



August 9, 2019

Ms. Jennifer Nelson
NEPA Document Manager
NNSA SRS Field Office
P.O. Box A, Aiken, SC 29802

By email to NEPA-SRS@srs.gov

Re: Comments on NNSA's Draft Supplement Analysis of the 2008 Complex Transformation PEIS

Dear NEPA Document Manager:

These comments by the Natural Resources Defense Council (NRDC) reiterate two fundamental points I have already made with co-counsel William N. Lawton of Meyer Glitzenstein & Eubanks, LLP in our May 17, 2019 letter to Department of Energy (DOE) Secretary James Richard Perry and National Nuclear Security Administration (NNSA) Administrator Lisa Gorden-Hagerty:¹

- 1) Given NNSA's May 10, 2018 decision to expand plutonium pit production, the National Environmental Policy Act (NEPA) clearly requires the agency to prepare a new programmatic environmental impact statement (PEIS) to supplement the 2008 Complex Transformation PEIS; and
- 2) Even if NNSA does not agree with the above, there is a 1998 court order that requires DOE to prepare a supplemental PEIS in the event NNSA's proposed plans for future plutonium pit production extend beyond fabrication at LANL of 50 pits per year under "routine conditions," or 80 pits per year under "multiple shift operations."

We intend to enforce that court order, if necessary.

A. NEPA Requires a New PEIS to Supplement the 2008 Complex Transformation PEIS

The stated purpose of the NNSA's *Supplement Analysis of the 2008 Complex Transformation Programmatic Environmental Impact Statement* is:

"... to allow NNSA to determine whether, prior to proceeding with the effort to produce plutonium pits at a rate of no fewer than 80 pits per year by 2030, the existing Complex Transformation SPEIS should be supplemented, a new environmental impact statement should be prepared, or no further *National Environmental Policy Act* (NEPA) analysis is required. The Draft SA preliminarily concludes that further NEPA documentation at a programmatic level is not required; however, NNSA will consider comments on this Draft SA and publish a Final SA."²

¹ See, *The need to prepare a Programmatic Environmental Impact Statement in connection with plans to expand plutonium pit production at the Los Alamos National Laboratory in New Mexico and the Savannah River Site in South Carolina*; Nickolas Lawton, MGE, LLP and Geoffrey Fettus, NRDC; May 17, 2019; <https://nukewatch.org/newsite/wp-content/uploads/2019/05/Summary-Pit-Production.pdf>

² *Supplement Analysis of its 2008 Complex Transformation Programmatic Environmental Impact Statement*, NNSA, June 2019, Executive Summary, <https://www.energy.gov/nepa/downloads/eis-0236-s4-sa-02-draft-supplement-analysis>

NNSA has reached the wrong preliminary conclusion. In our view, NNSA must complete a new programmatic environmental impact statement (PEIS) on its radically revised plan for expanded production of plutonium pits, the radioactive core of nuclear weapons. Simply amending the Record of Decision for the 2008 Complex Transformation (CT) PEIS will not suffice to support a decision to exceed the currently authorized level of 20 pits per year at the Los Alamos National Laboratory (LANL), which was sanctioned by the original 1996 Stockpile Stewardship and Management Programmatic Environmental Impact Statement. The need for a new PEIS is the product of numerous changed circumstances, much new information, and NNSA's new plan for simultaneous pit production at two disparate sites, separated by some 1,388 miles, a programmatic alternative that the Complex Transformation PEIS never considered.

NNSA's new proposal is sufficient justification by itself for a new PEIS. This is so for a host of reasons that should be evident. The new decision shifts the preponderance of NNSA's pit production capacity to a new site that has never hosted this activity before. Such a program entails new patterns for long-distance transportation for intrinsically hazardous plutonium in various forms, including fabricated nuclear weapons pits and plutonium-contaminated wastes. All of this could pose a hazard to the public from a security standpoint if the plutonium were to fall into the wrong hands or was dispersed into the environment by fire, a chemical explosion, or some other such unforeseen accident. Countenancing such situations is precisely what NEPA is for – prior to making the decision to proceed with such major federal programmatic actions.

