are denied.

137. The first sentence of this Paragraph appears to refer to the Final Environmental Impact Statement for Plutonium Pit Production at the Savannah River Site in South Carolina. This document speaks for itself and is the best evidence of its contents, to which no response is required. The second sentence appears to refer to a settlement agreement involving the State of South Carolina and the Department of Energy. This document speaks for itself and is the best evidence of its contents, to which no response is required. The remaining sentences contain speculative statements, legal conclusions, and/or Plaintiff's characterization of its case, to which no response is required. To the extent this Paragraph is deemed to include additional allegations of fact and/or violations of law, such allegations are denied.

138. Defendants lack sufficient information or knowledge to admit or deny the hypothetical allegations in the first sentence of this Paragraph. As to the last sentence of this Paragraph, Defendants admit that the Environmental Protection Agency placed the Savannah River Site on the National Priorities List.

139. Defendants deny the last sentence in this Paragraph. The remaining allegations in this Paragraph refer to the Final Environmental Impact Statement for Plutonium Pit Production at the Savannah River Site in South Carolina, which speaks for itself and is the best evidence of its own contents, to which no response is required. To the extent these remaining allegations are deemed to include allegations of fact and/or violations of law, such allegations are denied.

140. The allegations in this Paragraph refer to the Final Supplement Assessment for the 2008 Site-wide Environmental Impact Statement for the Continued Operation of the Los Alamos National Laboratory and the 2008 Complex Transformation Supplemental Programmatic Environmental Impact Statement. These documents speak for themselves and are the best evidence of their contents, to which no response is required. To the extent this Paragraph is deemed

to include allegations of fact and/or violations of law, such allegations are denied.

E. SIGNIFICANT CHANGES IN THE PROPOSED ACTION

141. The allegations in this Paragraph refer to the 2018 Nuclear Posture Review, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent this Paragraph is deemed to include allegations of fact and/or violations of law, such allegations are denied.

142. The allegations in this Paragraph refer to the 2008 Complex Transformation Supplemental Programmatic Environmental Impact Statement, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent this Paragraph is deemed to include allegations of fact and/or violations of law, such allegations are denied.

143. The allegations in this Paragraph refer to the Final Supplement Analysis of the Complex Transformation Supplemental Programmatic Environmental Impact Statement, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent this Paragraph is deemed to include allegations of fact and/or violations of law, such allegations are denied.

144. The first sentence of this Paragraph sets forth a legal conclusion for which a response is not required. The remaining sentences refer to the Complex Transformation Supplemental Programmatic Environmental Impact Statement and the Final Supplement Analysis of the Complex Transformation Supplemental Programmatic Environmental Impact Statement. These documents speak for themselves and are the best evidence of their contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, such allegations are denied.

145. This Paragraph contains a legal conclusion and Plaintiffs' characterization of their

case to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, such allegations are denied.

146. The allegations contain legal citations. The cited sources speak for themselves and is the best evidence of its contents, to which no response is required.

147. The allegations contain legal citations. The cited sources speak for themselves and is the best evidence of its contents, to which no response is required.

148. This Paragraph contains legal conclusions and Plaintiffs' characterization of their case, to which no response is required. To the extent the Paragraph is deemed to contain allegations of fact and/or violations of law, such allegations are denied.

F. CONNECTED, SIMILAR ACTIONS

149. This Paragraph contains a legal conclusion and Plaintiffs' characterization of their case, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, such allegations are denied.

150. This Paragraph contains Plaintiffs' statements and characterization of their case, and/or legal conclusions to which no response is required. To the extent the Paragraph is a characterization of the Final Supplement Analysis of the Complex Transformation Supplemental Programmatic Environmental Impact Statement, that document speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or conclusions of law, the allegations are denied.

151. As to the second sentence of this Paragraph, Defendants admit that LANL and SRS would generate TRU waste for disposal at WIPP as a result of pit production. As to the last sentence of this Paragraph, Defendants admit that SRS would produce low-level nuclear waste or mixed low-level nuclear waste for disposal at a low-level waste facility as a result of pit production.

Defendants deny Plaintiffs' allegation that the W87-1 warhead program is the "overall driving force of the expanded pit production" program. The remainder of this Paragraph contains speculative statements, Plaintiffs' characterization of their case, and/or legal conclusions to which no response is required. To the extent the Paragraph characterizes the Complex Transformation Supplemental Programmatic Environmental Impact Statement and the Final Supplement Analysis of the Complex Transformation Supplemental Programmatic Environmental Impact Statement, those documents speak for themselves and are the best evidence of their own contents, to which no response is required. To the extent the Paragraph includes additional allegations of fact and/or conclusions of law, the allegations are denied.