To use the Department of Energy's own NEPA regulatory language, a new PEIS is required because the expansion of pit production at LANL and the repurposing of the MOX Facility at SRS are "systematic and connected agency decisions" that are clearly "connected," "cumulative," and "similar" actions, and therefore "their environmental effects must be considered in a single impact statement." Accordingly, DOE's own NEPA regulations require the preparation of a PEIS.

NNSA's Supplement Analysis erroneously claims that the drivers and requirements for expanded plutonium pit production have remained the same. To the contrary, they have substantially changed; NNSA's past rationales for expanded pit production have involved speculative new-design nuclear weapons that end-up being canceled, such as the prior "Reliable Replacement" and "Interoperable" warheads. NNSA's latest rationale is for a newly proposed W87-1 warhead. In this instance, the Department attempts to inoculate itself against future objections on these matters by asserting that if it does not use newly manufactured pits in this latest iteration, it will use them for the as yet unnamed next warhead "Life Extension Program."³ NNSA has yet to offer a concrete, consistent rationale for an expensive and substantially expanded plutonium pit production.

NEPA requires that a federal agency clearly state the national purpose and need to be met by any programmatic proposal with significant environmental impacts. Such a clear statement of DOE's purpose and need for proposing expanded plutonium pit production at a new site, and an analysis of all reasonable alternatives that might satisfy this purpose and need with fewer environmental impacts, seems especially indicated in this case given that up to 20,000 existing pits are already stored at the Pantex Plant near Amarillo, TX. Moreover, independent experts have found that existing pits have reliable lifetimes of more than a century and can, if necessary, be refurbished.⁴ All of this points to the fact that in order to fulfill its NEPA obligations, NNSA must consider the extensive reuse of existing plutonium pits as a credible alternative to expanded plutonium pit production, and that the only appropriate and legally compliant

³ See *W78 Replacement Program (W87-1): Cost Estimates and Use of Insensitive High Explosives*, NNSA, December 2018, page 6, <https://nukewatch.org/newsite/wp-content/uploads/2019/03/W78-Replacement-Program-Cost-Estimates-IHE-1.pdf>.

⁴ *Pit Lifetime Study*, JSR-06-035, November 20, 2006, the Mitre Corporation (also known as the "JASONS"), https://www.nukewatch.org/facts/nwd/JASON_ReportPuAging.pdf.

vehicle for that is a new programmatic environmental impact statement on expanded plutonium pit production.

A new PEIS is also needed to analyze the occupational and public risks of repeated, chronic nuclear criticality safety infractions at LANL and how to resolve them. By extension, the need for a more effective nuclear criticality regimen applies to any future pit production at SRS as well. A genuine, comprehensive nuclear safety regime needs to be instituted at a programmatic level, and its putative beneficial impact on hazard reduction to workers and the public analyzed in a new PEIS. This document must also review potential risks to the public from apparent systemic attempts by DOE to degrade institutional safety, such as relaxing internal nuclear safety rules and restricting access of the independent Defense Nuclear Facilities Safety Board.

Additionally, but not last, the risks of increased transport of plutonium and plutonium-contaminated wastes between NNSA sites must be analyzed in a new PEIS. The only repository for transuranic radioactive wastes from plutonium pit production is the Waste Isolation Pilot Plant (WIPP). New programmatic review is required to analyze all (if any) of the increasing radioactive waste disposal demands on WIPP, which include future expanded pit production, 34 tons or more of existing “excess” plutonium and potential attempts by DOE to “reinterpret” or downgrade some high-level radioactive wastes, likely another topic of legal dispute in another forum. A new PEIS must guarantee that all future transuranic waste packaging and shipping will be safe, given that LANL sent an improperly prepared waste drum to WIPP that ruptured, exploded, and closed that facility for nearly 3 years, costing the American taxpayer some \$3 billion.

B. The 1998 Court Order

While a new or Supplemental PEIS in the present circumstance is indicated under any good faith interpretation of NEPA and its implementing regulations, the DOE apparently does not yet perceive its obligations in this light. Therefore, we respectfully remind the Department that it remains subject to a court order that *mandates* the preparation of a PEIS in the current circumstances. That Order established the following requirement:

Prior to taking any action that would commit DOE resources to detailed engineering design, testing, procurement, or installment of pit production capability for a capacity in excess of the level that has been analyzed in the SSM PEIS (the capacity analyzed in the SSM PEIS is the fabrication at LANL of 50 pits per year under routine conditions, and 80 pits per year under multiple shift operations), *DOE shall prepare and circulate a Supplemental PEIS, in accordance with DOE NEPA regulation 10 C.F.R. § 1021.314, analyzing the reasonably foreseeable environmental impacts of and alternatives to operating such an enhanced capacity, and issue a Record of Decision based thereon.*⁵

DOE now proposes pit fabrication of “*at least*” 50 pits per year at SRS and “*at least*” 30 pits per year at LANL. So not only has DOE introduced an entirely new production site in a radically different climate and geography into its programmatic proposal, but the previously analyzed *limit* of 80 pits per year under “multiple shift operations” has become an open-ended capacity for “no fewer than” 80 pits per year at multiple sites. Absent further NEPA programmatic review, NNSA is limited to *no more than* 80 pits per year *at LANL*, and only through utilizing a lesser “routine” production capability for 50 pits per year in “multiple shift operations.” Since it is clear that the new proposed production rate of “no fewer than” 80 pits per year will *not* be achieved via multiple shift operation of a smaller “routine” capability *at LANL*, this too becomes another factor triggering the Court’s requirement for a Supplemental PEIS. As the principle plaintiffs’ counsel on the case, NRDC intends to defend this hard-won decision.

⁵ *Natural Resources Defense Council v. Pena*, 20 F.Supp.2d 45, 50 (D.D.C. 1998), <https://law.justia.com/cases/federal/district-courts/FSupp2/20/45/2423390/>

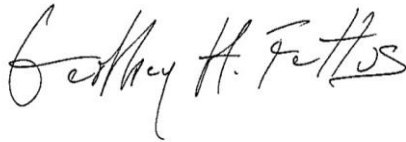
C. Conclusion

To close, in analogous circumstances, DOE and NNSA have undertaken PEISs in the past, providing ample legal precedent for why NNSA must prepare a new PEIS now. For example, in 1996, DOE undertook a *Stockpile Stewardship and Management PEIS* to consider, *inter alia*, relocating pit production to LANL. Likewise, in 2003, DOE prepared (but never finalized) a *Modern Pit Facility Supplemental PEIS* to analyze a possible increase in the rate of plutonium pit production and evaluate potential alternative sites. Similarly, in 2006, DOE undertook a *Complex 2030 Supplemental PEIS* to consider the modernization of the U.S. nuclear weapons program. And most recently, in 2008, the agencies undertook a *Complex Transformation Supplemental PEIS* in order to analyze alternatives for the modernization of the U.S. nuclear weapons program, including expanded plutonium pit production.

Because NNSA’s plans and circumstances at both LANL and SRS have changed significantly in the 11 years since it last undertook NEPA programmatic analysis of this issue—and these now clearly exceed the boundaries established by Court order in 1998—the agency *must* prepare a timely Supplemental PEIS “prior to taking any action that would commit DOE resources to detailed engineering design, testing, procurement, or installment of pit production capability” that goes beyond “fabrication at LANL of 50 pits per year under routine conditions, and 80 pits per year under multiple shift operations.”

Indeed, by undertaking or preparing to undertake “detailed” engineering design for pit production in a “repurposed” MOX plutonium fuel facility at SRS—before completing the required Supplemental PEIS—NNSA flirts with actual or anticipatory breach of the 1998 Court Order. We would be happy to meet with relevant DOE staff and decisionmakers in order to assist the Department in its efforts to find a lawful course that complies with its NEPA obligations.

Respectfully submitted,



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