152. The allegations in this Paragraph refer to the Final Supplement Analysis of the Complex Transformation Supplemental Programmatic Environmental Impact Statement, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or conclusions of law, the allegations are denied.

153. The allegations in this Paragraph refer to the Amended Record of Decision for Complex Transformation Supplemental Programmatic Environmental Impact Statement, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or conclusions of law, the allegations are denied.

154. Defendants admit that the GAO report references in this Paragraph was issued in September 2020. This Paragraph attempts to characterize the GAO Report GAO-20-703, which speaks for itself and is the best evidence of its contents; and therefore, no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or conclusions of law, the

allegations are denied.

G. NEW CIRCUMSTANCES AND INFORMATION

1. MOX FACILITY FAILURES

155. As to the first, second, and third sentences of this Paragraph, Defendants admit that the Mixed Oxide Fuel Fabrication Facility (MOX Facility), designed for the disposal of surplus weapon-grade plutonium, would be repurposed for plutonium pit production and referred to as the Savannah River Plutonium Processing Facility (SRPPF). Defendants admit the allegations in the remaining sentences.

156. This Paragraph refers to reports prepared by the Government Accountability Office, which speak for themselves and are the best evidence of their contents, to which no response is required. To the extent the Paragraph includes allegations of fact and/or conclusions of law, the allegations are denied.

157. The Defendants deny the first sentence of this Paragraph. Plaintiffs' second sentence is a legal conclusion and Plaintiffs' characterization of their case to which no response is required. To the extent the second sentence is deemed to include allegations of fact and/or violations of law, such allegations are denied.

158. This Paragraph refers to the Final Environmental Impact Statement for Plutonium Pit Production at the Savannah River Site in South Carolina, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or conclusions of law, the allegations are denied.

159. This Paragraph contains a legal conclusion and Plaintiffs' characterization of their case to which no response is required. To the extent this Paragraph is deemed to include allegations of fact and/or violations of law, such allegations are denied.

2. INCREASED COST AND DELAYS OF PIT PRODUCTION PLAN

160. This Paragraph refers to an assessment performed by the Institute for Defense Analysis, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

161. This Paragraph refers to a Congressional Budget Request, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

162. This Paragraph refers to Congressional testimony, the transcript of which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

163. This Paragraph contains a legal conclusion and Plaintiffs' characterization of their case to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

164. Plaintiffs' allegations in this Paragraph refer to the Plutonium Pit Production Engineering Assessment Results, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

165. Plaintiffs' allegations in this Paragraph appear to be their characterization of the Plutonium Pit Production Engineering Assessment Results, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed

to include allegations of fact and/or violations of law, the allegations are denied.

166. Plaintiffs' allegations in this Paragraph appear to be their characterization of the Plutonium Pit Production Engineering Assessment Results, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

167. This Paragraph contains a legal conclusion and Plaintiffs' characterization of their case to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

168. This Paragraph contains a legal conclusion and Plaintiffs' characterization of their case to which no response is required. To the extent these allegations characterize settlement agreements involving the Waste Isolation Pilot Plant, any such agreements speak for themselves and are the best evidence of their contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

169. The allegations in this Paragraph refer to the Final Supplement Analysis of the Complex Transformation Supplemental Programmatic Environmental Impact Statement, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

170. The allegations in this Paragraph refer to the Complex Transformation Supplemental Programmatic Environmental Impact Statement, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

171. This Paragraph contains a legal conclusion and Plaintiffs' characterization of their case to which no response is required. To the extent these allegations characterize the Final Supplement Analysis of the Complex Transformation Supplemental Programmatic Environmental Impact Statement, this document speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

3. SAFETY ISSUES AT LANL

172. Defendants deny the allegations in this Paragraph.

173. The allegations in this Paragraph refer to the Assessment of the Management of Nuclear Safety Issues at Los Alamos National Laboratory, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

174. The allegations in this Paragraph refer to a report issued by the Defense Nuclear Safety Board, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

175. The allegations in this Paragraph refer to the Final Supplement Analysis of the Complex Transformation Supplemental Programmatic Environmental Impact Statement, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

176. The allegations in this Paragraph refer to the Supplement Analysis of the Site-Wide Environmental Impact Statement for the Continued Operation of Los Alamos National Laboratory

for Plutonium Operations, the LANL Application for Pre-Construction Approval under 40 C.F.R. 61 Subparts A and H for Venting of Flanged Tritium Waste Containers at TA-54, and a report published by the Defense Nuclear Safety Board entitled Potential energetic Chemical Reaction Events Involving Transuranic Waste at Los Alamos National Laboratory. These documents speak for themselves and are the best evidence of their contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

177. This Paragraph contains a legal conclusion and Plaintiffs' characterization of their case to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

178. The allegations refer to a review published by the National Academies of Sciences, Engineering, and Medicine, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent the Paragraph is deemed to include allegations of fact and/or violations of law, the allegations are denied.

FIRST CAUSE OF ACTION

VIOLATIONS OF NEPA AND ADMINISTRATIVE PROCEDURES ACT

179. Answering Paragraph 179, each and every allegation of Defendants' Answer is incorporated herein to the same extent as is set forth verbatim.

180. This Paragraph contains a legal conclusion and Plaintiffs' characterization of their case to which no response is required. To the extent this Paragraph is deemed to include allegations of fact and/or violations of law, such allegations are denied.

181. This Paragraph contains a legal conclusion and Plaintiffs' characterization of their case to which no response is required. To the extent this Paragraph is deemed to include allegations

of fact and/or violations of law, such allegations are denied.

182. This Paragraph contains a legal conclusion and Plaintiffs' characterization of their case to which no response is required. To the extent this Paragraph is deemed to include allegations of fact and/or violations of law, such allegations are denied.

183. This Paragraph contains a legal conclusion and Plaintiffs' characterization of their case to which no response is required. To the extent this Paragraph is deemed to include allegations of fact and/or violations of law, such allegations are denied.

184. This Paragraph contains a legal conclusion and Plaintiffs' characterization of their case to which no response is required. This Paragraph is deemed to include allegations of fact and/or violations of law, such allegations are denied.

185. This Paragraph contains a legal conclusion and Plaintiffs' characterization of their case to which no response is required. To the extent this Paragraph is deemed to include allegations of fact and/or violations of law, such allegations are denied.

186. The first sentence of this Paragraph refers to a Congressional Budget Request, which speaks for itself and is the best evidence of its contents, to which no response is required. To the extent this Paragraph is deemed to include allegations of fact and/or violations of law, such allegations are denied. Defendants deny the second sentence of this Paragraph.

187. This Paragraph contains a legal conclusion and Plaintiffs' characterization of their case to which no response is required. To the extent this Paragraph is deemed to include allegations of fact and/or violations of law, such allegations are denied.

188. This Paragraph contains a legal conclusion and Plaintiffs' characterization of their case to which no response is required. To the extent this Paragraph is deemed to include allegations of fact and/or violations of law, such allegations are denied.

PRAYER FOR RELIEF

The remaining allegations set forth in the Complaint consist of Plaintiffs' prayers for relief to which no response is required. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the relief requested or any relief whatsoever.

DEFENDANTS' GENERAL DENIAL

Defendants deny any and all allegations in the Complaint, whether express or implied, that are not otherwise specifically admitted, denied, or qualified herein.

DEFENDANTS' AFFIRMATIVE DEFENSES

Defendants reiterate the responses and allegations contained hereinabove as fully as if repeated herein verbatim to the extent they are consistent with the following responses and allegations. Defendants state the following affirmative defenses:

1. Some or all Plaintiffs lack standing as to some or all of their claims.
2. Plaintiffs' claims fail to state a claim upon which relief may be granted.
3. Some or all Plaintiffs have failed to exhaust their administrative remedies for some or all of their claims.
4. Plaintiffs' claims are not justiciable as they are not ripe for judicial review.
5. Plaintiffs' claims are barred due to Congressional authorization, acquiescence, or implied consent.
6. Plaintiffs' claims are barred by the doctrine of waiver, estoppel, or laches.
7. Defendants reserve their right to assert additional affirmative defenses during the course of this litigation.

WHEREFORE, Defendants respectfully request that this Court deny Plaintiffs the relief they request, dismiss the Complaint in its entirety with prejudice, render judgment against

Plaintiffs and in favor of Defendants, and grant Defendants any further relief that this Court may deem just.

Respectfully submitted,

ADAIR F. BOROUGHS
UNITED STATES ATTORNEY

By: s/Barbara M. Bowens
BARBARA M. BOWENS (ID #4004)
MARTIN L. HOLMES (#13538)
Assistant United States Attorneys
1441 Main Street, Suite 500
Columbia, South Carolina 29201
Telephone: (803) 929-3052
Email: Barbara.Bowens@usdoj.gov
Email: Martin.Holmes@usdoj.gov

TODD KIM
ASSISTANT ATTORNEY GENERAL

J. SCOTT THOMAS, Trial Attorney
U.S. Department of Justice
United States Department of Justice
Environment & Natural Resources Division
150 M Street NE
Washington, DC 20002
jeffrey.thomas2@usdoj.gov

Attorneys for Federal Defendants